

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Prior Ruling of Tax)
Liability of)
) No. 88-389
)
)
 . . .) Registration No. . . .
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RULE 171: B&O TAX -- CLASSIFICATION -- PUBLIC ROAD
CONSTRUCTION -- DRAINAGE SYSTEM -- SURFACE RUNOFF.
In order for the construction of a drainage system
in a street or road to qualify as public road
construction it must carry surface runoff from the
streets and roads in which the system is
constructed.

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:

The taxpayer petitioned for a ruling that the work performed
for the . . . Project be classified as "the constructing of
a drainage system in streets and roads" under WAC 458-20-171.

FACTS:

Potegal, A.L.J. -- The project involves two phases. In Phase
I a new . . . sewer line will be constructed within the . .
. Street right of way. The new line will parallel an
existing combined sewer trunk. Existing combined sewer
lateral lines will be disconnected from the existing line and
connected to the new line. The existing lateral system will
carry 100% of the sanitary flow of the . . . basin. It will

also carry about twenty percent of the stormwater runoff. This stormwater runoff is from roof drains and other storm system connections which cannot be efficiently separated from the sanitary sewer. None of this runoff is from the surface of the streets in which the system is constructed. Another aspect of Phase I is the construction of a regulator in the . . . Avenue . . . right of way. The regulator will control the amount of sanitary flow into the . . . Interceptor from the new line. The . . . Interceptor conveys combined sewer flows to the . . . Treatment Plant.

Phase II of the project will involve converting the existing combined sewer trunk to a storm drain trunk. New storm drain lines will be constructed in . . . street right of ways. Existing storm service connections and combined service connections will be connected to these storm drain lines which will in turn flow into the storm drain trunk. The flow in these lines is from the surface of the streets in which the system is constructed.

Street restoration is a major part of both phases since all new lines will be constructed in street right of ways.

DISCUSSION AND RULING:

WAC 458-20-171 provides that contractors are taxable under the public road construction classification of the business and occupation tax when engaging in the business of "building, repairing or improving any street, place, road. . ." The rule goes on to define that term to include:

. . . the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed . . .

Phase I work is not public road construction under the rule. This is because it is the construction of a sewage system and not a drainage system. Although some storm runoff will flow through the line constructed in Phase I, the source of the runoff is not the streets and roads in which the system is constructed.

Even though street restoration is a part of the work performed in Phase I, that portion of the work would not be classified

as public road construction. This is because such work consists of:

. . . labor and services rendered in respect to . .
. the constructing, repairing, decorating, or
improving of . . . structures under . . . real
property . . .

RCW 82.04.050(2).

The language quoted above is a portion of the definition of a retail sale. The street restoration is work rendered in respect to the construction of the sewer line which is a structure under real property. Since the work meets the definition of a retail sale it is taxable under the retailing classification of the business and occupation tax rather than the public utility classification. RCW 82.04.250.

Phase II work is taxable as public road construction. It is the construction of a drainage system in streets and roads which disposes of the runoff of surface waters from the streets in which it is constructed.

Street restoration performed in Phase II is also taxable as public road construction. Unlike similar work performed in Phase I, this work consists of labor and services in respect to public road construction. Such labor and services are specifically excluded from the definition of a retail sale. RCW 82.04.050(6).

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 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.

DETERMINATION (Cont.)
No. 88-389

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Registration No. . . .

DATED this 21st day of October 1988.