

Cite as Det. No. 92-205, 12 WTD 395 (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 Correction of Assessment)	
and Refund of)	No. 92-205
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

RULE 190: FEDERAL INSTRUMENTALITY -- FARM CREDIT BANK SERVICE CORPORATION -- LIABILITY FOR B&O TAX. An instrumentality of the United States is not liable for the business and occupation tax. A service corporation organized under the provisions of 12 U.S.C. 2211 is a federal instrumentality.

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:

Taxpayer protests the assessment of B&O tax against it and petitions for tax previously paid in error.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- . . . [Taxpayer] is a corporation leasing tangible personal property. Its records were audited fully for the period January 1, 1987 through December 31, 1990, and a partial audit was conducted for the period January 1, 1991 through June 31, 1991. As a result, an assessment was issued in the amount of \$ Taxpayer paid \$. . . , which represented the taxes due on the assessment. It protested the assessment and requested a refund of the amount paid, as well as a refund of \$. . . for B&O taxes paid during the audit period.

Taxpayer was organized by certain Farm Credit Banks under Title IV, Part E of the Farm Credit Act of 1971 (12 U.S.C. §2211) as a

service organization of the Farm Credit System to provide leasing services to those farmers, ranchers, producers or harvesters of aquatic products, and entities eligible to borrow from the Farm Credit system banks and associations.

During the audit period, Taxpayer apparently paid B&O tax on most of its lease revenue. Because its lease contracts require the lessee to pay any and all taxes incurred as a result of its leases, it billed its lessees for the B&O taxes as well as the sales taxes due. Rather than splitting the taxes out and showing the taxes separately on the invoices, the taxes were lumped together on the lessees' invoices. Both the B&O tax and retail sales taxes were then remitted to the state. This arrangement was treated as overcollected sales tax in the audit. In June 1991, Taxpayer issued a credit to its lessees for the overcollected sales taxes, and separately billed them for the B&O taxes for the audit period.

Taxpayer apparently did not collect or remit B&O taxes on its leases to the federal government. Taxpayer also sold equipment, both at retail and for resale and did not pay B&O tax or collect retail sales tax on those sales.

Taxpayer contends that it is a federal instrumentality and is therefore not subject to the business and occupation tax. It requests that all B&O tax in the audit be deleted and that all other B&O tax paid during the audit period be refunded. It also objects to the assessment of additional interest on the B&O tax billed to and collected from its lessees that was refunded in 1991, contending that the amounts were not actually excess sales tax and that no additional interest is owing.

DISCUSSION:

12 U.S.C. §2211 provides, in part:

Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this Act. . . Upon the approval of articles by the Farm Credit Administration and the issuance of a charter, the corporation shall become as of such a date a federally chartered body corporate and an instrumentality of the United States.

Taxpayer received its charter [August 1983].

WAC 458-20-190 (Rule 190) provides, in part, as follows:

The United States, its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under chapter 82.04 RCW.

* * *

The retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities, except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally.

* * *

The retail sales tax does not apply to sales made by the United States, or any instrumentality thereof. . .

Taxpayer is not required to pay Washington's B&O tax. Taxpayer's petition is granted as to this issue.

[Part of this determination was not precedential and has not been published.]

DECISION AND DISPOSITION:

Taxpayer's petition is granted.

DATED this 31st day of July 1992.