

Cite as 6 WTD 133 (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 a Tax Liability Ruling )	
)	No. 88-256
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. . . )	Unregistered
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**RULE 111, RULE 170, AND RCW 82.08.010:** RETAIL SALES TAX -- DEDUCTION -- CONTRACTOR -- BUILDING PERMIT FEES -- REIMBURSEMENT OF. The reimbursement of building permit fees to a construction contractor is not deductible from the measure of the contractor's retail sales tax absent a showing that the contractor has no primary or secondary liability for such fees.

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:

A state agency seeks a ruling as to its liability for sales tax on building permits obtained by a builder with whom the agency has contracted.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (Bureau) is a division of the Washington State Department of . . ., a duly created state agency. Through the Vancouver office of the Department of Revenue (Department), the Bureau has requested a legal interpretation as to its liability for retail sales tax on a construction project. This Determination is being issued in response to that request pursuant to WAC 458-20-100(18).

In an audit of . . . Construction, a Department auditor assessed retail sales tax on charges to . . . College for building permits. The Bureau . . . believes that the charges for such permits are

reimbursements and, as such, are not subject to sales tax. The situation which prompted the request for this ruling involved a construction project in the Vancouver area. A construction contractor was engaged by the State of Washington to construct a building. Prior to commencing the project, the contractor obtained a building permit to do the work. The contractor paid a fee for the permit and then requested a reimbursement of that fee from the State. The contractor did not bill the State for sales tax on the building permit fee amount. When the Department audited the contractor, the Department said the contractor should have billed for sales tax and added an amount for same to the contractor's assessment.

The Bureau . . . argues that the building permit fee should be excluded from the sales tax measure as a reimbursement under WAC 458-20-111 (Rule 111). It states that the obligation for obtaining the building permit is that of the owner, not the contractor. It analogizes to an example given in Rule 111 in which an attorney pays filing fees or court costs on behalf of a client. The repayment by the client to the attorney of such fees is specifically excluded from the gross income of the attorney for purposes of determining the measure of the attorney's business and occupation tax. The Bureau takes the position that just like the attorney does for his client, the contractor in this situation advances the building permit fee as an accommodation to the property owner who is the real party responsible for payment. Just as court filing fees or costs are excluded from tax, so should be the building permit fee from the contractor's measure of tax.

The Bureau's Assistant Attorney General goes on to say that the reason that a building permit is the obligation of the owner of the property is that the governmental agency which requires the permit must be assured that it is the owner that is authorizing the project to be built on the owner's land. If it were otherwise, "the regulating entity could be faced with competing building permit applications on one piece of property." The contractor is obtaining the building permit, then, as an agent for the property owner, which, here, is the State of Washington.

In addition, the Bureau argues that WAC 458-20-170 (Rule 170) includes permit fees within the measure of sales tax only where no gross contract price is stated. In this situation, there is a stated gross contract price so the permit fees should be excluded from the measure of tax.

The issue, then, is whether an agency of the State of Washington is responsible for retail sales tax on a building permit fee where that fee is advanced by a building contractor.

#### DISCUSSION:

The retail sales tax is imposed by RCW 82.08.020 on the "selling price." That term is defined in RCW 82.08.010 to mean

. . . the consideration whether money, credits, rights, or other property . . . expressed in the terms of money paid or delivered by a buyer to a seller *without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes. . . or any other expenses whatsoever paid or accrued* and without any deduction on account of losses; . . . (Italics ours.)

In the case of a building contractor, such items as wages, *permits*, materials, and all other expenses are costs which must be incurred in order to engage in the business. As can readily be seen, the law permits few exclusions or deductions from the measure of the retail sales tax.

Rule 111 is asserted by the Bureau as the primary authority for excluding the building permit fee from the measure of the state's sales tax on this construction project. This Rule generally provides that money received as an "advance" or "reimbursement" in accordance with the regular and usual custom of the business may be excluded from the measure of tax. However, the rule limits the exclusion in the following terms:

The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

Frankly, we are not satisfied that the contractor is without primary or secondary liability for the building permit fee. The Bureau's Assistant Attorney General argues that such fee must be the obligation of the owner of the property rather than the contractor because, otherwise, construction activities not authorized by the owner might be undertaken by an unscrupulous contractor on the owner's land. While that argument is logical, we do not find it persuasive in the present situation. No statute, regulation, or case has been cited to us to the effect that a contractor has no personal liability for a building permit fee. As a matter of fact (and not that such a copy would necessarily be decisive), we have not even been supplied with a copy of the building permit at issue or, for that matter, a blank building permit.

The Department has held in the past that the repayment to an electrical contractor for an electrical permit fee is subject to retail sales tax. The Department has ruled that a reimbursement of sewer permits is taxable. While those cases may have had certain

factual idiosyncrasies, there has been no policy within the Department to exempt reimbursed permits, generally, from sales tax. Because of that, and because no showing has been made to us that the contractor has no primary or secondary liability to the issuing authority for the building permit fee, we decline to exclude from tax the reimbursement amounts received by the contractor in the present case. Such fee reimbursements are judged to be part of the contractor's selling price from which no "other expense whatsoever" may be deducted in determining the retail sales tax.

The Bureau's representative has also cited WAC 458-20-170 (Rule 170) which states in part:

(4) RETAIL SALES TAX.

(a) Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, *permits*, etc., required for the construction and paid by the builder. (*Italics ours.*)

The Bureau argues that, because a gross contract price is stated, charges for permits should not be included in the measure of the sales tax. We do not believe, however, that that is the proper interpretation of that language. It is our opinion that the paragraph presumes that permit charges would be included in the full contract price and, thus, taxed if the price were specifically stated. The last sentence of the quoted paragraph just clarifies the fact that all charges for construction, including permits, are to be taxed. The last sentence of the paragraph specifically names some of the components which would be included and taxed in the full contract price were such price specifically delineated.

DECISION AND DISPOSITION:

We rule that because it has not been established that the contractor does not have primary or secondary liability for the building permit fees, such fees must be included in the measure of the retail sales tax.<sup>1</sup>

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<sup>1</sup> This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department upon these facts. However, it

DATED this 30th day of June 1988.

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shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.