

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

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment	)	
	)	No. 87-352
	)	
	)	Registration No. . . .
. . .	)	
	)	
	)	

[1] **RULES 198 AND 211:** RETAIL SALES TAX -- SELLING PRICE INSTALLMENT SALE AND LEASE DISTINGUISHED. Used car dealer found to be making sales and financing the sales where the documents used included a bill of sale and promissory note and the purchasers owned the cars after all payments were made. The fact that the dealer wrote "lessor" by its name and "lessee" by the purchaser's name on the documents and that the dealer intended the transaction to be a lease did not make the transaction a lease.

[2] **RULES 198 AND 211:** INSTALLMENT SALE -- LEASE -- IMPROPER FORMS.  
Where taxpayer intended to lease vehicles but used forms which indicated it was making sales and financing the sales, it cannot re-document the transactions on lease agreements and have the transactions treated as leases for purpose of retailing and retail sales tax.

[3] **RULE 198:** RETAIL SALES TAX -- INSTALLMENT SALES -- CREDIT FOR TAXES PAID ON INSTALLMENTS. Persons making installment sales of tangible personal property must report the total selling price of such sales in the tax period in which the sale is made. Where taxpayer did not properly report installment sales at time of sales, but alleged it subsequently collected and remitted tax on all of the installment payments, it can receive a credit for the taxes paid if its records support its claim.

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: November 17, 1987

#### NATURE OF ACTION:

The taxpayer, a used car dealer, protests the assessment of retailing and retail sales tax on the selling price at the time of sale on grounds it was leasing rather than selling the vehicles.

#### FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer's records were examined for the period April 1, 1986 through September 30, 1986. The audit disclosed taxes and interest owing in the amount of \$ . . . . Assessment No. . . . in that amount was issued on February 3, 1987.

The auditor assessed retailing and retail sales tax on the actual selling price of the vehicles sold by the taxpayer from April 1, 1986 through September 30, 1986. The auditor found that the taxpayer was making sales and financing the sales. He relied on the following documents which were used during the audit period:

- 1) bill of sale;
- 2) promissory note; and
- 3) application for Certificate of Title.

The taxpayer contends it was leasing the vehicles and that improper forms were used. It wrote or stamped lessor by its name on the documents and "lessee" by the purchaser's name. It also wrote on the bill of sale that the transaction was a "lease to own." The taxpayer's owner said that he and his customers intended the transaction to be a lease and that he collected and remitted retail sales tax on all the payments made on the transactions at issue. He contends no further tax is due.

#### DISCUSSION:

1) The forms used by the taxpayer during the audit period clearly support the auditor's finding that the vehicles were sold rather than leased. The bill of sale is a standard form which contains a Vehicle Receipt and Odometer Mileage Statement and a Disclaimer of Warranty Agreement. The document states it is a "bill of sale" between a "seller" and a "purchaser." At the top of the agreement it states:

Buyer

Sold to: \_\_\_\_\_  
(Buyer and registered owner)

The bill of sale states a cash price less the deposit paid for a total balance due. The taxpayer had the purchaser execute a promissory note for the balance due. The promissory note refers to the balance as the "amount financed." We do not find that the fact the taxpayer wrote or stamped "lessor" by its name on the form and "lessee" by the purchaser's name is controlling. The use of a bill of sale and promissory note do not support a finding that the taxpayer was leasing rather than selling the vehicles.

The purchasers personally registered the vehicles and paid the auto registration fees and excise tax directly to the Department of Licensing at the time of the sale. The application for title shows the taxpayer as legal owner and the buyer as registered owner. Again the fact that the taxpayer stamped "lessee" by the buyer's name and "lessor" by its name on the certificate is not controlling. The fact remains that unlike a true lease, the purchasers owned the vehicles after all the required payments were made.

No sales or use tax was paid when the vehicle was registered. The taxpayer's ID number appears on the application for certificate a title in place of sale/use tax. We affirm the auditor's assessment of retailing and retail sales tax on the transactions at issue. We find that the auditor's instructions to the taxpayer were correct for reporting the sales at issue and for future periods. See WAC 458-20-198 (Rule 198 installment sales).

2) The auditor advised the taxpayer that if it subsequently changed its sales methods from a sale-financing arrangement (promissory notes) to actual leases with option to purchase (lease-purchase agreements), it should refer to WAC 458-20-211, ETB 158.08.211, and ETB 283.08.211, copies of which were provided to the taxpayer. The taxpayer stated it has changed its sales methods and is using leasing forms approved by the Department. As the taxpayer has been previously advised, however, the taxpayer cannot obtain relief in this appeal by re-documenting, on actual lease agreements, the sales contained in the audit report. ( . . . ).

3) The auditor instructed the taxpayer to report the total selling price of installment sales in the tax reporting period in which the sale is made. Those instructions follow Rule 198. The auditor instructed the taxpayer that the monthly payments subsequently received under its current method would not be subject to additional taxes.

Contrary to the auditor's instructions, the taxpayer stated it continued to treat the sales at issue as leases. It contends it

collected and remitted retail sales tax on all of the payments received from the transactions made during the audit period and that all of the vehicles sold during the audit period have been paid for. If the taxpayer's records document its claim, it shall receive a credit against the assessment for the amounts paid.

The burden of proof is on the taxpayer to show that it collected and remitted sales tax on payments received on sales identified in Schedule II of the audit. The taxpayer should identify the customer and the amount of retail sales tax collected and remitted. If the taxpayer's records show that it has collected and remitted the retail sales tax and paid Retailing B&O on all of the payments received, it may only owe tax on the down payments on which no tax was paid.

#### DECISION AND DISPOSITION:

The taxpayer's petition denied. The taxpayer shall have 20 days from the date of this Determination to present its evidence to the audit section of any Retailing tax paid and/or retail sales tax collected and remitted on payments received from customers identified in Schedule II. If that is done, and the taxpayer's records support its claim, the audit section shall issue an amended assessment with a new due date.

If the taxpayer does not present evidence supporting an adjustment, the amount owing on Assessment No. . . . of \$ . . . , plus extension interest of \$ . . . , for a total of \$ . . . is due by December 21, 1987.

Any evidence of payment which the taxpayer is not able to identify within the 20 day period 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 20th day of November 1987.