

Cite as 2 WTD 429 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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)	
)	No. 87-101
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	
)	

[1] **RULE 119, RCW 82.08.050:** RETAIL SALES TAX --
EMPLOYEE MEALS. An employer who provides meals at
no charge to its employees, and who fails to collect
retail sales tax, is liable for the tax, based on
the cost of the food.

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: March 3, 1986

NATURE OF ACTION:

The taxpayer operates a restaurant. An audit was conducted
for the period from January 1, 1982 through September 30,
1984. The taxpayer appeals the assessment of retail sales tax
on meals provided to its employees.

FACTS:

Normoyle, A.L.J. (successor to M. Clark Chandler, A.L.J.)--The
taxpayer provided meals to its restaurant employees without
collecting retail sales tax. The taxpayer was under the
impression that such meals were not taxable, apparently based

on information it received relating to federal tax treatment of the meals.

The tax was assessed on the basis of 75 cents per meal, which the auditor determined to be the average cost of the food.

The taxpayer believes that taxes and interest should not be assessed because:

1. If the meals are not taxable income to the employees under federal law, they should not be subject to state retail sales tax;
2. The taxpayer could not collect the unpaid taxes from the employees at this late date, either because they are no longer employed with the taxpayer or because it would work an undue hardship on those that are still employed.

ISSUE:

Is a taxpayer/employer liable for retail sales tax, based on the cost of meals provided to its employees?

DISCUSSION:

We start with a discussion of the statutes governing sales at retail. The term "sale" includes the furnishing of meals for compensation. RCW 82.04.040. "Retail sale" means every sale of tangible personal property. RCW 82.04.050. "Selling price" means the consideration paid by a buyer to a seller. If the consideration is not paid with money, e.g., a barter, or as in this case, employee services in exchange for free meals, the consideration must be put into money terms. RCW 82.08.010. In the present case, the consideration passing between the taxpayer and its employees is as follows:

- A. From taxpayer: Free meals, given as part compensation for employees' services;
- B. From employee: his or her services, in part, for free meals.

The retail sales tax is payable on sales at retail, based on the "selling price" (the consideration). RCW 82.08.020. Although the buyer is to pay the tax if the seller fails to collect it, the seller is personally liable to the state. RCW 82.08.050.

The legislature has directed the Department of Revenue to enact administrative rules designed to implement and make workable the excise tax statutes. WAC 458-20-119 (Rule 119) contains guidelines for determining the taxation of meals to employees. Two different versions of the rule were in effect during the audit period, but the critical language was the same in each version. That language is as follows:

Where no specific charge is made for each meal, the measure of the tax will be average cost per meal served to each employee, based upon the actual cost of the food. . . .

Persons engaged in the business of furnishing meals to the public, generally pay their employees a fixed cash wage and, in addition thereto, furnish one or more meals per day to such employees, as compensation for their services. The furnishing of such meals constitutes a retail sale, irrespective of whether or not a specific charge is made therefor. . . .

We conclude that the auditor properly applied Rule 119, and sustain the assessment. Although it is unfortunate that the taxpayer was confused by information received by it concerning federal taxation of employee meals, such confusion is not a statutory ground for relief from state taxation. Neither is the fact that the taxpayer will find it difficult, if not impossible, to collect the taxes from the employees.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied. Because the delay in the issuance of this Determination was solely for the convenience of the Department, interest will be waived from September 3, 1986 to April 20, 1987. Tax Assessment No. . . . in the amount of \$. . . , plus additional unwaived interest of \$. . . , for a total of \$. . . is due by April 20, 1987.

DATED this 31st day of March 1987.