

Cite as 5 WTD 145 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Refund of)	
)	No. 88-146
)	
. . .)	Registration No. . . .
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)	

[1] **RULE 103:** RETAIL SALES TAX -- TIME AND PLACE OF SALE -- DELIVERY IN WASHINGTON -- PROPERTY USED EXCLUSIVELY OUTSIDE OF WASHINGTON. The sale of property delivered in Washington is subject to retail sales tax regardless of the fact that the property will be used outside of Washington.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

The taxpayer petitioned for a refund of sales tax paid on the purchase of electronic equipment used exclusively in [another jurisdiction].

FACTS AND ISSUES:

Potegal, A.L.J. -- The taxpayer is a college located near the . . . border [to another jurisdiction]. The taxpayer operates a radio station which has a transmitter located on top of a mountain in [another jurisdiction]. Access to the transmitter site is from a road in Washington. The road is very primitive and is unplowed in winter. The taxpayer purchased some equipment for use in connection with the transmitter. Because access to the transmitter site was so difficult the taxpayer

had the equipment delivered to its campus in Washington. The vendors collected sales tax on the sale of the equipment to the taxpayer because delivery took place in Washington.

The taxpayer believes it is entitled to a refund of the sales tax. If delivery had taken place three miles [from] where it did take place there would have been no sales tax because that location would have been in [another jurisdiction]. There should not be sales tax on this transaction merely because delivery took place in Washington. The equipment was purchased exclusively for use in [another jurisdiction].

DISCUSSION:

RCW 82.08.020 provides that sales tax:

. . . is levied and . . . shall be collected . . .
on each retail sale in this state . . .

WAC 458-20-103 states in part:

For the purpose of determining tax liability of persons selling tangible personal property, the sale takes place in this state when the goods sold are delivered to the buyer in this state, irrespective of whether title to the goods passes to the buyer at a point within or without this state.

[1] The purchase of the equipment was a retail sale in this state because delivery took place here. Thus, the law requires that sales tax be imposed on the sale. The fact that the equipment was for use outside of this state is irrelevant. The incidence of the retail sales tax is the sale, not where the goods may be used. In the absence of specific exemptions or deductions, we have no choice but to deny the taxpayer's petition.

The taxpayer has expressed considerable frustration with the taxation of this transaction turning on so technical a point. It believes that the legislature could not have intended the result achieved in this case. However, "Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself." Human Rights Comm'n. v. Cheney Sch. Dist., 97 Wn.2d 118, 641 P.2d 163 (1982). Here, the wording of the statute unambiguously requires tax on each retail sale. Any unfairness in this situation would need to be remedied by the legislature. An administrative agency may not by interpretation or rule amend

a legislative enactment. Hansen Baking Co. v. City of
Seattle, 48 Wn.2d 737, 296 P.2d 670 (1956).

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 9th day of March 1988.