

Cite as Det. No. 16-0248, 36 WTD 236 (2017)

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>
Assessment of)	
)	No. 16-0248
)	
...)	Registration No. . . .
)	

RCW 82.12.010; Rule 278: VALUE OF THE ARTICLE USED – PURCHASE PRICE – SALES PRICE – DELIVERY CHARGES. Government contractor who purchased rock for use in a government contracting project, and who paid use tax on the value of the rock, was also liable for delivery charges paid to the vendor of the rock.

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.

Valentine, T.R.O. – A Washington taxpayer objects to the assessment by the Department of Revenue (Department) of use tax on transportation charges associated with the transport and delivery of materials the taxpayer used in a government contracting project completed in Washington. . . . The taxpayer contends that the Department improperly included transportation costs in the measure of use tax. Taxpayer’s petition is denied . . . [T]ransport charges are included in the measure of use tax in addition to the value of the goods or materials purchased.¹

ISSUES

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Pursuant to RCW 82.12.010, RCW 82.12.020, RCW 82.04.190, WAC 458-20-110, WAC 458-20-178, and WAC 458-20-17001, are delivery charges included in the measure of use tax when a government contractor purchases materials for a project and delivery charges are included in the purchase price?

FINDINGS OF FACT

[Taxpayer] is a joint venture operating in Washington. The Department’s Audit Division (Audit) reviewed Taxpayer’s business activities for the time-period of December 1, 2012, through March 31, 2015 (audit period).

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

During the audit period, Taxpayer's business activities included operating as a general government contractor. The use tax assessed on Document No. . . . in the amount of \$. . . (including interest) relates to a contracting job completed for the federal government on a military base located in Washington.

In its petition for review, Taxpayer provided the following description of the government contracting job related to the assessment:

Our joint venture repaired the maneuvering trails at Training Area . . . of the [military base]. The scope of our work involved repairing and restoration of existing trails used primarily for . . . unit training. We filled in deep ruts with quarry spalls to original grade, added both base and top courses, and compacted the rock.

Taxpayer purchased the rock used in the construction project from a company that both sold the rock and transported it to the construction site. The company billed Taxpayer for the rock and the transport on the same invoices. Taxpayer reported and paid use tax on the cost of the rock only.

Taxpayer contends that the transportation charges are not subject to use tax. Taxpayer's position is that the transportation charges belong under the [public utility] tax classification of "hauling for hire." Taxpayer points out that WAC 458-20-180 states that hauling for hire is not a sales taxable activity, but is instead subject to motor or urban transportation taxes.

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Audit's position is that Taxpayer owes the assessed use tax because the measure of use tax includes freight charges in addition to the cost of the goods or materials purchased.

ANALYSIS

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Are delivery charges properly included in the measure of use tax when a government contractor purchases materials for a project and delivery charges are included in the purchase price?

. . . RCW 82.12.020 imposes a use tax "for the privilege of using within this state *as a consumer* any: (a) Article of tangible personal property acquired by the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state." (Emphasis added.)

Under Washington law, government contractors are included in the definition of the term "consumer." RCW 82.04.190(6). WAC 458-20-17001. The measure of use tax is generally "the value of the article used" or "the value of the service used." RCW 82.12.020(4)(a). WAC 458-20-178(4). The use tax rate is equal to the rate of retail sales tax. *Id.*

RCW 82.12.010 defines the term “value of the article used” generally as the purchase price. [RCW 82.12.010(7)(a).] The term “purchase price” has the same meaning as the term “selling price” [in RCW 82.08.010. RCW 82.12.010(3);] WAC 458-20-178(4)(a). [Under RCW 82.08.010, the “selling price” is the “total amount of consideration” for which tangible personal property is sold, and no deduction from that amount is allowed for delivery charges.] [RCW 82.08.010(1)(a)(i)(D).] “Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but [are] not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)” [WAC 458-20-178(4)(a)]. *See also* WAC 458-20-110.

Taxpayer purchased rock for use in a government contracting project in Washington. The seller of the rock included delivery charges in the total selling price. Thus, Taxpayer is liable for use tax on the portion of the cost applicable to the delivery charges as well as the cost of the materials.

DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 11th day of August, 2016.