

Cite as Det. No. 92-029R, 12 WTD 345 (1992).

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

In the Matter of the Petition	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of	)	
Beneficial Liability of	)	No. 92-029R
	)	
. . .	)	Registration No. . . .
	)	Warrant Nos. . . . & . . .
	)	

[1] RULES 106 AND 217 -- BENEFICIAL INTEREST -- LIEN PURPOSES. There is no requirement that the definition of the term "beneficial interest" for lien attachment purposes and for tax-free transfers be identical in all aspects. The Department's long held definition of "beneficial interest" for lien purposes will not be overturned without legislative or judicial authority to do so.

Headnote is provided as a convenience for the reader and is 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: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

The taxpayer seeks reconsideration of the Determination No. 92-029 where the Department found that the taxpayer had a beneficial interest in the business of its lessee.

FACTS:

Coffman, A.L.J. -- The operative facts in this matter are fully stated in the Department's original Determination No. 92-029. The taxpayer does not dispute the factual findings as stated

therein.<sup>1</sup> After the taxpayer received the original determination, it entered into discussions with the Department's Compliance Division. These discussions did not resolve this matter to the taxpayer's satisfaction. The taxpayer presented the following additional legal issues for consideration.

#### ISSUES:

1. Is the Department's rule concerning beneficial interest liability (WAC 458-20-217) invalid because it purports to find third parties to have a beneficial interest in a business when there is no legal ownership interest in the business?
2. Assuming that the beneficial interest provisions of WAC 458-20-217 are valid, what property is subject to the Department's lien?

#### DISCUSSION:

We construe the term "beneficial interest" as it is used in RCW 82.32.210 and WAC 458-20-217 (Rule 217) to apply when:

the third party [has] a direct or indirect interest in the success of the business that results in the potential for gain to the third party.

(Brackets added.) Det. No. 92-029 (1992), page 8.

[1] The taxpayer argues that the Department's interpretation is incorrect. The taxpayer argues that the term beneficial interest refers to an ownership interest in the business.<sup>2</sup> In particular the taxpayer argues that because the term is used in WAC 458-20-106 (Rule 106) as well as Rule 217, we must interpret the term "beneficial interest" in an identical manner. The taxpayer states that the logical conclusion to be drawn from a finding of beneficial interest for the purpose of Rule 217 is that Rule 106 applies to the taxpayer's relationship with its lessees. Specifically, if we find a beneficial interest existed under Rule 217 then, according to the taxpayer, there would be no retail

---

<sup>1</sup> We note, however, that we erred when we stated that the lessees paid real property taxes. The real property tax was to be paid by the taxpayer according to the lease agreement. This error, we find to have been harmless.

<sup>2</sup> The taxpayer cited several statutes which use the terms "beneficial interest" and "beneficial ownership" and states that all of these statutes treat the term as an ownership interest.

sales tax on any transaction between the taxpayer and its lessees. This, the taxpayer argues, is because an adjustment of beneficial interest would result.

Rule 106 addresses the application (or nonapplication) of the retail sales tax to casual and isolated sales and various business reorganization possibilities. The latter occurs when there is no real change in ownership of business assets. Thus, if a partnership were to incorporate, there is no reason to apply the retail sales tax to the transfer because the partners continue to own the corporation. Further, we ruled in Det. No. 89-331, 8 WTD 53 (1989) that when related entities do business with each other the tax treatment of the transaction is governed by the its nature. Thus, if one party leases property to a related entity the transaction is treated as a retail sale. To obtain the benefit of Rule 106 tax-free treatment, there must be a transfer of property "accomplished through an adjustment of the beneficial interest in the business."

RCW 82.32.210 and Rule 217 address a decidedly different situation from that addressed by Rule 106. The statute and rule are intended to insure that the tax revenue is properly paid. The statute and rule state that when a third party allows a business to use, by lease or otherwise, its tangible personal property and the third party derives some benefit from that business, then the tangible personal property is subject to the Department's lien for the business' unpaid taxes. The taxpayer's argument that Rules 106 and 217 use the term "beneficial interest" in the identical manner is not persuasive.

Likewise, the taxpayer's argument that Rule 217 is inconsistent with other statutes is rejected. Rule 217 has been part of the revenue rules of this State since 1937. The legislature approved the Department's interpretation in 1949 when it included the beneficial interest language in the Revenue Act of 1935.<sup>3</sup> Under these circumstances, the Department will not overrule or invalidate that interpretation absent a compelling reason. The taxpayer's arguments have not convinced us that a compelling reason exists.

In the taxpayer's case, its interest in the business of its lessee was greater than that of a mere lessor. The extent of that interest is fully explained in the original determination. The taxpayer's business relationship with its lessee is exactly the type of arrangement that RCW 82.32.210 and Rule 217 were designed to address.

---

<sup>3</sup>

The section was later recodified as RCW 82.32.210.

Rule 217 limits the third party's responsibility to the property which is used in the business of the delinquent taxpayer. Thus, had the taxpayer not allowed the lessee to use its equipment, there would be no dispute. The taxpayer argues that the lessee did not use any of the taxpayer's property in its business. The facts in this matter reveal otherwise.

The commission agreement and the lease of the real property executed by the taxpayer and its lessee were inextricably intertwined. The lessee was required by the commission agreement to collect the gross proceeds from the sale of gasoline. In order to perform under the commission agreement, it was necessary to know how much gasoline was sold. The lessee was also required to account for the gasoline delivered by the taxpayer. The taxpayer agreed that the lessee's business included the collection of the receipts for gasoline sales. In order to accomplish this business, the taxpayer's tangible personal property was used. Therefore, that tangible personal property is subject to the lien created by the Department's filed tax warrants.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied. The file will be returned to the Department's Compliance Division for further action.

This determination is the final action of the Department of Revenue. The taxpayer may pay the tax and petition for a refund in Thurston County Superior Court in accordance with RCW 82.32.180.

In the alternative, the taxpayer may file a petition with the Board of Tax Appeals [PO Box 40915, Olympia, WA 98504-0915] pursuant to RCW 82.03.190. If the taxpayer chooses this alternative its petition must be filed with the Board within thirty (30) days of this final determination. Further appeal, however, will not extend the due date for payment or stay the collection of the amounts due.

DATED this 19th day of March 1993.