BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Correction of Assessment of | ) | D E T E R M I N A T I O N |
| | ) | No. 98-141 |
| . . . | ) | Registration No. . . . |
| | ) | FY. . ./Audit No. . . . |
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[1] RULE 183; RCW 82.04.050(3)(A): SALES TAX -- KARAOKE. A karaoke business' receipts were taxable under the retailing classification for amusement and recreation services regardless of the taxpayer's designation as room charges or equipment rentals.

[2] RULE 183; RCW 82.12.020: USE TAX – KARAOKE EQUIPMENT. Use of Karaoke equipment for karaoke, an amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a), is subject to use tax. [1]

[3] . . .

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:

A company that rents rooms with karaoke equipment protests use tax assessed on the equipment. [2]

FACTS:

[1] Nonprecedential portions of this determination have been deleted.
[2] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

M. Pree, A.L.J. – . . . [The taxpayer] rents rooms and karaoke equipment to customers. On occasion, the taxpayer charged retail sales tax on the rental of the equipment, but did not charge customers sales tax on rental of the rooms. Usually, the taxpayer provided the rooms with the equipment. On rare occasions, the customers rented only the rooms or only the equipment.

The Department of Revenue (Department) reviewed the taxpayer's books and records for the period January 1, 1992 through December 31, 1995. The Department's Audit Division issued the assessment referenced above on June 4, 1997. The assessment included sales tax on room rentals, [and] use tax on karaoke equipment . . . .

Each karaoke room had its own equipment with casual cocktail tables and seating for one to six individuals. Further, according to the Audit Division, individuals could not take the equipment off premises. The Audit Division concluded that the taxpayer provided an amusement activity when it rented rooms to customers with the equipment. In addition, the Audit Division found that the taxpayer did not acquire the equipment to rent (for resale), but used it to provide the amusement activity, and should have paid sales or use tax when it acquired[3] the equipment.

The taxpayer disputed the Audit Division's finding, stating individuals could rent only rooms, or occasionally rent the equipment only. The taxpayer provided copies of invoices showing "only room for rent". The taxpayer explained that on some occasions, customers brought their own karaoke equipment. The taxpayer also provided a copy of an invoice to verify that on one occasion only equipment was rented for use off the premises. The taxpayer alleges the charges for the rooms should not be subject to sales tax. The taxpayer also contends that it acquired the equipment for resale because customers rented the equipment.

. . . .

ISSUES:

1. Were the payments designated as room rental derived from an amusement activity subject to retail sales tax?

2. Did the taxpayer acquire the karaoke equipment for resale, to rent, not subject to retail sales tax or use tax when it was normally used in the taxpayer's rooms?

3. . . . .

DISCUSSION:

[3] The taxpayer states some equipment was leased from an out-of-state company. The tax in the assessment was measured by the rental payments.

[1] Subsection (3)(a) of RCW 82.04.050[4] provides:

> (3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:
>
> (a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

The Department's Rule 183 (WAC 458-20-183), in effect until Dec. 2, 1995[5] provided in part that retail sales tax must be collected upon charges for admissions and the use of facilities by persons engaged in the amusement and recreation activities. We note that the Department taxed charges for the use of facilities in the same manner as charges to participate in the activities. We recognized that customers paying for the use of facilities were really paying for the amusement or recreational service regardless of how taxpayers charged customers or booked the receipts. For instance, in Det. No. 88-247, 6 WTD 105 (1988), we recognized:

> Golf cart paths are one of the facilities used by persons involved in golfing activity. By the very terms of Rule 183, then, fees for such usage, even if separately charged and booked, are taxable under the retailing classification of the business and occupation tax and the retail sales tax.

The Department considers dancing an amusement and recreation service with dance cover charges taxable under the retailing classification. See Det. No. 85-306A, 2 WTD 243 (1987) and two decisions of the Thurston County Superior Court: Drayton Beverages, Inc. and Crossroads Enterprises, Inc. v. Department of Revenue, Nos. 44319 and 44320 (1971). In those "dance hall" cases, the Court held that amounts designated as "cover charges" were . . . charges for dancing and taxable as retail sales.

While karaoke is not dancing, karaoke customers are paying for an amusement or recreation service. Regardless of the "room charge" or "karaoke" designation, the taxpayer charges them for the right to participate in this entertaining activity. The Department continues to recognize that charges for facilities, as well as for providing the opportunity to engage in the activity, are taxable as "amusement and recreation activities". Currently, subsection (2)(b) of Rule 183[6] states:

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[4] This statute has been amended several times during and after the audit period, however, this language remained the same throughout.

[5] Rule 183 was amended 12/2/95.

[6] This language was the result of the 12/2/95 amendment, but reflected the Department's position as discussed in the various rulings.

> (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.** The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(Emphasis added.)

We find, regardless of designation, the taxpayer charged its customers for "amusement and recreation services" taxable under the retailing classification. We recognize that customers could bring their own karaoke equipment, but find they were still paying for the service. Bowlers may bring their own bowling balling balls, but they are still paying for the right to bowl. Skiers bring their own skis, but the resort's charge for the right to use the ski trails is still for the recreational service. Just as the golfers who paid the golf path fee in Det. No. 88-247 were paying for an "amusement and recreation service", the customers who paid the taxpayer's "room" charge were paying for the "amusement and recreation service". The taxpayer's charges were taxable under the retailing classification regardless of designation. We deny the taxpayer's petition on this issue.

[2] Use tax is imposed under RCW 82.12.020. Subsection (1) of that section provides:

> 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).

As discussed above, the taxpayer provides an amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a). The taxpayer purchased the equipment at retail or acquired it by lease. The taxpayer's use of that equipment to provide that service is subject to use tax.

The taxpayer contends that it acquired the equipment for resale, and therefore, the purchase was not subject to tax. Its customers operated the equipment. The taxpayer provided a copy of a single receipt showing that on one occasion it rented the karaoke equipment for use outside its establishment. Usually, the taxpayer provided the equipment for karaoke at its business location.

The principle use of the equipment was for the amusement or recreation service, not for use at another location. Such occasional use does not change the nature of their business, providing an amusement or recreation service. The taxpayer acquired the equipment to provide an amusement

or recreation service at its location. Use by the taxpayer's customers at the taxpayer's location constitutes intervening use, negating the resale exception.

Regardless of the taxpayer's stated intent for resale, use to provide any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a) subjects the equipment to use tax under RCW 82.12.020. The taxpayer's petition is denied on this issue.

. . .

DECISION AND DISPOSITION:

The taxpayer's petition is denied. . . .

Dated this 31st day of July 1998.