Cite as Det. No. 99-152, 19 WTD 643 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Future Reporting Instructions	)	D E T E R M I N A T I O N
	)	No. 99-152
. . .	)	Registration No. . . .
	)	Audit No. . . .

[1] RULE 170; RCW 82.04.050: RETAIL SALES TAX -- RETAILING B&O TAX -- SERVICES IN RESPECT TO CONSTRUCTING -- CONSTRUCTION MANAGEMENT FOR COMMERCIAL TENANTS. Construction management services provided to tenants in commercial construction projects, that are limited to review, inspection, advising the tenant, and acting as a facilitator in promoting the tenant's interests, and do not include performance, supervision, direction, or responsibility for the performance of the constructing activities, do not constitute services in respect to constructing.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

A taxpayer protests a future reporting instruction that retailing business and occupation (B&O) tax and retail sales tax apply to its receipts from construction management services.[1]

FACTS:

Prusia, A.L.J. -- The taxpayer provides project management services in Washington for tenants with respect to the construction of commercial and office space ("construction management services"). It provides additional services in the planning and purchasing of furniture and utilities for the new space, and arranges the physical move of its clients.

The Department of Revenue (Department) audited the taxpayer's books and records for the period January 1, 1994 through December 31, 1997. The audit examination showed that

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

throughout the audit period, the taxpayer had been reporting income earned from its construction management services under the Service and Other Business and Occupation (B&O) tax classification. The audit examination accepted that classification because letters from the Department to the taxpayer in 1996 stated the taxpayer's income was subject to that classification. However, the Auditor's Detail of Differences and Instructions to Taxpayer, dated March 20, 1998, instructed the taxpayer that based upon its contracts and information provided, it was providing retail construction management services. It instructed the taxpayer that as of April 1, 1998, it was to report income from its construction management services under the retailing and retail sales tax classification. In doing so, the Audit Division relied upon the Board of Tax Appeals (BTA) decision in Steele v. Dept. of Revenue, No 47590 (Bd. of Tax Appeals 1996), and also upon Det. No. 90-123, 11 WTD 45 (1990), and Det. No. 93-159, 13 WTD 316 (1994). The instruction does not apply to the services of planning and purchasing furniture and utilities, and arranging the client's physical move.

The taxpayer petitions for correction of the future reporting instruction. It contends the instruction is contrary to RCW 82.04.050 and a long history of Department treatment of project management services. The taxpayer has not been reporting and paying according to the instruction.

The taxpayer described its construction management activities at the hearing. The taxpayer has provided us with copies of representative proposal/contracts, and with meeting minutes from projects in which it participated. These projects were the . . . Project, the . . . Project, and the . . . project.

The taxpayer describes the context in which it performs, and its role, as follows. The taxpayer provides construction management services only in commercial and office landlord-tenant situations. Tenants hire it to manage construction projects from the tenants' perspective, as their representative. The taxpayer's fee typically is based on a percentage of the total project.

In the typical commercial lease situation, the lease agreement requires the landlord to make certain improvements before the tenant moves in, and the landlord arranges for and pays for the improvements. That is the situation in most projects on which the taxpayer works. The landlord hires the general contractor, and either the landlord or the general contractor hires the architect. Sometimes, the landlord will allow the tenant a specified tenant allowance for improvements, which is included in the price of the lease. In those cases, usually the tenant arranges for the improvements, and the landlord either pays the tenant the cost or pays the contractor. Tenants in possession generally can make changes in the premises, and are responsible for the cost.

On the projects on which the taxpayer works, a general contractor, hired either by the landlord or the tenant, is responsible for the actual constructing activity. There is also a construction supervisor who works for the general contractor and is on-site, supervising the work. The taxpayer never performs the role of either a general contractor or a construction supervisor. Rather, the taxpayer provides expert advice and assistance to the tenant, and acts as the tenant's alter ego, in making sure the construction is done correctly, on time, and at a reasonable cost.

