

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. 90-275
)	
. . . )	Registration No. . . .
)	. . ./Audit No. . . .
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)	

- Dressel, A.L.J. -- [Taxpayer] is a machine shop. It makes precision metal parts used in the manufacture of aircraft. Its books and records were examined by the Department of Revenue (Department) for the period . . . through . . . . As a result a tax assessment, identified by the above-captioned numbers, was issued for \$ . . . . The taxpayer appeals a portion of the assessment.

At issue is tooling used by the taxpayer to make the machine parts which it sells. Tooling is parts, forms, molds, patterns, and/or mechanical devices which are used to mass-produce the machine parts. After the tooling serves its purpose, it is discarded. Some of the tooling is manufactured by the taxpayer itself. Other tooling is bailed to it by the [X] Company. The Department's auditor assessed Manufacturing B&O tax on the tooling made by the taxpayer and use tax on that tooling plus that acquired from [X] via bailment. His basis for doing so is that the tooling was put to commercial or industrial use by the taxpayer who had not paid sales tax on it.

In objecting to the assessment, the taxpayer writes, in part, in its petition:

1. The method used by the Auditor in calculating the proposed tax was in error because credit was not given for tax already paid on material utilized and no verification of actual hours utilized in tooling work. In addition, several items were cancelled orders on which no tooling was ever performed. In addition, the Auditor failed to recognize that the cost of making a so-called "tool" is amortized into the price of the part when bid; sales tax is collected on the final sale of the product that the part is being used on.

2. Taxpayer disagrees with the Auditor's Schedule V - Bailed Tooling Subject to Use Tax in the amount of \$ . . . . The Auditor's valuation of \$400 per item was arbitrary and way without foundation. In addition, several of the bailed tooling was never used by taxpayer. There was also no verification that the bailor had not paid the tax.

There are two issues: 1) Whether tooling for the manufacture of machine parts is subject to use tax; and, if so, 2) whether the Department's measure of same was erroneous.

#### DISCUSSION:

WAC 458-20-136 (Rule 136) reads in part:

#### MANUFACTURING, PROCESSING FOR HIRE, FABRICATING.

. . .

(11) Manufacturing for commercial use. Persons who manufacture products in this state for their own commercial or industrial use are taxable under the classification manufacturing on the value of the products so manufactured and used.

. . .

(16) Use tax. Manufacturers are taxable under the use tax upon the use of articles manufactured by them for their own use in this state.

[1] Tooling is manufactured by this taxpayer for commercial or industrial use, namely, the taxpayer's manufacture of airplane parts. Thus, the tooling is subject to both B&O Manufacturing and use tax. See also WACs 458-20-134 and 458-20-178.

[2] There is a use tax exemption, though, for those present users who paid sales tax upon acquisition of whatever tangible personal property is under consideration. See WAC 458-20-178 (7)(d). Thus, if the taxpayer paid sales tax on certain of the raw materials that are utilized in the production of the tooling, a credit is due equal to the amount of the sales tax. The taxpayer says no such credit was given. The auditor says credit was given. Looking at page four of audit schedule IV, we observe the notation "\* SALES TAX PAID @ SOURCE ON TOOLING MATERIAL". That leads us to believe that credit for sales tax paid was figured into the formula which was used to project income for the audit period based on a test period. The taxpayer has not submitted any documentation that proves otherwise. A taxpayer who cannot produce books and records in support of its position on state excise taxes may not successfully complain when the Department makes a tax assessment based on the best evidence available to it. RCW 82.32.070. The same goes for the taxpayer's objections about labor hours expended in producing tooling and about cancelled orders. The taxpayer, apparently, has no better evidence than that used by the auditor because it hasn't produced it. The audit supervisor has said, incidentally, that cancelled orders were taken into consideration. With respect to the taxpayer's argument that the cost of making tooling is amortized into the price of the finished part and sales tax is collected on that price, the taxpayer's attorney overlooks the fact that there are two taxable events here. One is the use of the tooling by the taxpayer. The other is sale of the finished airplane part to [X] or whomever. Not only are there two taxable events, but also there are two different parties liable for tax. The taxpayer owes it on its use of the tooling, and the buyer owes it on its purchase of the part, although the buyer is likely to be an airplane manufacturer purchasing for resale. While we are at it, not only are there two taxable events and two taxpayers<sup>1</sup>, there are two different items potentially subject to tax, the tooling and the finished part. The fact that the cost of tooling may be amortized into the cost of the part is irrelevant. Tax is due on

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<sup>1</sup>We recognize that the second "taxpayer" may not actually pay tax because of the resale exemption.

each retail sale and each use of tangible property. RCW 82.08.020 (1) and RCW 82.12.020.

On the subject of bailed tooling, we repeat, in part, the taxpayer's argument:

The Auditor's valuation of \$500 per item was arbitrary and way without foundation. In addition, several of the bailed tooling was never used by taxpayer. There was also no verification that the bailor had not paid the tax.

Again, RCW 82.32.070 puts the burden on the taxpayer, not the Department, to provide adequate books and records to establish its correct tax liability. If the taxpayer thinks \$500 is arbitrary, it has got to show the Department by written evidence a basis that is more accurate. Similarly, the burden is on the taxpayer to prove that some of the bailed tooling which was taxed was not used by the taxpayer and that the bailor paid tax on the same tooling that was taxed to the bailee (taxpayer). The taxpayer has not met this evidentiary burden. If it yet is able to locate documentation to support its position(s), it should present same to the auditor who will give credit if appropriate.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 29th day of June 1990.