Cite as Det. No. 98-167, 18 WTD 70 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 98-167
	)	
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .
	)	
	)	

RULE 183: B&O TAX – SALES TAX – USE TAX – RESALE EXEMPTION -- GOLF COURSE – DRIVING RANGE – GOLF BALLS. A driving range at a golf course is part of the retail taxable amusement and recreation service of golf. Golf balls purchased by the course for use at the range are not exempt of sales/use tax because they are not actually resold to the driving range patron.

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.

NATURE OF ACTION:

Golf course protests deferred sales/use tax assessed on driving range golf balls.[1]

FACTS:

Dressel, A.L.J. -- . . .dba . . . (taxpayer) operates a golf course. Its books and records were examined by the Department of Revenue (Department) for the period June 30, 1992 through December 31, 1995. As a result a tax assessment, identified by the above-captioned numbers, was issued for $. . . The taxpayer paid the assessment but is now petitioning for a partial refund.

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

As part of its golfing operation, the taxpayer has a driving range. It purchases golf balls for use on the range. During the audit period it did not pay sales tax to its vendor(s) for the golf balls. As part of the tax assessment, it was charged deferred sales/use tax on these driving range golf balls. In objecting to this taxation, the taxpayer takes the position that it rents the range balls to its golfing customers. That being the case, says the taxpayer, the golf balls are acquired by the taxpayer from its vendor(s) for rental. Because the rental of tangible personal property is defined as a retail sale, the taxpayer feels that it purchased the range balls for resale and that, therefore, those purchases should have qualified for the resale exemption from retail sales tax.

ISSUE:

Are driving range golf balls rented by driving range patrons, such that the acquisition of the balls by the golf course is exempt of sales or use tax?

DISCUSSION:

As far as we know, this is a case of first impression. There are no Washington cases, either at the appellate court level or the administrative appeal level, on the sales/use taxation of driving range golf balls. This issue was recently before the Minnesota Tax Court. Because the case there was decided on the basis of the good faith acceptance by golf ball vendors of resale certificates from numerous golf courses, however, it is not relevant to our decision. *See Spalding and Evenflo Cos. V. Commissioner of Revenue*, Minnesota Tax Court Docket No. 6935 (1998).[2]

Included in the statutory definition of *retail sale* is the amusement and recreation activity of *golf*. RCW 82.04.050(3). Relative to golf, WAC 458-20-183 (Rule 183) further explains that definition where it says in § 2:

> (b) "Amusement and recreation services" include, but are not limited to: *Golf*, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, and all batting cages. *"Amusement and recreation services" also include the provision of related facilities* such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. (Italics ours.)

[1] A driving range is a facility related to golf. According to the above authority, then, it is considered an amusement and recreation service.

Section five of the same rule reads, in part:

> (5) **Retail sales tax.**

[2] Deferred sales tax in the cited case was being pursued against golf ball vendor/manufacturers, as opposed to the golf course purchasers of those golf balls.

> (a) The retail sales tax must be collected upon charges for admissions, *the use of facilities, equipment,* and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales . . . (Italics ours.)

Thus, the taxpayer should have collected sales tax on its charges to golfers for their use of the driving range facility. Rule 183 goes on to state in § 5:

> (c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

The driving range golf balls are equipment or supplies used by the taxpayer's amusement and recreation business, and they are not "actually resold" to the golf range user. That user leaves them at the range. The balls do not go home with him or her. Therefore, the acquisition of the range balls by the golf course, for the purpose of providing its amusement and recreation service, is subject to retail sales tax. *Id.*

In addition, because, as described above, the golf course is considered as rendering an amusement and recreation *service* in operating its driving range, it is not considered as renting or selling tangible personal property. If its driving range is not renting or selling the golf balls used there, it cannot be considered as having acquired them for resale.

Similarly, with regard to the liability of the taxpayer, the golf balls are not exempt of the tax that complements the sales tax, the use tax. RCW 82.12.020(1) reads:

> **Use tax imposed.** (1) *There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property* purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, *or otherwise furnished to a person engaged in* any business taxable under RCW 82.04.280 (2) or (7), or *any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a).* [Italics ours.]

This is not to say, of course, that the taxpayer owes *both* sales and use tax on the golf balls. One who pays Washington state's retail sales tax on tangible personal property is exempt from use tax on that same property. RCW 82.12.0252.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 30th day of September 1998.