The proposal the taxpayer submitted to . . . is representative of its proposal-contracts.[2] It sets out the scope of the taxpayer's services as follows:

> 1. Assistance in the refinement of the space plan and development of Tenant Improvement Specifications to assure tenant improvement dollars are well spent.
>
> 2. Be responsible for design and construction time frames and the completion of all necessary documents to keep the build-out of tenant improvements on schedule.
>
> 3. Conduct a three part competitive bid process with a minimum of three general contractors – a) analyze each bid on a fair "apples to apples" basis, b) recommend the most qualified contractor, and c) assist in negotiating the final contract with the contractor.
>
> 4. Review and confirm contractor invoices for authenticity.
>
> 5. Monitor construction of the improvements to verify they are finished per specifications and that all punchlist items are completed.

The taxpayer performs a number of pre-construction services on projects. It advises and assists the tenant during the process of the landlord's or the tenant's selection of a general contractor. It reviews all bids, because rent often is a function of what the improvements cost, which gives the tenant an interest in the project being done timely and efficiently. It may solicit additional bids. It works with the general contractor in preparing an initial construction schedule. It monitors the permit process and assists in getting permits.[3]

---

[2] The taxpayer states it performs the same role and services regardless of whether the landlord or the tenant hires the general contractor, and therefore uses similar proposal-contracts in both situations. We note the proposal the taxpayer submitted to . . . , a tenant that handled the construction itself, is virtually identical to the proposal it submitted to . . . , a tenant whose landlord handled the construction.

[3] The . . . proposal lists the following pre-construction services:

> Assist [architect] in value engineering construction documents and prepare preliminary construction budget.
> Review construction documents in preparation for assembly of engineers', permit and bidders' packages.
> Distribute construction documents, screened mylars and completion schedule to electrical, mechanical and structural engineers.
> Review any engineered drawings with the chief engineer of [the building].
> Prepare permit package and submit to City of . . . for both blanket and stair permits.
> Prepare list and order any long lead items.
> Prepare and issue bid packages to general contractors and carpet vendors. This package is complete with regulations and guidelines for contractors, bid forms, start and completion date information and other necessary information not included in construction documents.
> Conduct pre-bid site tours with bidders.
> Field questions from bidders and issue a list of answers.

During the construction, the taxpayer is available on a daily basis to monitor the progress and quality of the work, and assist in the resolution of scheduling and construction problems. It regularly, sometimes daily, conducts walk-throughs to monitor the progress and quality of the work. It is in regular phone contact with the general contractor, the construction supervisor, the architect, and other parties. It meets with all the parties weekly, to answer questions about what the tenant wants, and to review the progress of the work and problems that need to be addressed.[4]

When it observes or is told of construction or scheduling problems, the taxpayer tries to work out problems informally, by making its concerns known to the contractor or construction supervisor, and recommending steps to deal with the problem. For example, if it sees a problem with the quality of the work, it lets the general contractor or the construction supervisor know it does not like the work they have done. But, the taxpayer does not tell them how to do the work. It discusses scheduling problems and possible construction changes with the contractor, and makes the tenant's wishes in that regard known. On projects on which the tenant has the contract with the general contractor, the taxpayer generally has the authority to tell the contractor what the tenant wants, when it wants it, and how much it is willing to pay.

If informal efforts do not resolve a problem, the taxpayer goes to the tenant or the landlord, depending upon which has the contract with the general contractor. When issues require the tenant's input or decision, the taxpayer obtains the information necessary for the tenant to make

---

> Collect and review general contractor and carpet vendor bids to insure that each contains all elements described in [the architect's] architectural drawings, engineered drawings and bidders' specification.
> Present recommendation for successful bidder to [the architect] and [client].
> Review successful bidder's list of sub-contractors with [the architect] to see if alternates need to be selected.
> Prepare construction budget and assist general contractor in preparing construction schedule and distribute to [the client, the architect, and the building owner's representative].

[4] The . . . proposal lists the following construction services:

> Chair kick off meeting with [the client, the architect], general contractor, major sub-contractors, all related [client] vendors and [the building] management.
> Chair all weekly construction and phasing meetings.
> Prepare and issue all meeting minutes.
> Manage construction process and schedules, including all [client] vendors.
> Insure all [architect] requests for pricing or change orders are implemented and inserted into the proper sequence in the construction schedule.
> Conduct daily on-site inspection tours with job superintendent.
> Insure construction adheres to local codes and monitor construction personnel to see that they are not disrupting other tenants or building operations.
> Spend time daily on the telephone coordinating job details with the general contractor, sub-contractors, [the architect] and if necessary [the client].
> Conduct a punchlist walk through prior to [the client's] acceptance and move in for each phase.
> Monitor punchlist completion and signoff punchlist at completion of work.

a decision. When additional parties must be involved in resolving a problem, the taxpayer facilitates communication among parties.

