

Cite as 6 WTD 15 (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 Refund of)	
)	No. 88-216
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 138:** RETAIL SALES TAX -- TANGIBLE PERSONAL PROPERTY -- ARCHITECTURAL RENDERINGS. When a taxpayer subject to tax under the "Service and Other" category contracts with an artist to produce colored architectural renderings, such renderings are sales of tangible personal property to the taxpayer and subject to retail sales tax.

[2] **MISCELLANEOUS:** RETAIL SALES TAX -- TANGIBLE PERSONAL PROPERTY -- VALUE. It is not necessary that tangible personal property have resale value. Tangible personal property is any tangible item that is not real property.

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: . . .

DATE OF HEARING: February 25, 1988

NATURE OF ACTION:

Taxpayer petitions for refund of use tax/deferred sales tax paid on architectural renderings made by an outside artist.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer, an architectural firm, had its records audited by the Department for the period January 1, 1983, through September 30, 1986. Taxpayer paid the assessment and now petitions for a refund of that portion that represents use taxes on colored architectural renderings purchased by taxpayer.

Taxpayer explained that the renderings are used to illustrate, in artistic form, what the finished building will look like. This rendering may be used to encourage construction bids, financing, and to generate public interest in the proposed building. Taxpayer does most renderings "in-house," but sometimes contracts out for such work because it is too busy or does not have the ability to do certain kinds of renderings.

The auditor took the position that the purchase of such renderings was the purchase of a finished product by a consumer, that the renderings are tangible personal property, and that taxpayer is subject to retail sales tax on such purchases.

Taxpayer argues that it subcontracts the services of the artist for the renderings, not finished pieces of art; that they are

instruments of the architect's services which are photographed and otherwise reproduced and distributed to various agencies to gain support and financing for their product. WAC 458-20-224 clearly establishes the services of an architect as a service which should be taxed as a service. The fact that we subcontract a portion of this service to a specialist should not change that status.

Because these architectural illustrations have no intrinsic value to us, our clients, or others, they are not "tangible personal property" but merely instruments of personal services, meeting the need to illustrate to our clients and others what they are buying. For that reason, and because of the position taken by Tax Bulletin 308.04.224, it is our opinion that the retail sales tax does not apply to the subcontracting of architectural renderings.

DISCUSSION:

RCW 82.04.050 defines a sale at retail as:

every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business . . . the term also means every sale of tangible personal property to persons engaged in any business which is taxable under . . . RCW 82.04.290. [service] (Emphasis added.)

WAC 458-20-138 (Rule 138) states that:

The term "personal services," as used herein, refers generally to the activity of rendering services as distinct from making sales of tangible personal property or services which have been defined in the law as "sales" or sales at retail.

. . .

The retail sales tax does not apply to the amount charged or received for the rendition of personal services to others, even though some tangible personal property in the form of materials and supplies is furnished or used in connection with such services.

Tangible personal property is not defined in either the Revised Code of Washington or the Washington Administrative Code. Words not defined in the Code are to be given their common meanings. Gaylord v. Tacoma School Dist. No. 10, 88 Wn.2d 286 (1977). According to Black's Law Dictionary, tangible personal property is "property such as a chair or watch which may be touched or felt in contrast to a contract."

Excise Tax Bulletin 308.04.224 states that artwork prepared for advertising and publicity is not a sale at retail, but is instead subject to tax under the "Service and Other" category, because such designs and illustrations are not the end product. The ETB pointed out, however, that the provision of finished work for consumers are sales at retail and subject to the retail sales tax.

[1], [2] Here, the taxpayer contracts with an artist to produce a colored rendering of the architect's design. The taxpayer, as an architectural firm, is a consumer under the statutory definition. The fact that according to taxpayer such drawings have no resale value does not alter the fact that the finished renderings are tangible personal property

and subject to tax. The status of an item as tangible personal property does not depend on its value, but on its nature. Thus, any tangible item other than real property is considered tangible personal property.

If the drawings were produced "in-house," taxpayer would be required to pay retail sales tax on the supplies and materials used to make the drawing. Since it is purchased from an outside source, the retail sales tax applies to the price paid to the artist for the rendering.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 13th day of May 1988.