

NO. 93121-0

Court of Appeals No. 73663-9-1

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Washington State
Supreme Court

SUPREME COURT OF THE STATE OF WASHINGTON

Morpho Detection, Inc.,

Petitioner,

v.

State of Washington, Department of Revenue

Respondent.

**STATEMENT OF ADDITIONAL AUTHORITIES
IN SUPPORT OF
PETITION FOR REVIEW**

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On April 15, 2016, the same day the Petition for Review was filed and subsequent to the preparation and service of the Petition, the State of Washington, Department of Revenue moved for publication of *Morpho Detection, Inc. v. State of Washington, Department of Revenue*, Cause No. 73663-9-1, the decision sought to be reviewed, because “the decision in this matter addresses a new question of law and is of general public importance.” State of Washington, Department of Revenue Motion to Publish at 5, attached. The State’s Motion to Publish was granted today. Appended to the Motion was the decision sought to be reviewed. That decision is an appendix to the Petition for Review.

Respectfully submitted, this 12th day of May.

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By: 

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NO. 73663-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MORPHO DETECTION, INC.,

Respondent,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Appellant.

**DEPARTMENT OF
REVENUE'S MOTION
TO PUBLISH**

I. INTRODUCTION AND IDENTITY OF MOVING PARTY

Appellant State of Washington, Department of Revenue requests publication of the Court's unpublished opinion in the above-entitled matter. The decision addresses a new issue of state tax law, and publication would assist both taxpayers and the Department.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 12.3(e), the Department of Revenue asks the Court to publish its decision in *Morpho Detection, Inc. v. State of Washington, Department of Revenue*, No. 73663-9-I, filed on March 28, 2016 (copy attached).

III. GROUNDS FOR PUBLICATION

The *Morpho* decision meets two of the criteria for publication. First, it determines an unsettled or new question of tax law.

RAP 12.3(d)(1). No previous Washington appellate decision has addressed the issue of whether work performed by federal contractors for the United States on property the federal government does not own comes within the definition of a “consumer” in RCW 82.04.190(6). The outcome of that question can determine a federal contractor’s liability for use taxes on items or materials installed on that property. Second, the decision is of general public importance because it interprets a statute applicable to a wide variety of federal contractors. RAP 12.3(d)(3).

A. The Decision Determines an Unsettled or New Question of Law.

The central issue this Court decided in *Morpho* concerns the definition of “consumer” in RCW 82.04.190(6). Specifically, this Court held that Morpho’s installation of explosive detection systems for the United States, which it performed on land the United States did not own, is included within the definition of a “consumer” in RCW 82.04.190(6), and therefore subject to the use tax. No other Washington appellate case has addressed that legal issue. Though a federal appellate court previously held that the Department of Revenue’s interpretation of this statute is reasonable, that court also remarked that interpretation of the statute is ultimately for the Washington courts. *Morpho Detection, Inc. v. Transp. Sec. Admin.*, 717 F.3d 975, 982 n.10 (D.C. Cir. 2013) (“Whether the

Revenue Department's statutory construction is correct as a matter of public policy or of legislative intent is a question left to the Washington state courts . . ."). Now that this Court has confirmed the Department's interpretation, the decision should be published.

Publication of the decision will aid busy trial courts in interpreting RCW 82.04.190(6). This section of the statute consists of 209 words and requires a fair bit of digestion. The statute is unambiguous, as the Court points out in its opinion, but trial courts will still benefit from having this Court's decision cited in briefing to assist in any future cases with overlapping issues.

B. The Decision Is of General Public Importance.

Publishing the decision would provide additional notice to those intending to engage in federal government contracting in Washington about their tax obligations to the state. As evidenced by the litigation between the Transportation Security Administration and Morpho, contractors generally need to address state taxes early in the bidding or contracting procedures with the United States. *See Transp. Sec. Admin.*, 717 F.3d at 978-79 (explaining that the contract price for the type of federal contract at issue typically includes all applicable federal, state, and local taxes and duties, unless there is an "after-imposed tax"). Publication of this Court's *Morpho* decision will help taxpayers to understand and

plan for their tax obligations when they bid on federal projects taking place in Washington. Though RCW 82.04.190(6) and the Department's administrative rule, WAC 458-20-17001, provide notice of these obligations, a published appellate decision will reduce taxpayer uncertainty and promote greater understanding of Washington's use tax. This will be particularly helpful for those companies, like Morpho, that enter into nationwide contracts involving work in multiple states. See Brandon McAnally, *Nebraska Should Not Cover the Financial Burden in the Construction of the United States Strategic Command Headquarters by Foregoing Sales Tax That Can Apply to Federal Contractors*, 46 CREIGHTON L. REV. 467, 477 (2013) (describing various approaches states use in taxing or exempting federal contractors).

The decision is also of importance to Department of Revenue auditors. The Department's audit division conducts audits of particular taxpayers to ensure that proper taxes have been reported. These auditors review case law, statutes, administrative rules, and previous Department guidance. A published decision would provide additional clarity that work performed for the United States is within RCW 82.04.190(6), regardless of who owns the underlying land.

In summary, publishing the *Morpho* decision is of general public importance because it will promote efficient reporting and administration

of taxes related to federal contractors, to the benefit of both taxpayers and the Department of Revenue.

IV. CONCLUSION

Because the decision in this matter addresses a new question of law and is of general public importance, the decision meets the criteria for publication. RAP 12.3(d)(1), (3). The Department respectfully requests that the decision be published.

RESPECTFULLY SUBMITTED this 15th day of April, 2016.

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Certificate of Service

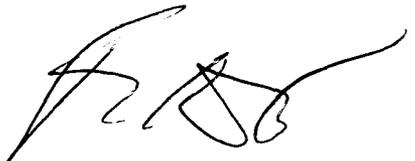
I, Franklin G. Dinces, do hereby certify that on this the 13th day of May, 2016 I served a copy of the Statement of Additional Authorities in Support of Petition for Review via email, pursuant to an electronic service agreement, on the following:

Joshua Weissman (JoshuaW@ATG.WA.GOV)

Candy Zilinskas (candyz@arg.wa.gov)

Julie Johnson (JulieJ@ATG.WA.GOV)

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Franklin G. Dinces', written over a horizontal line.

Franklin G. Dinces