

Cite as Det. No. 92-156, 12 WTD 195 (1993).

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 of)	
)	
)	No. 92-156
)	
. . .)	Unregistered
)	Notice of Use Tax Due
)	

[1] RCW 82.12.020 and RCW 82.12.010(1): USE TAX -- DETERMINATION OF TRUE VALUE. Where the taxpayer purchases real and personal property in a single transaction, allocates the purchase price in an "arms length transaction," the value placed on the personal property is in excess of the assessed value for property tax purposes, and the value as determined by the Department's Revenue Officer was merely a projected estimate, the use tax will be imposed on the agreed purchase price. Partial Accord: Det. No. 90-298, 11 WTD 67 (1990).

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: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

The taxpayer protests the assessment of additional use tax by the Department's Miscellaneous Tax Division on its purchase of two apartment complexes where the taxpayer paid retail sales tax/use tax on the purchase price of the personal property as allocated in the purchase agreement.

FACTS:

Coffman, A.L.J. -- The taxpayer is a general partnership which purchased two apartment complexes. The total purchase price for the two complexes was \$. . . of which \$. . . was allocated to personal property. The taxpayer paid the retail sales tax on the allocated purchase price of the personal property. The Department's Miscellaneous Tax Division conducted an on-site audit to determine the fair market value of the tangible personal property. As a result of this audit, the Revenue Officer determined that the actual value on the purchase date of the personal property was [nearly twice the allocated value]. A notice of use tax was issued.

The Revenue Officer used estimated new values for the personal property and applied percentages to those values to determine the value as of the date of purchase.¹ The taxpayer's representative testified that they negotiated the total purchase price and then determined the value of the personal property by negotiating the value of the personal property in each unit and multiplying by the quantity.

ISSUES:

Was the purchase price of the personal property stated in the closing statements for each complex representative of its true value?

DISCUSSION:

RCW 82.12.020 imposes a tax:

for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail . . . The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020, as now or hereafter amended, in the county in which the article is used.

(Emphasis supplied.)

The taxpayer paid retail sales tax on the negotiated price for the personal property. RCW 82.12.0252 provides that to the extent that the taxpayer has paid retail sales tax on the personal property being used, there is no use tax imposed.

¹ This methodology is valid when the purchase price is known and other valuation methods are not available or practical.

RCW 82.12.010(1) defines "value of the article used" as:

the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. . . . In case the article used is . . . sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the department of revenue may prescribe.

This statute makes clear that the value of the article used is first to be determined by reference to the value established by the parties to sale. If one is able to get the seller to reduce its price, then the retail sales tax/use tax will be based on the consideration actually paid. The prices charged by retailers of goods vary depending upon where an item is purchased, the seller's overhead, etc. The identical item may be purchased at one store for \$100 while at another it may cost \$120. Alternatively, a retailer may have a sale and reduce the price by \$20. The amount of tax which is due on these transactions depends on the price paid even though the item is the same. It would be an impossible burden on the Department and retailers to require that the use tax be collected on the regular retail price of all transactions. Therefore, the legislature limited reference to true value to those cases where the price is determined under conditions where the purchase price is out of sync with the retail selling price of the item. These conditions include, but are not limited to, sales between family members, cases with a nominal consideration, and forced sales such as seizures.

[1] It was the opinion of the Revenue Officer that the allocated purchase price was not representative of the true value. However, the assessed values of the personal property for property tax purposes for the year of the sale and the year after the sale were both below the value allocated by the parties. The taxpayer negotiated the purchase price in an arm's length transaction. Further, the Revenue Officer used estimated new values, which we believe to be in excess of the cost, especially in light of the quantity involved. The purchase price of the personal property was documented. These facts indicate that the purchase price was not determined under circumstances where it did not represent the true value. See Det. No. 90-298, 11 WTD 67

(1990). Therefore, we find that the price negotiated by the parties is the true value.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 23rd day of June 1992.