

Cite as Det. No. 91-292, 11 WTD 483 (1992).

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 Prior Determination of)	
Tax Liability of)	No. 91-292
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[1] RULE 106 -- RETAIL SALES TAX -- USE TAX -- SUBSIDIARIES
-- EQUITY. Transfers of equipment between wholly-owned
subsidiaries with only adjustments to the equity
accounts are not subject to retail sales tax or use
tax.

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:

The taxpayer and its subsidiaries request a prior determination
of tax liability under WAC 458-20-100(9) regarding the transfer
of assets between subsidiaries.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer, a foreign corporation
headquartered outside Washington, and its subsidiaries (some of
which conduct business in Washington) are in business
The subsidiaries provide . . . services in mutually-exclusive
geographic areas. They own [equipment] for use in the business.

Occasionally, to meet the demands of each subsidiary's business, the taxpayer causes one subsidiary to transfer [equipment] to another subsidiary. These transfers are not documented by written contract or bill of sale; and no cash, other property, or promises of payment are exchanged for the [equipment]. The only documentation of the transfer on a nationwide basis is the title transfer forms issued by the Washington Department of Licensing. On these forms, the purchase price is listed as zero. There is never any exchange of consideration for the [equipment].

For accounting purposes, the transaction is booked in the following fashion. The transferor books a credit to the asset side of the transferor's balance sheet. At the same time a debit is taken to the equity side on the transferor's balance sheet. These two entries effectively eliminate the asset and a corresponding dollar amount of equity based on the book value of the asset in the transferor's hands. Instantaneously, an asset is debited on the asset side of the transferee's ledger and a similar dollar credit is made on the transferee's equity.

This has the affect of increasing the asset side of the ledger by the dollar amount of the transferor's basis in the asset, and also increases the equity account by the same amount. The result is that the net worth of the transferor declines, the net worth of the transferee increases, and on the consolidated books and reports of the taxpayer and its subsidiaries, all of these entries cancel one another out.

All entries are made through the equity measures for each of the subsidiaries. There is no sale or entry suggesting a sale with respect to any of these . . . assets.

Each transferor of [equipment] has satisfied its retail sales tax or use tax obligations in Washington either by payment of the tax or by virtue of credit for tax paid to another state.

The taxpayer contends that the transfers are without consideration so there is no "sale" under the definition of RCW 82.04.040. Since there is no "sale" the transfers are not subject to sales tax, use tax, nor business and occupation tax.

DISCUSSION:

[1] WAC 458-20-106 (Rule 106) provides in part:

A transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply.

(1) Transfers of capital assets between a corporation and a wholly-owned subsidiary, or between wholly-owned subsidiaries of the same corporation.
(emphasis supplied)

This Rule applies to the transactions outlined above. The [equipment is] capital asset. The parties involved are wholly-owned subsidiaries. There is no consideration given in exchange for the [equipment]. The transfers are accomplished through an adjustment of the equity account which represents the beneficial interest of the taxpayer in the subsidiaries. Therefore, retail sales tax does not apply to the subsidiaries' intercompany transfers.

Regarding use tax, Rule 106 provides as follows:

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. (See the exempt situations listed under the retail sales tax subdivision of this rule.)

The exempt situation discussed regarding the retail sales and wholly-owned subsidiaries also applies to use tax. Again, the [equipment is] capital asset transferred between wholly-owned subsidiaries without consideration, only an adjustment of the taxpayer's beneficial interest. There is no additional use tax obligation for the transferees since the transferors previously paid sales or use tax on the property transferred. The taxpayer should keep records to document that the tax has been paid.

Under these circumstances, no sale has occurred. Since there has been no sale, the business and occupation tax does not apply.

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(9) 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 were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not 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.

We caution the taxpayer that WAC 458-20-106 (Rule 106) controlling these transactions is docketed for amendment. We are not aware of what the eventual changes to the Rule will be but anticipate that they will be prospective only.

DATED this 10th day of October 1991.