

Cite as 6 WTD 279 (1988)

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

In the Matter of the Petition )	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 88-312
)	
. . . )	Registration No. . . .
)	Document No. . . .
)	Document No. . . .

[1] **RULE 107, RCW 82.08.010, RCW 82.12.010, RCW 82.08.050:** SALES TAX -- LEASE -- SELLER LIABLE FOR SALES TAX COLLECTION. A lease of tangible personal property wherein monthly payments are made is a contract for a series of transactions in which each monthly lease payment represents a retail sale. Lessor is obligated to collect retail sales tax from lessees as rental payments fall due. Where tax is not separately stated, there is a conclusive presumption that it was not collected. Presumption is not overcome by agreement between the parties. Department of Revenue is not obligated to look to the buyer/lessee for payment of the tax due.

[2] **RULE 211, RCW 82.08.010:** LEASE -- SELLING PRICE -- VALUATION USED. Sales tax due is measured by amount of lease payment, which will not be lowered merely because parties are related and because payment amounts do not reflect true value. 4 WTD 127 (1987). A taxpayer may not treat a transaction one way for federal tax purposes and another way for state tax purposes. 4 WTD 293 (1987).

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 TELEPHONE CONFERENCE: July 12, 1988

NATURE OF ACTION:

Petition for correction of assessment of sales tax on unreported lease income.

#### FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is a trust established in the 1970's by a physician to lease equipment for business use to the physician, who operates as a personal services corporation. The terms of the lease call for monthly payments. The parties agreed that the physician would be responsible for all tax liabilities. During an audit of the physician's records, the auditor determined that sales tax had not been paid on the amount of the rental payments. The trust was then audited, and two assessments were issued. . . . The previously-unregistered trust was also required to register with the Department of Revenue, because it is subject to B&O tax on its rental activities.

Taxpayer trust protests assessment against it for the sales tax owing. Taxpayer's representative contends that the parties are related; that the lease agreement assigning tax liability to the lessee should control in determining which party should be assessed the tax liability; and that the trust is a passive entity less equipped to handle the mechanics of tax compliance than is the doctor's professional services corporation. Additionally, taxpayer contends that the monthly lease payment amounts are in excess of fair market rental value for the equipment leased and that the amount against which the assessment is made should be lowered to reflect the true value of the equipment leased. Taxpayer also states that the reason for assessing tax against the trust was that the Department could make the assessment for a longer period against the unregistered taxpayer-trust.

#### DISCUSSION:

[1] Retail sales tax is imposed on each retail sale in Washington pursuant to RCW 82.08.020. RCW 82.04.050 (4) classifies as a sale the rental of tangible personal property to consumers. WAC 458-20-211 (Rule 211) is the rule implementing the statute; it has the full force and effect of the law itself. RCW 82.32.300. Rule 211 restates the definition of sale as including rentals of tangible personal property and imposes liability for collection of tax on either the lessor or the lessee:

(9) RETAIL SALES TAX. Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by the gross income from rentals as of the time the rental payments fall due.

. . .

(13) USE TAX. Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the use

tax on the amount of the rental payments as of the time the payments fall due.

RCW 82.08.050 provides, in part, as follows:

The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale. . . .

In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of the tax.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price quoted in any sales invoice or other instrument of sale. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter. . . .

Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. . . . (Emphasis added.)

WAC 458-20-107 (Rule 107), the administrative rule that implements the statute, provides in pertinent part as follows:

The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome by rebutted by any written or oral agreement between seller and buyer. (Emphasis added.)

Under the statute, it is the seller's obligation to collect the retail sales tax. A seller who fails to collect the tax is personally liable for it. Thus, taxpayer is liable for the unpaid sales tax, and the buyer is liable to taxpayer for the amount of tax paid.

As noted previously, tax is imposed "on each retail sale" in this state. 82.08.020. The term "person" is defined in RCW 82.04.030 as "any individual...trust...corporation." Thus it is clear that the two business entities are separate "persons" under the law and that the taxpayer, as seller, is subject to liability for collection and remission of sales tax on the gross income from the rental payments, regardless of the parties' related status.

Here, the physician and the trust which he established contracted for the rental of equipment for use by the physician in his business. The rental agreement between the parties assigned the duty to pay sales tax to the physician. Upon determining that sales tax had not been collected and paid on the lease payments, the auditor assessed the trust for sales tax on unreported lease income. Such assessment was proper under the statutes quoted above. The Department is not required to go against a particular taxpayer, and for this purpose, the delegation of tax liability between the parties is irrelevant.

RCW 82.32.100 specifically provides that

[n]o assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter...

The leasing arrangement has been in effect since the 1970's. The assessments against the trust covered the period from January 1, 1980 through September 30, 1987. Those years were clearly within the statute above, because the taxpayer was not properly registered as required by RCW 82.32.

[2] RCW 82.08.010 provides that sales tax is applied to the selling price or consideration paid by the buyer or lessee. That statute also states that

[w]hen tangible personal property is rented or leased under circumstances [such] that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

This statute allows for a redetermination of the sales price to a different amount in situations where the lease payments do not represent the reasonable rental value. However, the Department has refused to adjust such amounts where circumstances show that the parties considered the arrangement to be reasonable. D. 87-305, 4 WTD 127 (1987).

Here, we are persuaded that, to the parties involved, the amounts do represent a reasonable value. The lease arrangement has been in effect for a number of years. The physician willingly established the trust to act as his lessor and agreed to the terms of the lease. Additionally, the physician willingly made the lease payments and took the benefit of deductions therefor on his federal tax return. However, for state tax purposes, taxpayer trust contends that a different lease value should be used and sales tax assessed against a rental value which is less than half that agreed to in the lease. The Department's position on such juggling of values has been clearly stated at Det. 87-354, 4 WTD 293, 296 (1987):

(t)he taxpayer, in essence, argues that the auditor should disregard accounting procedures followed by the taxpayer when recording this transaction for federal tax purposes. . .By Department of Revenue precedent, a taxpayer may not treat a transaction one way for federal purposes and yet another way for state tax purposes.

Because the leasing arrangement has been structured to obtain federal tax benefits, it will not be restructured for state tax purposes to confer a different type of benefit. The lease payments each represent a separate sale subject to retail sales tax, which the seller/lessor is statutorily obligated to collect and remit to the state. The statutes governing retail sales taxation clearly state that pursuing the buyer in such cases is discretionary, not mandatory; as a result, the auditor has properly assessed the sales tax against the trust.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 5th day of August 1988.