The taxpayer states it acts as a monitor, auditor, mediator, conciliator, and expert advisor. It does not do any of the constructing. It does not decide "constructability" issues. It does not supervise the means and methods of construction. It does not order material. It does not hire anyone. It is not responsible for any of the construction. If it were not present, the job would be done anyway. But, it is less likely the job would be done timely or to the tenant's satisfaction. It is common for a commercial tenant to hire an expert to look after their interests, and if they did not hire the taxpayer, the clients likely would hire an architect or other expert advisor.

At the completion of construction, the taxpayer reviews and validates all submitted invoices, turns over to its job file to the tenant, and authorizes payment of the general contractor's retention fee. The job file includes signed-off inspection reports, final inspection form and permit set of drawings.

The quality and quantity of the work the taxpayer performs is identical whether the landlord has the contract with the general contractor, or the tenant has the contract.

The taxpayer addressed some questions raised by certain language in its proposals. In its proposals and contracts, the taxpayer agrees to "manage the construction process and time frames." The taxpayer states that language refers to the monitoring, consulting, mediating, and advising activities the taxpayer engages in to make certain the work is done properly and timely. It does not mean the taxpayer supervises the actual construction. It does not mean the taxpayer schedules the work. The taxpayer walks through and says whether the job looks okay. It asks the general contractor when a portion of the work will be done, monitors the schedule, and gets involved when something gets off schedule. It provides input on how to handle the situation when the work has gotten off schedule.

In its proposals and contracts, the taxpayer agrees to spend time daily on the telephone "coordinating job details with the general contractor, subcontractors, [architect], and, if necessary [its client]." The taxpayer states the "details" referred to are mostly material-oriented. Some materials do not come in, and adjustments have to be made. The taxpayer discusses with the contractors and the architect how to deal with the problem, and tries to facilitate a solution. Sometimes decisions are deferred to the weekly meetings. The language in the proposals does not mean the taxpayer tells the contractor or the sub-contractors how to perform the details of their work.

The taxpayer also addressed a hand-written note one of its accountants sent the Department on a copy of a June 3, 1996 Department notice of balance due. The note contains the following sentence: [Taxpayer] manages and actually supervises tenant improvements in commercial office space." The taxpayer states the sentence is factually incorrect, if the word "supervises" was used in the sense of supervising the constructing. It reiterates that the taxpayer does not supervise the manner and methods of construction. It inspects the work after it is done, and tells the

contractors when it believes the work is not in accordance with the requirements of the contract or otherwise is deficient from the tenant's perspective.

The taxpayer argues as follows. The term "construction manager" is variously used to refer to tenants' agents, owner's agents, and construction superintendents. Only construction superintendent services -- the on-site management -- are subject to sales tax. A construction superintendent typically works for the general contractor. It is on site, supervising the work. Its job is part of the construction contract. The taxpayer is not a construction superintendent. It is not on the site, supervising construction. Its job is not part of the construction contract. The construction will be done whether or not the taxpayer is involved in the project. The taxpayer's services may be rendered in connection with a construction project, but they are not rendered as part of the construction job, and therefore are not "rendered in respect to constructing" for purposes of RCW 82.04.050(2). It contends the BTA's Steele decision, when properly understood, stands for the proposition the taxpayer asserts.

The taxpayer argues that its activities are distinguishable from the Steeles' activities in various respects. It argues the Steeles were really construction supervisors. The owners who hired the Steeles acted as their own general contractors, but needed someone to be the construction superintendent. The Steeles performed that role. They resolved all "constructability" issues -- the means and methods of construction. In contrast, on the projects the taxpayer is involved in, there is a general contractor, and a construction supervisor who works for the general contractor. It argues there is a world of difference between the situations in which it performs a role, and those where there is no separate general contractor or construction supervisor, and the construction manager performs activities usually performed by such parties. A construction manager's function is fundamentally different when there is a separate general contractor. When there is a general contractor, the construction manager is not responsible for the work. The taxpayer argues that neither the Department nor the BTA has addressed the situation where there is both a general contractor and a construction manager.

