

Cite as Det. No. 91-281, 11 WTD 469 (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 Ruling of	)	
	)	No. 91-281
	)	
UNDISCLOSED TAXPAYER	)	Registration No. Unavailable
	)	
	)	
	)	

[1] RULE 103 -- TIME OF SALE -- CONDITIONAL SALE. The time of sale for a conditional sale is when the buyer takes possession.

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 requests a ruling of tax liability on an uncompleted sale.

FACTS AND ISSUES:

Free, A.L.J. -- The taxpayer is selling a business and entered into an earnest money agreement with prospective purchasers. The sales price was \$40,000.

The seller received \$20,000 with the earnest money agreement. Under the agreement, payments of \$5,000 were due on July 1, 1991, October 1, 1991, January 1, 1992, and April 1, 1992. The seller will give the buyer title on April 1, 1992.

Of the total purchase price, \$10,000 was allocated to furniture and fixtures which are the only part of the transaction subject to retail sales tax. From the petition it is unclear when the purchaser took possession of the furniture and fixtures.

The taxpayer asks when retail sales tax is due on the transaction.

#### DISCUSSION:

WAC 458-20-103 (Rule 103) discusses the time and place of sale. That Rule provides in part:

Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration, and includes the sale or charge made for performing certain services. (emphasis supplied)

In cases where possession transfers at a time different than when title transfers, the Department has consistently interpreted this provision to mean the time when the purchaser takes possession.<sup>1</sup> Physical delivery of the property determines the time of sale.

WAC 458-20-198 (Rule 198) discusses conditional and installment sales and provides in part:

Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.

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Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax period in which the sale is made.

The foregoing is true irrespective of the fact that such sellers arrange to receive payment of tax in installments . . . .

Therefore, the tax should be reported in the period in which the sale was made, in this case when the buyer took possession.

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

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<sup>1</sup> See Det. No. 87-352, 4 WTD 289 (1987); Det. No. 87-4, 2 WTD 127 (1987); Det. No. 86-295, 2 WTD 11 (1986).

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.

The taxpayer's identity is not given in the request for a ruling made by its attorney. Since we will not be able to inform the taxpayer of any future changes in our position, this ruling may not be effective for future application and will not necessarily be binding on the Department should the position of the Department change.

DATED this 27th day of September, 1991.