

Cite as Det. No. 16-0132, 38 WTD 079 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Tax Ruling re: )	
)	No. 16-0132
)	
. . . )	Registration No. . . .
)	

RCW 82.04.050; WAC 458-20-171: RETAIL SALES TAX – PUBLIC ROAD CONSTRUCTION – CONTRACTORS. Retail sales tax must be imposed against a contractor upon the rental of equipment used in the performance of public road construction contracts.

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.

March 31, 2016

. . .

Re: . . .  
Registration No. . . .  
. . .  
Determination No. 16-0132<sup>1</sup>

Dear . . . :

This is our decision regarding your petition, received by the Appeals Division of the Department of Revenue (Department) on March 31, 2015, in which you dispute a Tax Ruling issued to you by the Department's Taxpayer Services Division - Taxpayer Information and Education (TI&E) section on February 26, 2015. On February 12, 2015, you submitted a request as follows:

Our company provides rental of water treatment systems to construction companies. These systems treat wastewater produced by construction efforts to meet state discharge requirements. At this time, we have been hired by a construction company who is performing construction on the [project]. I am being told that this project is classified under public roads and we are not to charge the construction company sales tax on the rental of our treatment system to them. Furthermore, they have indicated that we need to pay use

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

tax on any materials we use. I need a ruling stating that we do or do not charge sales tax to the construction company on the rental of our water treatment system. I also need to know if the construction company needs to provide us with an exemption form or some [type] of document stating that the project is classified under public roads and we do not charge sales tax. In regards to us having to pay use tax on any materials used: our treatment systems utilize filter media in order to provide the treatment of the wastewater. This is a consumable item that needs to be replenished periodically. Does this media fall on the same lines as materials? If so, do we in fact have to pay use tax on this media? We also bill operational support labor on these jobs. Does the no sales tax issue include our service labor?

On February 26, 2016, you received the TI&E response (Tax Ruling) to your request:

We assume your company has been hired to conduct a water treatment operation at the construction site. Water run-off from the construction site must be monitored, analyzed, and treated, if necessary. These activities are considered to be professional services rather than construction services. Therefore, the retail sale tax does not apply to amount charged by [Taxpayer] to your client. In addition, you are not subject to tax treatment under Public Road Construction as you [are] not permanently installing tangible personal property or other materials in the road. Your gross income from water treatment services is subject to the business and occupation (B&O) tax under the Service and Other Activities classification.

While [Taxpayer] uses its equipment at the site to perform this service, this is not considered to be the rental of equipment or rental of equipment with operator. It is clear that your client is purchasing your knowledge, skills and expertise of your company and the operational support labor you provide as part of the service. You are the consumer of any equipment or materials used on the job and must pay sales or use tax on them. As such you should pay sales or use tax on the filter media used in the water treatment process.

You appealed this Ruling because it assumed that you are using the equipment at the construction site to provide your services, including monitoring, analyzing and treating, if necessary, water run-off at the construction site. In your petition you state:

Our company provides the rental of water treatment systems to construction companies. The equipment being rented to the construction company is operated by the construction company. We do not conduct any water treatment operations at the construction site. We provide and bill to our customer the set up, training, commissioning of the system, breakdown at the end of the job, and any repairs to the equipment that might need to be done. We are neither performing any monitoring nor analysis of the water being treated. We are strictly renting water treatment equipment and that equipment is being operated by the customer. We also sell to the customer the necessary consumables they will need to add to the rented system to properly treat the water.

The gross sales amount derived from the rental of bare (unoperated) equipment or other tangible personal property [is] subject to the retailing business and occupation tax (B&O) tax classification

and retail sales tax. RCW 82.04.050 excludes from the definition of “retail sale” purchases for resale.

The February 26, 2015, Tax Ruling found that, based on the information you provided and your website, you provide professional services to construction sites where water treatment systems are required to monitor, analyze and treat, if necessary, water run-off at construction sites. The Tax Ruling determined that, when you provide water treatment systems to construction sites, you are providing professional services because you are hired for your skill, knowledge, and expertise in operating the equipment. The Ruling did not address the situation where you would rent a water treatment system to a customer to be operated and controlled exclusively by that customer.

To the extent that you rent or lease equipment to a consumer for the sole use and operation of that equipment by the consumer, these sales would be subject to retailing B&O tax and you must collect retail sales tax from the consumer. *See* RCW [82.04.040(1); RCW 82.04.050(4)]; RCW 82.04.190; [RCW 82.08.010(11);] RCW 82.08.020. In general, contractors that rent equipment are responsible for retail sales tax. WAC 458-20-170(4)(d) states:

The retail sales tax applies upon sales and rentals to prime contractors and subcontractors of tools, machinery and equipment, and consumable supplies, such as hand and machine tools, cranes, air compressors, bulldozers, lubricating oil, sandpaper and form lumber which are primarily for use by the contractor rather than for resale as a component part of the finished structure.

You inquired whether you must charge your client retail sales tax on your rental of equipment on the . . . project. The Ruling stated that you were not a public road contractor and your charges to the prime contractor would not be subject to retail sales tax. This response was based on its conclusion that you are providing professional services when performing under a contract to provide a water treatment system for monitoring, analyzing and treatment of water runoff at a construction site.

Under RCW 82.04.050(10), the term “retail sale” does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

Public road construction includes the activity of building roads, streets, and sidewalks owned by the cities, counties, or political subdivisions of the state or the U.S. that are used for foot or vehicular traffic. Both prime and subcontractors are taxable under the Public Road Construction B&O tax classification. Public road contractors are not required to collect or remit retail sales tax [from the public entity] on the gross contract price. [However, the] contractor is considered the consumer of all materials [used] on the job. Thus, “the retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, **equipment and supplies** used or consumed in the performance of such contracts.” WAC 458-20-171 . . . (emphasis added).

Here, if your charges are solely for the rental of the equipment and the contractor is performing public road construction, then the contractor is the consumer of the rented equipment and must pay you the retail sales tax on those charges.

Accordingly, the ruling is modified as discussed above.

Jacqueline M. Danyo, T.R.O.