Cite as 2 WTD 435 (1987)

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

In the Matter of the Petition for Refund of . . .	D E T E R M I N A T I O N No. 87-99 Registration No. . . .

[1] **RULE 178, RULE 203, RULE 211, AND RCW 82.04.050:** SALES/USE TAX -- HELICOPTER -- LESSOR'S LIABILITY AT ACQUISITION -- INTERVENING USE --CLOSELY HELD CORPORATION.
Tangible personal property acquired exclusively for rental is not subject to retail sales tax. A helicopter leased by a sole proprietor to his closely-held corporation was found to be so acquired notwithstanding a gap in the term of a written lease agreement.

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: December 18, 1986

NATURE OF ACTION:

Petition for refund of use tax paid on helicopter allegedly acquired solely for lease.

FACTS AND ISSUES:

Dressel, A.L.J.--[John Doe] (taxpayer) is an individual who has a variety of business interests. Of these, primary is a trucking company called [Acme Trucking], Inc., whose

Washington tax registration number is . . . . For various reasons he also does business under his own individual name and as [John Doe] Leasing Co. on a sole proprietorship basis. Income from that business is reported for state tax purposes under registration number . . . . Included in that income is rental revenue he receives for the lease of a helicopter to [Acme Trucking], Inc., a corporation of which he is president. The helicopter is used exclusively in the business of the latter entity. The lease arrangement from [Mr. Doe] as an individual to [Acme Trucking], Inc. (hereafter the "corporation") was concocted to keep the aircraft out of the corporation in the event it incurred legal liability to a third party and, also, to presumably afford certain federal tax advantages to both the corporation and [Mr. Doe].

On March 7, 1986 a Notice of Use Tax Due on the helicopter was issued by the Department of Revenue (Department) to [Mr. Doe]. Tax claimed due amounted to $13,312.50 based on a valuation of the aircraft of $177,500. Said tax amount was paid in its entirety by the taxpayer who in the present action is claiming a full refund. In so doing he acknowledges that he did not pay retail sales tax on his purchase of the helicopter, but he claims he is exempt because he acquired the property solely for the purpose of leasing it to the corporation which fact makes his acquisition of the craft a purchase at wholesale and not subject to retail sales or use tax. Whether this position is correct is the issue to be decided herein.

DISCUSSION:

WAC 458-20-211 (Rule 211) is the Department's duly published administrative rule relating to the lease or rental of tangible personal property. It states in part, "The retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property." Such a sale is deemed to be for the purpose of resale so is excluded from the statutory definition of retail sale if there is no intervening use of the property by the person who resells or, in this case, rents it to somebody else. RCW 82.04.050.

In this situation the taxpayer ordered the used helicopter from . . . Helicopter Co. on October 16, 1984. He did not take delivery, however, until February 21, 1985. At that time the aircraft was flown from Seattle to . . . which has been its home base since acquisition. Until approximately April 1, 1985 a hired pilot flew the craft for the taxpayer who was acting in his capacity as president of the corporation. After

that initial period of slightly over a month, the taxpayer himself became qualified to fly the aircraft, and he has been the sole operator ever since. He claims that the helicopter has been used exclusively for the business of the corporation and not for the sole proprietorship, his other businesses, or personal, non-business purposes. In fact, a written lease agreement was executed under which the taxpayer, dba [John Doe] Leasing, rented the helicopter to the corporation for $125 an hour. The term of the agreement is five years commencing March 31, 1985. The lease was signed twice by [John Doe] on February 9, 1985, once as sole proprietor of [John Doe] Leasing Co. (the lessor) and once as president of [Acme Trucking], Inc. (the lessee).

A major part of the problem here centers on the gap between the date of delivery, February 21, 1985, and the beginning date of the lease, March 31, 1985. In that period the helicopter was flown approximately 60 hours. The Department has taken the position that this is intervening or personal use by the lessor which is a use other than rental which disqualifies the lessor as a wholesale buyer of the aircraft and which concomitantly subjects such use to the retail sales tax on a deferred basis or to its complementary tax, use tax. The taxpayer's explanation is that delivery of the helicopter came sooner than expected. The purchase agreement called for certain modifications, repairs, and additions to be made by the seller prior to delivery. The parties contemplated that the aircraft would be ready for action on April 1 and typed that date onto the blank lease form.[1] When it was learned that delivery would be sooner, [Mr. Doe] signed the lease form on February 9 but simply neglected to change the lease dates which had already been typed on the form either because he did not think it was important or because of pure oversight. The important thing, the taxpayer argues, is that both lessor and lessee considered that a lease relationship existed the moment the plane was delivered to . . . .

