Marble & Granite Countertop Fabrication – ruled Manufacturing – Case Study

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Loudoun County

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Background of Taxpayer’s Business in Loudoun County

The taxpayer was initially classified as a contractor and provided a DPOR contractor's license at the time of registration.

During a subsequent review, it was found that the taxpayer sold stone slabs that were cut to size per customer specifications. The slabs were then installed by a third party.

The taxpayer sold to both homeowners and contractors.

Based upon, Virginia Administrative Code 23VAC10-500-260 which states, “an installation by a merchant is not considered contracting where he delivers and installs an appliance or other merchandise he sells when the installation uses existing openings and connections”, Loudoun did not find the taxpayer to be a contractor.

The taxpayer was promptly reclassified to both a retail merchant and wholesale merchant.

Appeal Application for Correction of Classification - Determination September 2020

- Based on the three-part test outlined in the Virginia Supreme Court ruling (County of Chesterfield v BBC Brown, 1989) – Loudoun concluded that there was no substantial transformation of a slab by cutting to order. Additionally, Loudoun found that a countertop with sink and backsplash, when the attachment of the sink and backsplash is an activity completed at the site by a 3rd party contractor, did not sufficiently satisfy the three-part test nor had a substantially new product been created.

- The taxpayer cited a comparable activity that involved cutting wood in a frame making process in P.D. 09-94. Loudoun found that the frame making process in 09-94 went beyond cutting and did not feel that the cutting of stone for countertops was similar. In the frame making process, wood was cut and combined with metal and glass using glue and fasteners, assembled, and stained and painted to result in a significantly changed product that would make it difficult to distinguish the individual components.

Administrative Appeal of Classification - Determination June 2021

- The taxpayer’s representative sent numerous YouTube videos detailing the process of cutting and polishing slabs of granite.
- Although the videos were not directly the taxpayer’s videos, the taxpayer stated that the video clips depicted their same processes and equipment used.
- A site visit had been conducted during the prior review. Loudoun was able to verify some of the equipment and processes depicted in the video clips as having been performed at the taxpayer’s location.
- Loudoun noted that a significant portion of the taxpayer’s business was retail, direct to consumer. Loudoun found that the granite slab had merely been cut and it was still a granite slab. As such, the County’s position remained the same.

State Appeal - Initiated July 2021

- The taxpayer's representative submitted to the state the same YouTube videos, and relayed that manual labor and equipment is applied to the original rough slab that comes from the quarry to transform each stone slab into a custom countertop.
- Additional cases cited by the taxpayer included:
  - Prentice v. City of Richmond (1956) – poultry processing plant
  - Chesterfield v. BBC Brown Boveri, Inc. (1989) – both manufacturing and non-manufacturing activities take place
- The Virginia Administrative Code 23VAC10-500-520C – "A business engaged in manufacturing does not lose its status as a manufacturer merely because it conducts some non-manufacturing activities".
- Pictures were provided to show the process along with shop drawings.

Administrative Appeal to State Tax Commissioner - Determination March 2022

The State Tax Commissioner found that…

- The “process” of making a countertop included starting with multiple slabs of stone;
- trimmed down to specifications by cutting away excess stone with a saw;
- cutting the applicable edge treatment which involved sometimes attaching another piece of stone which is glued to form a new edge profile;
- more detailed precise cuts were made with a saw to complete the edge treatment;
- the sink hole was cut with a saw;
- a mitered or decorative edge was applied with a saw;
- the slab was then buffed and polished;
- a sealant was applied;
- a quality check was completed.

Administrative Appeal to State Tax Commissioner - Determination March 2022

- The State Tax Commissioner cited Virginia Administrative Code 23VAC10-500-520(C) which states that “mere manipulation or rearrangement of the original materials is not sufficient” to signal a transformation that would be indicative of a manufacturing function.
- Additionally, noted in the same citation was that assembly did not qualify as manufacturing.
- Finally, noted in the same citation was that a “complex process” is indicative of manufacturing.

Administrative Appeal to State Tax Commissioner - Determination March 2022

- The State Tax Commissioner found that while the only components used were slabs of stone and mounting studs, the process for transforming a slab into a countertop "was complex".
- Additionally, the State Tax Commissioner noted that while a substantial transformation may not have occurred that a "substantial alteration occurred."
- The State Tax Commissioner found the granite countertop fabricator to be a Manufacturer. (PD 22-42)
- It should be noted, that the State Tax Commissioner indicated that the taxpayer's retail/direct to consumer sales were still taxable and not exempt.

Virginia Administrative Code

Did you know…

23VAC10-500-632. Tax Commissioner's advisory and interpretative powers.

A. The Tax Commissioner has the authority to issue advisory written opinions that interpret the BPOL statutes and the BPOL Regulations (23VAC10-500). The Tax Commissioner is not required to interpret any local ordinances. (BPOL guidelines last updated 2000)

B. Examples of the issues that the Commissioner may render advisory opinions upon include:

1. Interpretation of changes made to the BPOL statutes.

2. Questions, the answers of which depend upon both state law and the laws of a locality.

3. Situations where two jurisdictions are attempting to tax the same gross receipts.

4. Classifications of businesses under the BPOL enabling legislation.

5. Whether a business qualifies as a manufacturer under existing court decisions.

6. Whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL-enabling legislation.

Steps we are taking here in Loudoun …

- Identify all marble and granite businesses in Loudoun County
- Clarify all lines of business within each business – Retail, Wholesale, on-site cutting/manufacturing, installing, contractor etc.…
- Visit all granite and marble businesses to evaluate operations
- Setup individual lines of business for each business.
- Exempt all BPOL tax for on-site manufacturers and add M&T to each of these accounts.
- Remove all BPPT other than M&T when appropriate.
- Adjust assessments as necessary

Questions?

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