

Cite as 10 WTD 25

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

Petition for Determination of	)	<u>D E T E R M I N A T I O N</u>
Tax Liability of	)	
	)	No. 90-232
. . .	)	Registration No. . . .
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**[1] RULE 171, RCW 82.04.280 & RCW 82.04.050 -- PUBLIC ROAD CONSTRUCTION -- MASS TRANSIT FACILITY -- PHASED CONSTRUCTION.** Demolition contract for the site preparation for a transit mall taxed under the public road construction classification where the contract was done as part of an approved plan to build the transit facility.

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:

A public transportation authority seeks a ruling that a demolition contract for the site preparation for a transit mall should be treated as public road construction.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- . . . (hereinafter referred to as Transportation Authority) purchased several adjoining lots for the purpose of constructing an off-street bus station. The planned facility will provide a driveway for the buses, a passenger shelter, passenger parking lot, and landscaping.

The first phase of the project was for the demolition of structures, removal of concrete footings and floor slabs, sidewalks, buried fuel tanks, drainage piping, building debris, and other obstructions on the site. The demolition contract also included replacing sidewalks and related appurtenances and backfilling and grading the site. The Demolition contract was bid in March of 1990.

The taxpayer's petition stated the following reasons for using phased construction:

1. The construction season for the final tasks of erecting the shelter structure and paving is restricted to the warm, dry weather of summer. The demolition and site clearing, however, may be accomplished at any time prior to the final tasks.
2. The demolition and site clearing tasks require only engineering design work while the final tasks noted above require both engineering and architectural design. Thus, once the engineering for the demolition and clearing tasks are complete, that work may be performed (under a separate contract) while the engineering and architectural designs for the rest of the project are being done.
3. Tasks such as demolition and tank removals represent a fairly small fraction of the overall cost, and are often subcontracted out by the prime contractor, who may either specialize in building construction or paving if all tasks are included in one comprehensive contract. The prime contractor would mark up the subcontractor's cost and is not obligated to seek competitive quotes. If those tasks are contracted separately by the owner, the owner will benefit from competitive bids from firms specialized in that type of work without markups on their costs. Furthermore, the legalities of contract administration restrict the owner to dealing only with the prime contractor. This is a disadvantage to the owner when a task as sensitive environmentally as removing fuel tanks is involved.
4. The task of removing old fuel tanks has a high probability of creating extra work and time extensions. The owner is well advised to know that such a task is under control prior to obligating contractually to a much larger scope of work and paying for the consequences of delaying the contractor.

The bid schedule for the demolition work contained the following notation:

This contract is exempt from Washington State Sales Tax under Rule 171. The contractor must pay USER TAX which is applicable.

Transportation authority seeks a written ruling verifying that statement.

# DISCUSSION:

The term "retail sale" does not include

the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind....

RCW 82.04.050(6)

Income received from contractors for building or repairing mass transportation facilities owned by a municipal corporation is taxed under the public road construction classification upon the total contract price. The issue is whether the tax consequences change where the contracts are bifurcated.

The tax consequences for the demolition work should be the same whether done by a separate contract or part of one contract if done as part of an approved plan to build a transit facility. For example, if a the Board minutes and/or resolutions indicate adoption of a plan to build a transit facility, the fact that the contracts for the facility are phased should not be controlling. Another indication would be passage of a bond issue for the construction of the facility.

In this case the Transit Authority has provided contract documents and plans which indicate the intent to construct a bus station. The taxpayer has also provided copies of minutes of several Transportation Authority board meetings which indicate the intent to develop the transit station and support the finding that the demolition was part of an overall plan to construct a transit facility. For example, minutes of the August 1989 meeting indicate cost estimates for demolition and for final construction were presented.

# DECISION

We find that the contract for site preparation for the bus station is exempt from retail sales tax. The contractor must pay applicable use tax. The income from the contract is subject to tax at the public road construction rate.

DATED this 31st day of May 1990.