

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment of)
) No. 87-6
)
)
 . . .) Registration No. . . .
) Tax Assessment No. . . .
)
)

- [1] **RULE 211:** RETAIL SALES TAX -- USE TAX -- LEASE PAYMENTS. Persons who rent or lease tangible personal property are required to collect from their lessees the retail sales tax (RST) measured by the gross income from rentals as each rental payment falls due. If RST is not collected, the lessee is liable for use tax on the amount of the rental payments.
- [2] **RULE 109 and RCW 82.08.050:** RETAIL SALES TAX -- SELLING PRICE -- SEPARATELY STATED. As proof that retail sales tax was collected on rental payments, the invoices or lessor's records must show the sales tax separately stated from the payment for the rental.
- [3] **RULE 224:** RETAIL SALES TAX -- SERVICE PROVIDER -- CONSUMER -- REIMBURSEMENTS. A person taxable under the Service classification is the "consumer" of items used in performing the taxable service. Payments made by the service provider's customer as reimbursements for the service provider's expenses are not subject to the retail sales or use tax.

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: July 31, 1986

NATURE OF ACTION:

The taxpayer is a Washington limited partnership which owns a hotel. It seeks a correction of the amount of use tax assessed on consumable supplies after a routine audit of the hotel's records.

FACTS AND ISSUES:

Frankel, A.L.J.--The taxpayer's account was examined for the period January 1, 1983 through March 31, 1985. The examination disclosed taxes and interest owing in the amount of \$. . . . Assessment No. . . . in that amount was issued on October 8, 1985. A post-audit adjustment was made in March of 1986 after the taxpayer supplied additional information not available at the time of the original audit. The adjustment reduced the assessment to \$. . . .

The taxpayer disagrees with the deferred retail sales tax or use tax assessed on consumable supplies in Schedule IV of the assessment (\$. . . .}. First, the taxpayer protests the assessment of tax on the payments made for the compactor rental. The taxpayer contends a sales tax is collected by the lessor.

The other items at issue concern payments made to Vance Hotels for promotional materials. The taxpayer contends the payments are made as reimbursements to Vance and should not be subject to the sales or use tax.

DISCUSSION:

1) Lease payments: The term "retail sale" includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4). Retail sales tax should be collected by the leasing company measured by the gross income of the rental payment at the time each rental payment falls due. WAC 458-20-211. If that was done, the assessment of tax on the rental payments shall be deleted. If retail sales tax was not paid, the taxpayer is liable for the use tax on the amount of the rental payments at the time the payments fall due.

[2] The taxpayer's records indicate payments are made for the lease of the compactor but do not indicate that retail sales tax was collected by the lessor. As proof that the retail sales tax was collected, the invoice or other records from the leasing company must show the sales tax separately stated from the rental payments. RCW 82.08.050; WAC 458-20-107. If such

evidence is presented to the auditor, the assessment in Schedule IV on the lease payments for the compactor rental shall be deleted. If not, the taxpayer shall be liable for use tax on the amount of the rental payments and interest as was assessed.

2) Reimbursements: The [management company] entered into an agreement with [the management company] in 1980 to provide management services. The agreement provided [the management company] would be paid fees for its services. In addition, the agreement provided the taxpayer would reimburse [the management company] for all reasonable expenses incurred in performing its services. The taxpayer relies on the following language of the agreement in support of its position that the payments made to [the management company] for promotional items are made as reimbursements, rather than for the purchase of tangible personal property:

4.4 In addition to the aforesaid fees, [the management company] shall be reimbursed for all reasonable expenses incurred by [the management company] in performing its services under this agreement, including without limitation travel expenses (transportation, meals and lodging), the Hotel's pro rata share of expenses for advertising and advertising materials wherein the Hotel and other hotels and motels are advertised, and the Hotel's pro rata share of operation costs of the reservations system for the Hotel and other hotels and motels; provided, however, that all such items must be reflected in a budget approved by Owner. Such expenses shall be reimbursed as incurred.

In this case, evidence supports the taxpayer's position that [the management company] is performing a service for the taxpayer. The management services are not defined as a "retail sale." RCW 82.04.050. The fees received by [the management company] for its management services are subject to the Service and Other Activities tax. RCW 82.04.290; WAC 458-20-224 (Rule 224).

As Rule 224 provides, the retail sales tax applies upon all sales of tangible personal property made to persons for use or consumption in performing a business activity taxable under the Service classification. As [the management company] did not purchase the items for resale to the taxpayer, but for use in performing services under the agreement, Vance is the "consumer" of the items. RCW 82.04.190(2). As the purchaser

and consumer of the items, [the management company] is liable for the retail sales or use tax on the items. RCW 82.08.050; 82.12.020. The taxpayer is not liable for sales or use tax on payments to [the management company] as reimbursements¹ for expenses, as the taxpayer was not the "consumer" of the items. Accordingly, the tax on these payments shall be deleted.

DECISION AND DISPOSITION:

The taxpayer shall have 20 days from the date of this Determination (until February 2, 1987) to present evidence to the auditor of sales tax paid on the compactor rental payments and payments made as reimbursements to [the management company]. The Audit Section shall make any adjustments permitted by this Determination and issue an amended assessment due on the date shown. If the taxpayer does not present evidence supporting an adjustment to Schedule IV in the original assessment, the amount remaining owing on Assessment No. . . ., plus extension interest of \$. . ., for a total of \$. . ., also shall be due by February 2, 1987.

Any invoices or evidence which the taxpayer is not able to identify within the 20-day period, but which it believes meets the guidelines for exclusion, may be presented to the Audit Section with a petition for refund. A petition for refund must be within the four-year limitation period provided by RCW 82.32.060.

DATED this 12th day of January 1987.

¹We are not using the term "reimbursment" as it is used in WAC 458-20-111 as we find Vance was liable for payment to the vendors.