

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 Determination of Tax Liability of)	
)	No. 88-324
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 192:** RETAIL SALES TAX -- LIABILITY OF SELLER FOR COLLECTION -- SALES TO INDIANS ON INDIAN RESERVATION. Seller is not liable for collection of retail sales tax on sales to registered members of Indian tribes recognized by the United States Department of the Interior if delivery of goods or services occurs on that tribe's recognized Indian reservation. Corporations chartered by Indian tribes and not registered by the state receive the same treatment as Indian persons if the above requirements are met and if all of the shareholders of the corporation are registered with the tribe on whose reservation the purchase and delivery of goods or services occurs.

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:

Taxpayer requests a ruling on whether it is liable for collection of retail sales tax on its sales to Indians which occur on an Indian reservation.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is a corporation registered with the State of Washington. It states that its place of business is situated within the boundaries of the . . . Indian Reservation. In response to its request for information from the Department's Taxpayer Information and Education section, taxpayer was informed that sales to corporations owned or controlled by Indians do not qualify for the retail sales tax exemption, as provided for by WAC 458-20-192 (Rule 192). Taxpayer provided the information that the

buyer in question was recently chartered with the . . . Indian tribe, changing its status from an individual or individuals; the corporation is not registered as such with the State of Washington. Additionally, taxpayer delivered a copy of a letter from the United States Department of the Interior, which verifies that the address of the business in question is located within the boundaries of the . . . Indian reservation.

Further, taxpayer delivered a copy of a letter from the . . . Indian tribe's legal counsel, which stated in pertinent part:

as a follow up to our phone conversation last Friday, May 20th, 1988, please be advised that the . . . tribe has granted to [sic] a corporate charter to [buyer]. This charter does not alter or change the fact that [buyer] is wholly owned and operated by . . . Indians. Thus, as long as goods or services are purchased by these same owners for their business located within the . . . reservation, they would still be entitled to a waiver of the state tax.

DISCUSSION:

[1] Rule 192 is an administrative rule promulgated by the Department of Revenue, which has the same force and effect as law. RCW 82.32.300. The rule states that Indians and Indian tribes are not subject to sales tax on sales to them of tangible personal property made within an Indian reservation. This language is strictly construed to mean that only Indian members properly registered with the same tribe occupying the reservation on which delivery occurs will be eligible for the exemption.

The exemption is also strictly applied to Indians acting as a corporate entity. The term "Indian," for purposes of the rule, means a person duly registered with the Indian tribe. For many statutory purposes, corporations are accorded the same rights and duties as are persons. However, the state's position has been that Indians who choose to avail themselves of the benefits of state law abandon their right to be exempt from privileges granted to them as Indian persons under Rule 192. In a prior Determination, 83-57, the Administrative Law Judge representing this department explained this position:

[w]e note that the Indian shareholders operate in the corporate form by choice. The corporate form is authorized by the state and confers certain benefits not available to sole proprietorships or partnerships. Choosing that form of business organization in this situation also causes the individual owners of the corporation to lose any tax immunity they may have had as Indians with respect to the business. It is a

consequence of their own election to use the corporate form of organization.

We believe that there is a distinction, however, where the corporation is chartered by its tribe and is not registered by the state. In such a case, the entity is not availing itself of state benefits and does not lose the privilege of the tax exemption. The courts have held that a corporation, even when comprised of Indian stockholders is not an Indian. We believe that this applies to state-chartered corporations, not to those chartered only by the tribes with which the Indian owners are themselves registered. Consequently, the provisions of Rule 192 shall apply to corporations which are only chartered by their tribes and are not registered as such by the state, if all of the shareholders are themselves registered with the tribe on which delivery of purchased goods or services occurs. This means they can be exempt from sales tax, but only if the seller makes actual delivery of the property or services sold to a tribally-chartered corporation at a point within the boundaries of the chartering tribe's Indian reservation. In order to avoid liability for the tax, the seller must take from the tribally-chartered corporation a simple affidavit or signed statement which describes the goods or services sold and states that delivery was actually taken by an Indian at a point within the reservation.

Here, the taxpayer states that it makes sales to a corporation chartered by the . . . tribe and not registered with the State of Washington. The Indian corporation's address has been verified by the Department of the Interior as being located on the . . . Indian reservation. Taxpayer's business is also located on the reservation, and deliveries take place within its boundaries. Taxpayer has also supplied a letter from the tribe's legal counsel stating that all of the shareholders are duly-registered members of the [chartering] Indian tribe. Upon these facts, taxpayer is not liable for collection of retail sales tax from this customer, because the customer retains its tax-exemption privilege.

RULING:

Upon the narrow facts represented by the taxpayer, it is not liable for collection of retail sales tax from the customer whose status was questioned in this taxpayer's petition.

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 change 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 10th day of August 1988.