

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 Determination of Tax Liability)	
)	No. 87-4
)	
. . .)	Registration No. . . .
)	
)	

- [1] **RCW 82.32.300:** The Department of Revenue's duly adopted Administrative rules have the same force and effect as the Revenue Act itself unless declared invalid by a court of record not appealed from.
- [2] **RULE 103 -- RETAIL SALE -- TIME OF.** A sale takes place in this state when the goods are delivered to the buyer in the state, not when the goods are paid for.
- [3] **RULE 211: RETAIL SALES TAX -- SALE/LEASEBACK.** Retail sales tax is due on initial purchase and on lease payments if purchaser uses equipment between time of initial purchase and subsequent sale/leaseback.
- [4] **RCW 82.08.050 -- RETAIL SALES TAX -- REFUND -- SELLER TO COLLECT TAX -- ETB 132.** RCW 82.08.050 imposes a duty upon each seller to collect the retail sales tax from the buyer. Seller not entitled to a refund of sales tax that had been remitted to the Department because buyer was refusing to pay seller the tax that was due.

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.

NATURE OF ACTION

On August 6, 1986, the taxpayer wrote the Department requesting a written opinion and ruling, as provided by section 18 of Rule 100, as to whether retail sale tax was improperly refunded to one of its customers.

FACTS AND ISSUES

Frankel, A.L.J. -- . . . Corporation (hereinafter referred to as the seller) received a purchase order from a Washington customer (. . .) for computer products on September 26, 1984. On October 31, 1984, the seller shipped the equipment and invoiced the customer. The invoice states the purchase price of \$. . . and adds applicable Washington retail sales tax and shipping charges. The customer sent payment of the equipment on January 4, 1985, excluding the amount added for retail sales tax. Included with the payment was a cancellation of the original purchase order, a new purchase "confirming order" from . . . Lessors, Inc. (also dated January 4, 1985), and a resale certificate.

At that time, the seller refunded sales tax to the customer by a credit memo and requested a refund of the sales tax remitted to this state. In requesting the refund, the seller stated that after the sale had been completed the customer decided "to obtain financing through a lease company" and that sales tax will be paid through the lease payments.

A revenue auditor for the Department denied the request for a refund. The denial states:

Persons who purchase tangible personal property are subject to sales tax at the time of the purchase on the full value of the article purchased. If after the initial purchase the purchaser chooses to finance the item through a leasing company, then they are actually selling the item purchased to the leasing company and leasing it back.

In this instance the tax is due on the original purchase and on the lease payments to the leasing company.

The taxpayer/seller states that its customer is refusing to pay sales tax on the order at issue. The customer argues that the "time of sale" is the time they paid for the equipment, i.e., January 4, 1985 rather than when the equipment was invoiced and shipped. The seller requests a ruling from the Department which clarifies when the sale occurred and which supports the Department's position, if the sales tax is upheld on the initial sale.

DISCUSSION

[1] The administration of the Revenue Act is vested in the Department of Revenue. The Department is to make and publish rules and regulations consistent with the Act which are necessary for its enforcement. The rules have the same force and effect as if specifically included in the Act unless declared invalid by a court of record not appealed from. RCW 82.32.300.

[2] WAC 458-20-103 (Rule 103) is the Administrative rule which clarifies the "time and place of sale." Rule 103 provides:

Under the Revenue Act of 1935, as amended, the word "sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration, and includes the sale or charge made for performing certain services.

For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this state when the goods sold are delivered to the buyer in this state, irrespective of whether title to the goods passes to the buyer at a point within or without this state.

. . . With respect to the charge made for renting or leasing tangible personal property, a sale takes place in this state when the property is used in this state by the lessee.

The "time of the sale," therefore, was the date the equipment was delivered to the buyer in this state. We assume this was on October 31, 1984 when the property was shipped to the customer or shortly thereafter. The date payment was made does not determine the time of sale.

[3] A retail sales tax is imposed on each retail sale in this state, including successive retail sales of the same property. RCW 82.08.020. The term "retail sale" includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4). Purchases for resale are exempt only when there is no intervening use prior to the resale. RCW 82.04.050(1)(a).

Accordingly, if a person purchases property, uses it, and then executes a sale/leaseback, the retail sales tax applies to the initial retail purchase and the subsequent lease payments. Pursuant to the above statutes, the two transactions are separate and independent taxable events. The retail sales tax is a tax on the transaction, not on the property or the person. Black v. State, 67 Wn.2d 97, 99 (1965). (Emphasis added.) The fact that the original owner and subsequent lessee are the same person is immaterial.

A purchaser can avoid payment of the sales tax on the first transaction where property is purchased with the intent to execute a sale/leaseback if there is no intervening use¹ of the property

¹Taxable "use" includes any act by which a taxpayer takes or assumes dominion or control over an article, including "installation, storage, withdrawal from storage, or any other act

between the time of the initial purchase and execution of the sale/leaseback or a commitment to lease the property is executed at the time of the initial transaction. The retail sales tax is then collected from the lessee as the rental payments fall due. WAC 458-20-211.

[4] As the seller was not informed of any leasing transaction or intent to lease the property when it was first purchased and sold, the retail sales tax was properly added to the purchase price of the equipment and shall be paid by the buyer to the seller. RCW 82.08.050. The issue as to the sales tax liability of a seller on a buyer's refusal to pay is discussed in a 1966 Excise Tax Bulletin, ETB 132.08.197. In that case, a buyer refused to pay the sales tax claiming the contract required the seller to pay all taxes. The Tax Commission found that the expressed legislative intent of RCW 82.08.050 was not to relieve sellers of their obligation to collect the tax from buyers. A copy of ETB 132 is attached. We agree, therefore, with the Revenue auditor's decision denying a refund of the sales tax paid.

DATED this 12th day of January 1987.

preparatory to subsequent actual use or consumption within the state." WAC 458-20-178. Thus the purchaser would be deemed to be "using" the equipment after receiving it, even if the equipment were only stored.