The taxpayer argues that because it is not a party to the construction contract, and its services are not part of the construction contract, conceptually its activities cannot be in relation to the actual constructing.

The taxpayer also contends the Department must base the taxation of its activities upon the nature of its predominant activity. It argues that even if some of its service activities might be in relation to constructing, its activities are predominantly unrelated to construction supervision, and therefore, none are subject to retail sales tax. It argues the activities of the taxpayer in Steele were subject to retail sales tax because the taxpayer predominantly was a construction supervisor.

ISSUES:

1. Do a company's construction management services, on behalf of tenants involved in commercial and office construction, constitute services in respect to constructing, when

the services involve monitoring the construction activity and the schedule, advising the contractors when it finds their work deficient, communicating the tenant's wishes to other parties, and facilitating communication and problem resolution among the parties to the project?

2. Are the future reporting instructions issued by the Audit Division correct?

DISCUSSION:

Generally, amounts received for services are taxable to the service provider at the catchall "service and other activities" B&O tax rate. RCW 82.04.290; WAC 458-20-224 (Rule 224).[5] The Legislature has included some services in the definition of "retail sale." In those cases, the service provider is taxed at the retailing B&O rate, and must collect and remit retail sales tax.

RCW 82.04.050(2) defines a "sale at retail" to include:

> [T]he sale of or charge made for tangible personal property consumed and/or for labor or services rendered in respect to the following: . . . (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, . . .

(Emphasis added.) Accordingly, a company rendering services "in respect to . . .constructing" for a consumer generally is required to collect retail sales tax from the consumer and pay retailing B&O tax. See also WAC 458-20-170 (Rule 170).

Generally, if a taxpayer engages in activities that are within the purview of two or more tax classifications, it will be taxable under each applicable classification. See RCW 82.04.440. However, when a taxpayer's contract requires it to engage in activities subject to two or more classifications, but lumped together in a single billing, the Department looks to the primary activity in order to identify the proper tax classification of the receipts for work completed under the contract. As stated in Det. No. 92-183ER, 13 WTD 96 (1993):

> [W]here a taxpayer agrees to perform an activity taxable primarily under a particular classification and only incidentally engages in other activities in furtherance of that activity, the taxpayer will be taxed according to the primary activity. In Final Det. No. 89-433A, 11 WTD 313 (1992) we stated:

[5] From July 1, 1993, until repealed effective July 1, 1998, certain business activities were classified for B&O tax purposes as selected business services. RCW 82.04.290. Various professional services, such as engineering and architectural services, were specifically included as selected business services.

> [B]ifurcation of a contract for taxation will not be the usual case. In most cases income from a performance contract will be taxed according to the primary nature of the activity.
>
> . . .
>
> In short, taxpayer's income from its contracts should be taxed according to the primary nature of the work performed under the contracts.

Rule 170 addresses the bifurcation of activities related to constructing, as follows:

> The term "constructing, repairing, decorating or improving of new or existing buildings or other structures," . . . includes the sale of or charge made for all service activities rendered in respect to such constructing, repairing, etc., . . . Hence . . . such service charges such as engineering fees, architectural fees or supervisory fees are within the term when the services are included within a contract for the construction of a building . . . .

(Emphasis added.)

If the services are functionally integrated with what is predominately a retail activity, such as occurs under a contract to design and build a new structure, then the entire contract price is subject to retail sales tax. See Chicago Bridge and Iron v. Department of Rev., 98 Wn.2d 814, 659 P.2d 463, appeal dismissed, 464 U.S. 1013 (1983).

The Department has interpreted and applied the phrase "services rendered in respect to constructing" in published determinations, but has not developed a clear or bright-line test. See, e.g., Det. No. 90-123, 11 WTD 45 (1990), Det. No. 93-159, 13 WTD 316 (1994), Det. No. 97-227, 17 WTD 99 (1998).

