

Cite as 6 WTD 223 (1988)

BEFORE THE DIRECTOR  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
For Correction of Assessment of )	<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>
)	
)	No. 88-286
)	
. . . )	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	

**RULE 17001:** USE TAX -- MATERIALS AND EQUIPMENT --  
GOVERNMENT CONTRACTS -- LIABILITY -- INSTALLING  
CONTRACTOR -- DEFINITION. The installing contractor  
bears primary responsibility for the payment of the use  
tax on the value of materials and equipment. The  
installing contractor is the one who has possession and  
control of the equipment and materials.

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: . . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:

Garry G. Fujita, Assistant Director  
Edward L. Faker, Sr. Administrative Law Judge

DATE AND PLACE OF HEARING: March 22, 1988; Olympia, Washington

NATURE OF ACTION:

Petition for the correction of Document No. . . . which levied  
use taxes on the taxpayer. Petition is heard as a Final  
Determination before the Director's Designees.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- Taxpayer was a subcontractor on the  
replacement of power transformers at . . . Power Plant. The prime

contractor was . . . . The prime contractor had a contract with the Bureau of Reclamation to provide and install replacement power transformers. It owned the transformers, paid use tax on them, had exclusive possession of them, and provided an engineer to supervise their installation. Taxpayer subcontracted from . . . , the electrical and other work relating to the transformers installation. Taxpayer in no way modified the transformers during installation. Taxpayer provided only about \$9,000 worth of conduit and cable (use tax paid) in a subcontract in excess of \$250,000.

The sole issue is whether there is a use tax due by the taxpayer on the value of the transformers which they installed as subcontractors.

#### DISCUSSION:

The auditor reported the value of the 9 transformers (\$2,162,520) furnished by the prime contractor as an unreported item for use tax on a government contract. Rule 17001 provides:

#### USE TAX

(7) The use tax applies upon the value of all materials, equipment, and other tangible personal property purchased at retail, acquired as a bailee or donee, or manufactured or produced by the contractor for commercial or industrial use in performing government contracting and upon which no retail sales tax has been paid by the contractor, its bailor or donor.

. . .

(9) The use tax is to be reported and paid by the government contractor who actually installs or applies the property to the contract. Where the actual installing contractor pays the tax, no further use tax is due upon such property by any other contractor.

The auditor has held that under subsection 9, the taxpayer was the installing contractor and the tax is due. The question is factual. Who is the installing contractor? In this case, the prime contractor who actually had the contract to install and who remained in possession and control of the transformer at all times. The control being exercised by the prime contractor's on-site engineer who under the contract between the parties was given that power. In this case, the prime contractor did pay the tax and under the rule, no further tax is due by the subcontractor.

The new Rule 17001 (issued May 1, 1986) does provide broad language as to who is liable. This was necessary in order to cover the many different arrangements that can occur between various contractors on government projects. But the intent of the Rule appears clear,

that if one contractor pays the tax on the property furnished and it is not altered or changed by another contractor, there is no further tax due on that property. If materials are furnished in the installation as in this case, a use tax is due on those materials furnished.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 26th day of July 1988.