

Cite as 3 WTD 205 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Correction of Assessment of)	
)	No. 87-184
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 178 and RULE 159:** RCW 82.12.020 -- USE TAX -- CONSUMABLE ITEMS -- CONSUMER -- ALLEGED USE OF TAXPAYER'S ID NUMBER BY ANOTHER. Where taxpayer's records indicated it had purchased items for a vessel which it had leased from another business entity owned by an officer of the taxpayer, and the lease agreement stated the taxpayer was responsible for such purchases, the taxpayer owed use tax on the purchases on which it had not paid retail sales tax. The fact that the taxpayer produced statements from the former officer of the corporation stating the taxpayer should not be liable for the taxes and that he should not have used the taxpayer's number on the re-sale certificates was not controlling.

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: April 16, 1986

NATURE OF ACTION:

The taxpayer protests the assessment of use tax on consumable items.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer's records were examined for the period July 1, 1981 through March 31, 1984. The audit disclosed taxes and interest owing in the amount of \$ Assessment No. . . . in that amount was issued on September 16, 1984.

Two post-audit adjustments were made. The last one was on February 12, 1987 and reduced the amount owing to \$¹ The amended assessment was due March 9, 1987. That date was extended to April 9, 1987.

The taxpayer agrees with the assessment of the tax relating to the vessel [Boat A]. It submitted payment for \$. . . which it contends relates to that vessel. It disputes the assessment of use tax on consumables purchased for the vessel [Boat B]. It contends the vessel was owned by another business entity and that entity should be liable for any taxes owing. It has filed amended returns deleting any taxes owing for that vessel.

The taxpayer registered with the Department in 1981, describing its business as marine repair and maintenance. The taxpayer was formed by [Mr. "B"] and [Mr. "A"]. They intended to incorporate and to put their two boats, [Boats A and B] into the company.

During the hearing, [Mr. "A"] stated he did put his boat, [Boat A] into the business, but that [Mr. "B"] did not. He stated their arrangement was that each would pay for the expenses and repairs to their own boats.

The taxpayer is part of the [a] group [which] consists of the taxpayer and two other businesses owned by [Mr. "B"]. The taxpayer's records included a lease agreement showing that [Boat B] was leased from [the chartering business owned by Mr. "B"].

Several issues were resolved at the audit level by the post-hearing adjustments. The remaining issue is whether the taxpayer is responsible for use tax on consumable items purchased for [Boat B]. The auditor agreed to delete the tax on certain capital assets purchased for the vessel, but not the tax on the consumable items. The basis for this

¹ Extension interest was waived after July 16, 1986 (three months after hearing).

distinction was that the lease between the taxpayer and [Mr. "B"'s business] indicated that [Mr. "B"] would be responsible and liable for any capital improvements, but that the taxpayer [the lessee] was responsible for maintenance and other expenses. The auditor deleted the tax on capital expenses which [Mr. "B"] had capitalized for federal tax purposes, even though the taxpayer's records indicated that it had also capitalized some of the items.

The taxpayer protests the assessment of use tax on consumables primarily for the following reasons:

- 1) [Boat B] was the separate business of [Mr. "B"] and he or [his charter business] should be liable for any taxes owing on purchases for that vessel;
- 2) [Mr. "B"], without authority, used the taxpayer's number on re-sale certificates to purchase consumables and capital items without paying retail sales tax. He has submitted an affidavit stating that any of the tax liabilities for [Boat B] should not appear on the taxpayer's books, but should be charged to [his charter business].

DISCUSSION:

[1] The use tax supplements the retail sales tax by imposing a tax of like amount on the use in this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, or bailment, or extracted, produced or manufactured by the person so using the same, where the retail sales tax has not been paid by the user, donor, or bailor. RCW 82.12.020; WAC 458-20-178.

The taxpayer does not argue that use tax is not owing on items purchased for [Boat B]; but instead argues that any tax owing is [Mr. "B"]'s liability alone. We disagree.

The taxpayer contends that the facts are uncontroverted as to the existence of separate businesses. (letter of April 6, 1987.) The taxpayer states that the two businesses had separate books, separate worksheets, separate cash receipts, separate records, and separate bank accounts. The taxpayer argues that correspondence from "the appropriator of the tax i.d. number" and his affidavit indicate the separate existence of these two businesses.

The "appropriator," however, was named as the taxpayer's president on the registration statement. [Mr. "B"] used the taxpayer's number on the resale certificates when purchasing some of the items at issue. Also, the purchases were listed on the taxpayer's books and in some cases capitalized by the taxpayer for federal tax purposes. The fact that [Mr. "B"] now states the bookkeeping and use of the I.D. number was in error is not controlling.²

The taxpayer also notes that the auditor gave credit for some capital improvement items to [Boat B], but not all. The taxpayer alleges this shows the audit is not even internally consistent. The taxpayer contends the fact that the auditor found it "necessary" to look at its books and those of [Mr. "B"]'s sole proprietorship is evidence that the two businesses were separate.

We agree that the evidence shows the existence of two separate businesses. The evidence also indicates [the lessor] leased [Boat B] to the taxpayer and the taxpayer purchased items for the vessel. The auditor agreed to look at [Mr. "B"]'s books and to delete the use tax assessed on capital items purchased for [Boat B] which that business capitalized, even though in some cases the items were also capitalized by the taxpayer on its federal tax returns. As noted above, he did that because the lease provided [the lessor] was responsible for the capital expenses. He did not delete the use tax on the consumables purchased for [Boat B] because the lease provided those purchases were the taxpayer's responsibility. Any person who claims to be making purchases for a buyer will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and the agent's books or records show the transactions were made in the name and for the account of the principal. WAC 458-20-159.

The Department is not required to consider the taxpayer's arguments that in substance it did not lease [Boat B] and the vessel was never part of its business. See, e.g., Higgins v. Smith, 308 U.S. 473 1940) (a taxing authority may penetrate

² We note that [Mr. "B"] and [his charter business] filed for bankruptcy after the audit at issue; thus his subsequent agreement to the tax liabilities is questionable. If he agreed to and paid the use tax assessment for items for [Boat B], no issue would remain.

the form of a transaction to determine its substance, but a taxpayer may not).

DECISION AND DISPOSITION

The taxpayer's petition is denied.

DATED this 2nd day of June 1987.