Cite as Det. No. 92-328, 12 WTD 489 (1992).

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

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 92-328
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULE 131 -- PARKING -- GAMBLING. Gaming receipts designated "parking fees" were found in fact to be for card playing, taxable as services.

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 HEARING: . . .

NATURE OF ACTION:

The taxpayers were audited and . . . assessments . . . were issued. . . . . The taxpayers only protest the tax assessed when the Audit Division reclassified income that the taxpayer had designated as gambling, taxable at the service business and occupation rate. The Audit Division reclassified that income as income from parking, taxable at the retailing rate of business and occupation tax and subject to retail sales tax which the taxpayer failed to collect and remit to the state.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayers operate a restaurant, lounge, and card room in Washington. While they are not allowed to operate a "gambling business", they allow gaming controlled by the Gambling Commission. In addition to other charges, they also charge for

other goods and services including "parking." It is the characterization of the parking income that is in dispute.

As a result of an investigation and audit by the Gambling Commission, a notice of administration charges was issued against the taxpayers' license to conduct authorized gambling activities. An adjudicative proceeding was conducted [in December 1991], resulting in findings of fact and conclusions of law. A final order was issued [October 1992] adopting those findings of fact and conclusions of law. The taxpayer indicates that the order will not be appealed further. The auditor has indicated that the findings of fact are accurate and does not take issue with the conclusions of law.

Therefore, we will rely on the findings of fact and conclusions of law as stated in the Gambling Commission decision. The portions of the findings of fact relevant to the parking issue state:

> . . . In addition to the card playing fees, the licensee collected $ . . . for "parking fees" each one-half hour from each player participating in a card game. . . . .
>
> . . . The licensee acknowledges that the parking fee was collected from card players . . . . (. . .). The parking fees were only collected from players participating in card games. The parking fees were collected at the same time that the card playing participation fees were collected. (. . . .) These parking fees were collected regardless of whether the player had a vehicle parked at the . . . or not. (. . . .) The parking fees were not collected from other patrons . . . , as for example those in the restaurant or lounge. (. . . .)
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> . . . The licensee had no notice, sign or schedule posted in its card room advising players participating in its card games that each was being charged $ . . . per one half-hour for parking. (. . . .) On occasion the licensee would advise those players who were present during the beginning of a card playing occasion that parking fees were going to be collected in addition to the card playing fees. Other than this occasional verbal notice, the players were not advised that a portion of the fees collected during a card game were being delineated as a "parking fee." (. . . .)
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> . . . .
>
> . . . During the audit, the commission determined that the parking fees were part of the gambling proceeds received

> by the licensee . . . . (. . .) By making the parking fees part of the gambling proceeds, the licensee's net gambling receipts exceeded its total gross sales from non-gambling activities . . . .
>
> . . . .

The portions of the conclusions of law relevant to the parking issue state:

> . . . The purpose of RCW 9.46.281(4) and WAC 230-40-060 is that all the monies received by the licensees from players as fees charged as a condition for their participation in card games are to be considered proceeds from a gambling activity. The assignment of a different name, as for example "parking fees," to these collections does not alter their character.
>
> . . . The payment of the "parking fee" of $ . . . per half-hour by each player in addition to the $ . . . card playing fee was required by the licensee as a condition for playing in a card game. The total fee collected from the players of $ . . . was a charge for participating in a card game, not for placing a vehicle in a parking lot. The total fees collected from players for each half-hour of participation were gambling proceeds and must be considered as such when determining if the activity was being operated by the licensee as a commercial stimulant.

No evidence contrary to these statements has been provided. The issue is, were the amounts the taxpayer collected and accounted for as "parking fees", really parking fees subject to retail sales tax.

DISCUSSION:

RCW 82.04.050 defines retail sales and provides in part (3):

> (3) The term "sale at retail" or "retail sale" shall <u>include the sale of or charge made for personal business or professional services</u> including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others; (b) abstract, title insurance and escrow businesses; (c) credit bureau businesses; (d) <u>automobile parking and storage garage businesses.</u>

(Emphasis supplied.)

If the receipts were for parking services, the taxpayer should have collected retail sales tax and applied the retailing business and occupation tax rate. However, it has now been resolved by the Gambling Commission that the charges were in fact gambling proceeds.

WAC 458-20-131 (Rule 131) provides in part:

> MISCELLANEOUS. Revenues of card rooms, etc., from all activities other than those which are reportable under the retailing classification, must be reported under the service and other business activities classification. Such revenues include income from the furnishing of playing facilities to card players, etc.

Therefore, the receipts were properly reported under the service rate.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 2nd day of December 1992.