

Cite as 3 WTD 133 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Correction of Assessment of)	
)	No. 87-156
)	
)	Registration No. . . .
. . .)	
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)	

[1] **RULE 102, RCW 82.04.470:** RETAIL SALES -- WHOLESALE SALES -- RESALE CERTIFICATE. If a taxpayer who claims to be a wholesaler does not take a resale certificate from its buyer, the taxpayer has the burden of proving that each sale was wholesale. If that cannot be proved, retail sales tax may be assessed against the taxpayer.

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: . . .

DATE OF HEARING: May 5, 1987

NATURE OF ACTION:

The taxpayer petitioned for correction of a retail sales tax assessment covering the period from April 1, 1984, to September 30, 1985.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The taxpayer operates an upholstery business. He incorrectly reported income under the Service business and occupation (B&O) classification. The Department reclassified the income as "retailing" and assessed retail sales tax. The taxpayer did not collect sales tax from his customers because, he claims, all sales were wholesale. A

resale certificate was not taken from the buyers of his services.

The taxpayer states that he was a sub-contractor for other upholsterers. All or nearly all services were provided to one particular upholsterer, who contracted with the taxpayer to handle the upholsterer's excess business.

The issue is whether the services provided were retail or wholesale. We note that, in any event, B&O tax was not due because the income each quarter was below the \$3,000 minimum of RCW 82.04.300.

DISCUSSION:

Under RCW 82.04.050(2), the services provided by the taxpayer were retail sales, unless the work was provided to a non-consumer, as defined in RCW 82.04.190(5). In other words, if the taxpayer was a sub-contractor for other upholsterers, he was not engaging in a retail sales activity. Rather, he was a wholesaler, under RCW 82.04.060.

If he was a wholesaler, the taxpayer should have taken a resale certificate from the other upholsterers. Having failed to do so, the taxpayer has the burden of proving that the sales were not retail. RCW 82.04.470 and Washington Administrative Code 458-20-102. Here, the taxpayer's accountant believes that written documentation can be obtained from the other upholsterers verifying that all sales during the audit period were sales for resale (i.e., wholesale); that retail sales tax was properly collected from the ultimate consumer; and that the tax was then remitted to the Department by these upholsterers. To the extent that the taxpayer can so document, the assessment will be reduced accordingly.

DECISION AND DISPOSITION:

The assessment of retail sales tax will be sustained except to the extent that the taxpayer, by June 13, 1987, substantiates in writing that the sales were wholesale. The Audit Section will reduce the assessment for any sales which were wholesale, in accordance with this Determination. The tax assessment will become final if the above documentation is not received by that date.

DATED this 14th day of May 1987.