

Cite as Det. No. 01-101, 21 WTD 123 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Appeal of a)	D E T E R M I N A T I O N
Prior Departmental Ruling of)	
)	No. 01-101
)	
...)	Registration No. . . .
)	Appeal of a prior Departmental Ruling
)	Docket No. . . .
)	
)	
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RCW 82.12.020; ETA 332.12.178: USE TAX – SAMPLE PRODUCT – DISPLAY – MANUFACTURED HOMES. If the sample home is carried on taxpayer’s books as inventory and not as a demonstrator, and if the home is sold as new with no substantial reduction in price or compromise of warranty because of “wear and tear,” then the taxpayer is not required to pay retail sales tax or use tax on its intervening display use of the home before sale.

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:

An appeal of a Departmental ruling that Taxpayer’s use of a modular home as a demonstrator is subject to retail sales or use tax.¹

FACTS:

Lewis, A.L.J. -- Taxpayer is an authorized sales agent and “builder” for an out-of-state manufacturer of mobile (manufactured) homes. In June 2000, Taxpayer’s CPA wrote to the Taxpayer Information and Education (“TI&E”) Division of the Department of Revenue (“Department”) to determine if retail sales tax or use tax must be paid on a manufactured home used only for display purposes.

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

The CPA's letter further explained:

1. [Taxpayer] has an administrative office and does not intend to relocate it to the show home.
2. [Taxpayer] intends to place the home on a lot that is zoned commercial (not residential) in downtown . . . , Washington in time for the annual celebration. (See letter)
3. [Taxpayer] has obtained financing for the project that has restricted use as a "demonstration model in his business". (See letter)
4. [Taxpayer] has obtained a building permit for a "show home not for residential purposes". (See copy of permit)
5. [Taxpayer] intends to sell the show home if a customer decides to buy. This would appear to be similar in nature to the situation described in ETA 061.12.178. (See Advisory)

In July 2000, TI&E ruled that Taxpayer's display of the home constituted use and that retail sales tax or use tax was due on the value of the home.

In January 2001, Taxpayer's CPA sent a letter to TI&E to clarify facts. Taxpayer's letter stated:

Specifically, [Taxpayer] has not placed the home on a foundation as you indicated. There is no foundation. The manufactured homes rests on a ribbon (pedestal) only. Second, it is not and has not been connected to city water or sewer utilities. Power is provided from a temporary power pole. No occupancy permit would ever be issued.

These facts should establish that [Taxpayer] is not erecting a building on real estate, but merely setting a manufactured home on property temporarily. This property is inventory and is available for sale. As a matter of fact, the home may be sold effective in May of 2001 and sales tax would be collected and remitted at that time.

On February 8, 2001, TI&E replied to Taxpayer's representative's letter.

Even though the home is not permanently placed at your premises by installing on a foundation and permanently connecting to utilities, the home will still be subject to sales tax or use tax if it is substantially used for sales promotion purposes.

Evidence that the home will be substantially used for sales demonstration includes the fact that the finance papers indicate that its use is restricted to "demonstration model in his business." Also, the fact that [taxpayer] has obtained a building permit for a "show home not for residential purposes" indicates that it will be substantially used for sales

demonstration purposes. ETA 332.12.178 rather than ETA 061.12.178 is controlling in this case.

On February 28, 2001, Taxpayer's lawyer filed an appeal of TI&E's ruling with the Appeals Division. Taxpayer's lawyer's petition attempted to distinguish two sets of facts in ETA 332.12.178.

... My reading of ETA 332.12.178 leads me to believe that there was created in that Bulletin, a definite distinction between two very different factual possibilities. On one hand, paragraph one deals with automobiles and other types of products that obviously get consumed as to their useful life during the sales and demonstration process. They subsequently are sold for substantial discount, or as with advertising materials and samples, are simply given to the prospective customers.

In our case, we are dealing with a modular home. It is simply available to look at by prospective customers. They do not drive it for periods of time thus using its useful life and they are not given the product, as with advertising materials.

Much to the contrary, the modular home is sold for its full retail value once a customer is located, then moved to the customer's land to be installed on a foundation. This is no different than the single trade show, convention or, for that matter, no different than the materials placed in the show window as a window display and thereafter sold as new merchandise.

Clearly, the modular home and its placement fits the exceptions stated in the second paragraph of ETA 332.12.1789, if that ETA is applicable. There is no "substantial use" of the modular, as it is simply to look at and will be resold for full retail.

I would also like to resubmit for the record, a copy of the Building Permit issued by the city, which I don't believe was previously submitted. As you can see, the permit clearly states that it is "for show home --not for residential purposes".

ISSUE:

Whether a Taxpayer must pay either retail sales tax or use tax on a manufactured home used strictly for display purposes?

DISCUSSION:

RCW 82.12.020 imposes the use tax in these terms:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail

The Department's longstanding position as to the imposition of use and/or deferred sales tax on inventory items used for demonstration purposes is set forth in Excise Tax Advisory ("ETA") 332.12.178. This tax advisory states:

The Use Tax applies to articles which are substantially used for sales promotion purposes. This includes automobiles, boats or appliances regularly used as demonstrators, display advertising materials, samples or advertising material given away to customers, and samples carried by salesmen.

The tax is not applicable to the brief and superficial use which occurs when articles held for sale are displayed in single trade shows (boat shows, home shows, auto shows, agricultural fairs conventions, etc.) for short periods or are used in floor or window displays, and are thereafter sold as new merchandise.

As a general guide, such articles will be deemed to have been substantially used, and subject to the Use Tax, when carried in the taxpayer's books of account as demonstrator or display merchandise, or when so extensively used for demonstration or display purposes that they can no longer be sold as new merchandise.

The tax advisory places great emphasis on whether the use is "brief and superficial" or so "substantial" and "extensive" that the item "can no longer be sold as new merchandise." In Det No. 92-044R, 13 WTD 63 (1993) the Department stated guidelines to help determine what type and level of use triggers use tax liability:

Therefore, if a product is demonstrated in furtherance of its own sale, its demonstration is part of the selling activity and is not separately use taxable. However, if a product is used in furtherance of the sale of other like products, such demonstrator use will be use taxable if the product is either carried on the taxpayer accounts as a demonstrator or if its use in furthering sales other than its own is so extensive that it can no longer [sic] sold as a new product.

Therefore, according to Det. No. 92-044R, for a sample product to be "used" and not trigger use tax liability the product must:

- Be used in the furtherance of its sale or the sale of other like products.

- Not be carried on Taxpayer's books as a demonstrator.
- Not experience use so extensive that the product cannot be sold as new.

Thus, whether use tax is due on the use of a sample product used for demonstration is determined on a case by case basis in light of the guidelines contained in ETA 332.12.178 and Det No. 92-044R, 13 WTD 63 (1993). Accordingly, in this case, if the sample home is carried on Taxpayer's books as inventory and not as a demonstrator, and if the home is sold as new with no substantial reduction in price or compromise of warranty because of "wear and tear," then the Taxpayer is not required to pay retail sales tax or use tax on its intervening display use of the home before sale.

DECISION AND DISPOSITION:

Dated this 10th day of July, 2001.