Cite as 3 WTD 431 (1987)

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

In the Matter of the Petition For Ruling of Tax Liability of)		D E T E R M I N A T I O N
	)	No. 87-254
. . .	)	Registration No. . . .
and	)	
. . .	)	Registration No. . . .

RULES 106 AND 211: LEASE OR RENTAL -- PARTNER -- JOINT VENTURE -- DIVISION OF PROFITS. Reimbursement to a partner in a joint venture for equipment provided to the joint venture constitutes a nontaxable division of profits rather than taxable rent where payments are not absolute.

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: . . .

NATURE OF ACTION:

Taxpayer seeks a ruling that amounts paid to the owner of assets furnished to a joint venture constitute division of profits, and not proceeds of sale, even though such amounts are referred to as "rent" in the joint venture agreement.

FACTS:

Rosenbloom, A.L.J. -- The above-named taxpayers have entered into a Joint Venture Agreement that involves the combining of three primary lines of business of the companies: . . . . The . . . business is the subject of this ruling request. One taxpayer (the "operating company" herein) will operate the combined . . . operations. The other taxpayer (the "non-operating company"

herein) will "lease" its . . . assets to the operating company for this purpose. The operating company will pay "rent" to the nonoperating company in the amount of $1.00 per year plus 15 per cent of the operating companies "profits" from the . . . operations ("profits" are defined as the "contribution margin" which is defined as gross sales price less: cost of product sold; discounts; all direct operating costs; direct staff support expenses; office rental expenses; and interest expense.)

ISSUE:

The issue is whether the amounts designated as "rent" in the Joint Venture Agreement are in fact amounts derived from the lease or rental of tangible personal property, and therefore subject to Retailing B&O and retail sales tax, or whether they constitute a nontaxable division of profits of the joint venture.

DISCUSSION:

[1] The Tax Commission, the Department's predecessor, has held that reimbursements to a partner in a joint venture for equipment furnished to the joint venture is not taxable as rent, provided that the payment is not absolute. ETB 73.08.106. The Bulletin provides in part:

> Rental is "absolute," and, therefore, taxable when it is payable in any event, regardless of whether or not the profits of the venture are adequate to meet the payments. The division of the assets or profits of a partnership is not subject to tax, but the payment of a firm debt or an account payable for services performed for the partnership is subject to tax even though the services have been performed by a partner.

In the present case, the "rental" is not payable to the non-operating company "in any event." Aside from the nominal payment of $1.00 per year, there is no assurance that the non-operating company will receive anything for the use of the . . . equipment. We find that the Joint Venture Agreement merely entitles the non-operating company to participate in the profits of the joint venture; it does not provide for the payment of an "absolute" rental as contemplated in ETB 73.08.106.

RULING:

We conclude that amounts paid to the non-operating company under the Joint Venture Agreement for the use of its . . . assets constitute a nontaxable division of profits of the joint venture, and not rental of tangible personal property.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This

ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the Department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently changes and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 29th day of July 1987.