We agree, both that this is what the parties contemplated and that such fact is important. There are a number of reasons. First of all, the explanation that delivery came sooner than expected is plausible. Secondly, the taxpayer has produced wage and tax statements indicating that the temporary pilot of

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[1] The opening sentence of the lease agreement proclaims that its date is April 1, 1985. A later paragraph, however, states that the beginning date of the five year lease term is March 31, 1985.

the craft in February and March of 1985 was employed and paid by the lessee, [Acme Trucking], Inc. Thirdly, the taxpayer has stated that use of the aircraft before and after March 31, 1985 was the same, viz. for the business endeavors of the corporation. In fact, it was put to the same use under the same lease arrangement as had been a previous helicopter which was grounded in 1984 and which the craft at issue replaced. Fourthly, the attorney representing the taxpayer verified that rent was actually paid for the period February 21, 1985 to March 31, 1985, the start date of the written lease. Fifthly, the craft was used only for the corporation's purposes which allegation is supported by the helicopter's log book which primarily shows flights to . . . , Seattle, and Spokane all of which are sites of corporation facilities. Sixthly, in spite of the March 31, 1985 start date, the lease was signed February 9, 1985 which was prior to the date of delivery. Seventhly, both the purchase order and installment contract were executed between . . . Helicopter . . . , Inc. and [John Doe] Leasing Co. The fact that [Mr. Doe] used the latter designation, rather than solely his own name or [Acme Trucking], Inc., or that of another of the companies in which he has an interest, provides a good indication of what he planned to do with the craft. Eighthly, taxpayer has provided copies of a billing for one year of the present lease term from "[John Doe]" to [Acme Trucking], Inc., in the total amount of $48,850 which figure includes $3,404.14 in sales tax and of a check from [Acme Trucking] to "[John Doe] Leasing" for the same total amount. This tends to demonstrate both that rent is actually being paid and that sales tax is being collected on the rental payments pursuant to RCW 82.04.050(4), RCW 82.08.020, and Rule 211. We presume, of course, that [John Doe] Leasing is properly reporting that income and remitting the sales tax collected to the Department of Revenue.

All of these factors point to a legitimate lease between the parties, not only for the period of the written lease, but also for the prior 40 day period. As to the latter period we note that there is no requirement in Rule 211 or elsewhere in the rules and statutes that a lease be in writing in order for the lessor to not be subject to retail sales tax on her or his acquisition of a leased item. Further, there is no statute of frauds problem in that the leased item here is personal, not real property. We find, therefore, that in this case there has been no intervening or personal use by the lessor. The fact that the same individual is the lessor and is president of the lessee as well as the pilot of the aircraft does not

invalidate the lease as the Department recognizes in WAC 458-20-203 (Rule 203)[2] the separate identity of closely-held corporations. The lessor and lessee here are not the same party under that authority, so there is no reason not to afford the lessor the sales/use tax exemption at issue where there has been no use of the helicopter for purposes other than those of the lessee.

Because the helicopter was acquired solely for rental purposes, the taxpayer is not liable for sales tax on its purchase under RCW 82.04.050 and Rule 211. Because the taxpayer was found not to have used the aircraft and because he is not a consumer as to this transaction, he is also not liable for use tax. RCW 82.12.020 and RCW 82.04.190.

DECISION AND DISPOSITION:

The taxpayer's petition is granted with one condition. The Department's Audit Section will first verify that the taxpayer has reported the helicopter rental payments and paid the appropriate B&O and sales tax thereon. Once such verification is made, a refund will be issued with interest per WAC 458-20-229 (Rule 229).

DATED this 31st day of March 1987.

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[2] **WAC 458-20-203 Corporations, Massachusetts trusts.** Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

Each unincorporated association organized under the Massachusetts Trust Act of 1959 (chapter 23.90 RCW) is likewise taxable in the same way as are separate corporations.