

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment)
of) No. 88-364
)
 . . .) Registration No. . . .
) . . . /Audit No. . . .
)

- [1] **RCW 82.29A.010 and RCW 82.29A.050(2):** LEASEHOLD EXCISE TAX -- LIABILITY FOR -- LESSEE VS. LESSOR. Where rent but not leasehold excise tax has been paid by a lessee to a lessor, the Department may proceed against either for collection of the tax.
- [2] **MISCELLANEOUS AND RCW 82.29A:** LEASEHOLD OR OTHER EXCISE TAX -- NOTICE -- BURDEN TO INFORM. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon the taxpayer to correctly inform himself of his obligation under the Act. ETB 310.32.101.230.
- [3] **MISCELLANEOUS AND RCW 82.29A:** LEASEHOLD OR OTHER EXCISE TAX -- LEASE AGREEMENT -- OBLIGATION OF LESSOR AND LESSEE. In a lease of public real property, the lessor and lessee may not contract away what would otherwise be their statutory responsibilities for the leasehold excise tax.
- [4] **RCW 82.29A.050(2):** LEASEHOLD EXCISE TAX -- SPECIFIC STATEMENT OF -- LEASE AGREEMENT. In a lease subject to leasehold excise tax, where the written statement of does not separately state the amount of such tax, the stated contract rental amount is deemed not to include the tax.

Headnotes are provided as a convenience for the reader and are not in any way part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .
. . .

DATE OF HEARING: September 7, 1988

NATURE OF ACTION:

Petition by lessee to cancel leasehold excise tax for period during which it was unaware it was liable for same.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is a purveyor of building materials. On May 9, 1979 it entered into an agreement with . . . Port District # . . . to lease certain public premises from the latter organization. Subsequently, the Department of Revenue (Department) examined the books and records of the . . . Port District to determine if it was in compliance with the leasehold excise tax statutes as found at RCW 82.29A. As a result of such examination, the Department issued the above-captioned tax assessment in the total amount of \$ The taxpayer paid that portion of the assessment it calculated as owing from September, 1984 through June 30, 1987. It declined to pay leasehold tax for periods prior to September, 1984 for the reason that the . . . Port District did not notify it until September, 1984 that it owed leasehold tax in addition to its monthly rental payments. The written agreement between the two parties was somewhat ambiguous on the subject. It stated, among other things, ". . . lessee may be required to pay a leasehold excise tax on the property. . ." The agreement did not set forth any specific amount for leasehold tax. It simply said that the taxpayer was to pay a monthly rental of \$

The taxpayer's objection centers around the matter of notification. Because the lessor did not advise or bill the lessee/taxpayer for the leasehold tax, and because the contract between the two was ambiguous, the tax should be the sole responsibility of the lessor/port district. In so contending, the taxpayer cites RCW 82.29A.050(2) which provides in part: "The lessor shall be fully liable for collection and remittance of the tax." Whether the taxpayer may be excused from liability for the tax on this basis is the issue to be decided herein.

DISCUSSION:

[1] First of all, the Department is free to pursue either the lessor or the lessee for the tax in this case. A portion of RCW 82.29A.050(2) not quoted by the taxpayer states in part: "Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax..." It has done precisely that in this instance. It is not limited to the lessor in its audit or collection efforts. Indeed, the economic burden of the leasehold tax is the primary responsibility of the lessee, not of the lessor. The lessor, in effect, is simply a collection agent for the Department just as a merchant is an agent for the Department for the purpose of collecting sales tax. That the legislature intended the lessee to bear primary responsibility for the tax is made clear in RCW 82.29A.010. The tax was created as a substitute for the property tax which would have to be paid by somebody were the leased premises not in the ownership of a public entity.

[2] Secondly, it is irrelevant that the taxpayer was not specifically informed of its liability until September, 1984. The burden is placed upon taxpayers themselves to find out what state excise tax obligations they have vis-a-vis their business operations. As stated in Excise Tax Bulletin (ETB) 310.32.101.230:

. . . The taxes imposed by the Revenue Act (RCW 82) are of a self-assessing nature and the burden is placed upon the taxpayer to correctly inform himself of his obligation under the Act.

While every effort is made by the Tax Commission (Department) to give a broad distribution of copies of the Revenue Act, instructions, rule changes and other pertinent information, failure to notify a particular taxpayer of his correct tax liability for unreported taxes does not relieve him from the assessment resulting from a misunderstanding of his correct tax liability. (Parenthetical inclusions ours.)

[3] Furthermore, we observe that the ambiguity of the agreement between the contracting parties is of no assistance to the taxpayer either. In fact, that ambiguity provided a good reason for the taxpayer to contact the Department at the time the lease agreement was executed. Had it done so, the

present conflict likely would not have resulted in that the taxpayer would have been informed of its correct liability at the outset. Regardless of that, the fact that the lease did not affirmatively fix the lessee's obligation for leasehold excise tax, in no way diminishes the lessee's legal duty to pay it. That duty is created by the legislature in the statute. The lease no doubt establishes rights and responsibilities between the parties to it, but the Department of Revenue was not such a party. Regardless of the language contained in the lease agreement, the parties' responsibility for the leasehold excise tax is set in the statutes. The lessor and lessee may not alter that statutory authority by contracting between themselves.

[4] Finally, we address the opinion voiced by the taxpayer that the rent stated in the lease agreement should have included the leasehold excise tax. Again, RCW 82.29A.050(2) is pertinent. It reads in part:

The amount of tax until paid by the lessee to the lessor shall constitute a debt from the lessee to the lessor. The tax required by this chapter shall be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter.

Because the leasehold tax amount was not separately stated in the lease agreement, the proper measure of the tax was the amount that was stated in the agreement, or \$

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 21st day of September 1988.