In several recent cases, the Board of Tax Appeals (BTA) has discussed services rendered in respect to constructing. Steele v. Dept. of Revenue, No. 47590 (Bd. of Tax Appeals 1996); Beacham v. Dept. of Revenue, No. 47414 (Bd. of Tax Appeals 1996); Traffic Expediters, Inc., v. Dept. of Revenue, No. 96-83 (Bd. of Tax Appeals 1998); Riplinger v. Dept. of Revenue, No. 51234 (Bd. of Tax Appeals 1998).[6] In Steele, the BTA concluded that construction management services were subject to retail sales tax. In reaching its conclusion, the Board recognized that the Department applied a direct relationship test to determine when services were rendered in respect to constructing activity, but the Department had not articulated factors to be used in applying this test. The Board analyzed Steele's activities as follows:

> We find these activities are directly related to the actual construction of the building in question. They encompass the classic construction management function without which any

[6] Traffic Expediters was appealed to Thurston County Superior Court, Docket No. 98-00831-5 (1998).

> building more complex than an unheated chicken coop could be built on time and within budget . . . . [T]hey agreed to deal directly with contractors and suppliers to obtain bid proposals; prepare, monitor and continuously update the construction schedule; and determine whether the contractors' work was up to standards. These were necessary, essential--indeed crucial--activities to the successful completion of the buildings.

(Emphasis added.) Subsequently, in Traffic Expediters, the BTA abandoned the direct relationship test and stated that "the test is whether Taxpayer's . . .services are necessary" for the construction.

The Washington State Supreme Court has defined the phrase "with respect to" to mean "with reference to, or relating to." In re Weyerhaeuser Tbr. Co., 53 Wn.2d 235, 238, 332 P.2d 947 (1958); see also Phoenix Leasing v. Sure Broadcasting, Inc., 843 F. Supp. 1379, 1388 (D. Nev. 1994); aff'd, 89 F.3d 846 (9th Cir. 1996). In Phoenix Leasing, a case involving the interpretation of a jury waiver provision in a loan agreement, the court adopted Washington's definition of the phrase "with respect to," and held that it was not a "but for" test (which would be similar to a "necessary" test).

We find that the phrase "in respect to . . . constructing" should be similarly limited. In general, all words and provisions of the applicable statute and the act as a whole must be harmonized so as to ascertain the legislative intent. International Paper Co. v. Department of Rev., 92 Wn.2d 277, 595 P.2d 1310 (1979). The legislature clearly intended that, under most circumstances, retail sales tax is not imposed on architectural and other services. See RCW 82.04.290. In order to harmonize the applicable statute with other provisions of the tax code, we must limit the scope to something other than a "necessary" or "but for" test.

Several examples illustrate the unworkable extent to which a "necessary" or "but for" test would reach. For example, development fees, architectural fees, hazardous materials consultant fees, testing fees, and engineering fees, which all involve fees for services "necessary" to the construction of a project, would be subject to retail sales tax. Under some circumstances, for example when a contractor or owner uses testing services, the service provider may not even be aware that a structure is being built.[7] Even some administrative, legal, or accounting services may be deemed necessary for the successful completion of a construction project.[8]

---

[7] In Det. No. 91-183ER, 13 WTD 96 (1993), we held that field testing of construction materials was not services in respect to constructing activity and stated "simply performing a service with respect to property that will be used in a construction activity is not sufficient to convert that service to a retail sale."

[8] In Riplinger, a case involving change order administration services for contractors, the BTA may have recognized the potential overreaching of its prior test, where it stated:

> This Board has not developed its own bright-line test, nor are we able to do so in this appeal. The issue is complex and does not lend itself to a simple, widely applicable, easy-to-apply solution. We agree with the Department that it is the nature of the service provided, rather than the business of the client, that determines the applicable tax rate.

In identifying the scope of what constitutes services "in respect to . . . constructing", it is first important to note the statute refers to the activity of "constructing", not construction in general.[9] Accordingly, services that are directly related to or in direct reference to the activity of constructing a building are covered.[10] The further removed an activity is from the physical activity of constructing a building, the less likely it is to be considered a service rendered in respect to such activity.

