

Cite as 10 WTD 372 (1990).

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. 91-007
	)	
. . .	)	Registration No. . . .
	)	
	)	
	)	

[1] **RULE 192:** RETAIL SALES TAX -- TRIBAL MEMBER/NON MEMBER MARITAL COMMUNITY -- LIABILITY OF SELLER FOR COLLECTION. Tribal member and his/her non-member spouse will be treated as one with respect to their liability for sales tax on purchases of goods/services delivered on the Indian reservation. Any exemptions which the tribal member is entitled to are extended to the spouse as well. Accord: Det. 87-147, 3 WTD 111 (1987).

[2] **RULE 192:** RETAIL SALES TAX -- LIABILITY OF SELLER FOR COLLECTION -- SALES TO INDIANS ON INDIAN RESERVATION. Seller is not liable to collect sales tax on sales to a tribal business when the business' non-tribal employee /agent is authorized to purchase goods/services for it with the business' credit card. Delivery must occur on the reservation. Corporations chartered by Indian tribes and not registered with the state receive the same treatment as non-corporate Indian business persons employing non-tribal employee/agents. However, the above requirements must be met and all of the shareholders of the corporation must be registered with the tribe on whose reservation the purchase and delivery of goods/ services occurs. Accord: Det. 88-324, 6 WTD 309 (1988).

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 requests a ruling on whether it is liable for collection of retail sales tax on its sales to non-tribal members which occur on an Indian reservation.

#### FACTS AND ISSUES:

De Luca, A.L.J. -- The taxpayer is a general merchandise store located on [an] Indian Reservation. The taxpayer's manager wrote: "during a recent audit by the state, it was brought to our attention we would have to begin keeping records on taxable sales to [tribal member]'s (sic) when the tax is deleted." He then posed two questions about credit card purchases at his store.

- 1) A [tribal] owned business with a charge card and paid by a . . . tribal member, can a [non-tribal member] charge on this card for the business without charging the tax?
- 2) A [tribal] family where the entire family is [tribal] except for one spouse. The [non-tribal] spouse makes a purchase for his/her family is this person taxable? What if this family has a charge card in the [tribal] spouse's name and the [tribal] spouse pays the charge, can the [non-tribal] spouse charge without paying the sales tax?

#### DISCUSSION

WAC 458-20-192 (Rule 192) states that Indians and Indian tribes are not subject to retail sales tax on purchases of tangible personal property in certain limited situations. The rule allows the exemption only to those Indians who are properly enrolled with the same tribe governing the reservation on which delivery occurs.

[1] We will answer the second question first. A similar situation was addressed by the Department of Revenue in Det. 87-147, 3 WTD 111 (1987). There, a non-Indian wife operating

a fishing business with her Indian husband was permitted the same exemptions from Washington's fish tax which her husband was allowed. The exemptions applied both to the business and the marital community as a single entity. Likewise, the [non-tribal] spouse is part of the marital community with the . . . tribal member. She/he and the [tribal] spouse are to be treated as one entity and, therefore, she/he is entitled to the same exemptions from Washington's sales tax for family purchases delivered on the reservation as her/his [tribal] spouse enjoys.

[2] The other question receives a qualified yes. First, the business must be wholly owned by [tribal member(s)]. Second, the business must authorize the [non-tribal] employee/agent to make purchases for it with its credit card. Finally, the goods/services must be delivered on the [tribe's] reservation. Then, the sales would be exempt from Washington's sales tax because they are to the [tribal]-owned business, not to the [non-tribal] employee/agent. It is the business which is liable for their payment.

If the business is a corporation chartered by the tribe and not registered with the state as a corporation, the exemption may also apply to it. However, all the shareholders themselves must be registered tribal members. Moreover, delivery of the goods/services must occur on the reservation. Finally, the seller must take from the corporation or its agent an affidavit or signed statement which describes the goods/services sold and states that delivery to the corporation occurred on the reservation. Det. 88-324, 6 WTD 309 (1988).

#### RULING

Upon the narrow facts presented by the taxpayer, it is not liable for collection of retail sales tax from the two types of customers presented in its petition.

DATED this 14th day of January, 1991.