In this regard, when the relationship at issue involves a service that controls or determines how or when the constructing activity takes place, the service is directly related to building activity. For example, in Steele, the taxpayer prepared a construction schedule and continuously monitored and updated it, supervised construction on a day-to-day basis, and arranged for and approved the purchase of all materials, all of which concern how and when the constructing takes place. Such services are directly related to the activity of constructing a building or structure. In this regard, the Department has consistently held that construction management services constitute services in respect to constructing activity. See Det. No. 89-63, 7 WTD 163 (1989); Det. No. 93-159, 13 WTD 316 (1994); Det. No. 98-27, 17 WTD 99 (1998). In contrast, most architectural, administration, inspection, or other related services--which may be related to the general process of construction--are not directly related to the activity of constructing itself. Accordingly, they would not be covered, except when they are functionally integrated with a building or installation activity.

Such an interpretation of the phrase "services rendered in respect to . . . constructing" is consistent with the Department's past administration of the statute. See, e.g., Det. No. 89-63, 7 WTD 163 (1989); Det. No. 93-159, supra; Det. No. 98-27, supra. An administrative agency's interpretation of its own regulations is entitled to great weight. Washington State Liquor Control Bd. v. Washington State Personnel Bd., 88 Wn.2d 368, 561 P.2d 195 (1977).

Based upon the context, in which the taxpayer performs its services, and its description of its role, we find that the taxpayer is not performing services "in relation to constructing" as that term is used in RCW 82.04.050(2). The taxpayer provides services in situations in which there is a separate general contractor and construction supervisor. The essence of the taxpayer's role is review, inspection, advising the tenant, and acting as a facilitator in promoting the tenant's interests. It provides no "hands on" work, makes no decisions as to the subcontractors and

---

Although it did not develop a bright line test, the BTA reasoned that change order administration services were more in the nature of legal or accounting services, rather than management services. It concluded the services were not services in respect to constructing activity.

[9] The term "constructing" means "to put together by assembling parts; BUILD", whereas the term "construction" has a more general meaning, that is, "the act or process of constructing." Webster's II New Riverside University Dictionary, at 303 (1988).

[10] In general, when a taxpayer must refer to the terms of a construction contract or contracts (whether oral or written) to define the scope of the services to be provided is a good indication that the services are directly related to constructing activity. See Rule 170.

suppliers, and does not warrant any of the work. The taxpayer does not arrange for the provision of construction services, or direct or supervise the constructing activity itself.

The taxpayer's presence, and its activities, certainly affect how and when the constructing activity takes place. Its involvement assures that the parties are in frequent communication, and potential problems are promptly aired and resolved. But the taxpayer does not control or determine how and when the building activity takes place. It does not supervise or direct the work of the general contractor or subcontractors. It is not responsible for the performance of the constructing activity. Based upon its description of its activities, even on projects on which the tenant contracts with the general contractor, the taxpayer's role falls short of being a co-superintendent of construction activities. The taxpayer's activities are in the nature of professional services, such as provided by architects, inspectors, and consultants to project owners, and are appropriately taxed as a service rather than a retail sale.

Finally, we note that the 1999 Legislature added a new section to chapter 82.04 RCW to clarify the meaning of the term "services rendered in respect to" as used in RCW 82.04.050.[11] The legislation provides that the term means:

> [T]hose services that are directly related to the constructing . . . and that are performed by a person who is responsible for the performance of the constructing . . . The term does not include services such as engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services provided to the consumer of, or person responsible for performing, the constructing . . .

The legislation defines the term "responsible for the performance" as meaning:

> [T]he person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work.

We believe our determination in this case comports with the legislative clarification of what are services rendered in respect to constructing and what are not. The taxpayer is not obligated to perform any constructing activities, either personally or through a third party.

The Audit Division's future reporting instructions incorrectly instruct the taxpayer. The construction management service it has performed for tenants and building owners do not constitute retail construction management activity. Accordingly, we grant the petition for review.

DECISION AND DISPOSITION:

[11] Laws of 1999, ch. 212. The legislation expressly states that its intent is to clarify, and to maintain the application of the law and not to extend retail treatment to activities not previously treated as retail activities. Its effective date is July 25, 1999.

The taxpayer's petition is granted. . . .

. . .

Dated this 28th day of May 1999.