

Cite as 4 WTD 17 (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 Refund of )	
)	87-269
)	
. . . )	Registration No. . . .
)	Tax Assessment No. . . .
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**RULE 158 AND RULE 111:** BUSINESS & OCCUPATION TAX -- RETAIL SALES TAX -- EXCLUSION -- TRANSFER CHARGE. Florist made transfer charge for out-of-town delivery to cover costs of computer terminal, wire service membership dues, advertising expenses and a per-transaction transmission charge. Held: The transmission charge qualifies as the functional equivalent, in today's technology, of the telephone and telegraph charges mentioned in Rule 158; however, the transmission charge must be separately stated in order to qualify for exclusion from the measure of the sales and business and occupation 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: April 24, 1987

NATURE OF ACTION:

Petition for refund of sales tax paid on florist transfer charges and petition for refund of litter tax paid in error.

FACTS:

Rosenbloom, A.L.J. -- The taxpayer is a florist. Many of the taxpayer's customers request out-of-town delivery. In such cases, the taxpayer does not deliver the flowers from his own inventory. Instead, he instructs another florist located closer to the recipient to make the delivery on his behalf. Similarly, the taxpayer often receives instructions from out-of-town florists directing him to deliver flowers to recipients in his area. Most of these orders are transmitted via computer terminals located at each florist's business location and connected by a dedicated telephone line. The terminals keep an exact record of orders sent and received. The taxpayer belongs to two different florist organizations, both of which use the same computer terminals for sending and receiving orders.

The taxpayer's bill to customers requesting out-of-town delivery consists of three parts: The cost of the floral arrangement itself, a transfer charge, and a delivery charge. The taxpayer pays the cost of the flowers and the delivery charge to the other florist.

The transfer charge is a flat amount calculated to cover the taxpayer's wire service costs. These costs are set forth in a representative billing from the wire service as follows:

- Mercury Console Sales Tax
- Mercury Console Rental
- Mercury Console Service charge
- Mercury Net Transmission charge
- September membership dues
- F.I.D. News Extra Listings
- F.I.D. News Special Listing

The first two items are sales tax and rental charge for the terminal (i.e., the Mercury Console). The third charge is payment on a service contract that covers necessary repairs to the console. The fourth item is the total of transmission charges during the billing period. The transmission charge is a per transaction charge for transmitting the order through the wire system. The charge varies according to the day of the week and the number of orders sent. The fifth item represents dues for membership in the wire service. The sixth and seventh items are advertising expenses.

The transfer charge is also calculated to cover telephone costs associated with out-of-town deliveries. Specifically, there is a monthly charge from the telephone company for the

cost of the dedicated line by which the terminal is connected to the wire service.

In a few instances, the taxpayer is requested to make an out-of-town delivery to a location where none of the local florists have terminals at their places of business. These orders must be placed via a normal telephone call. In such cases, the transfer charges are intended to cover the cost of the long distance telephone charge.

During the audit period, the taxpayer collected retail sales tax on the cost of the floral arrangement and the delivery charge, but not on the transfer charge. However, the taxpayer remitted retail sales tax on the gross amount. The auditor determined that the taxpayer was entitled to a partial credit on the ground that sales tax does not apply to that portion of the transfer charge which is attributable to the transmission charges listed in the wire service billings.

The auditor also allowed a credit for litter taxes paid in error for 1983. The taxpayer asserts that the litter tax assessment was also paid for 1982 and 1984, but no credits were allowed for those years.

#### TAXPAYER'S EXCEPTIONS:

The taxpayer petitions for an additional credit or refund asserting that: (1) the entire transfer charge should be excluded from the measure of the tax. The taxpayer did not collect sales tax on any portion of the transfer charge based on his assumption that these charges are excludable advances under WAC 458-20-180. (2) Credit should be allowed for litter taxes paid in error for 1982 and 1984.

#### DISCUSSION:

(1) WAC 458-20-158 provides in part:

TELEPHONE AND TELEGRAPH CHARGES. The income derived by a florist from telephone and telegraph charges is construed to be an advance for the customer when such charges are paid by the florist and the amount thereof is billed to the customer as a separate item.

[1] The entire transfer charge does not qualify for exclusion under this provision. The transfer charge is intended to cover the rental of the terminal plus sales tax, the service

contract for the terminal, wire service membership dues, and advertising expenses. These are clearly the taxpayer's own business expenses. Amounts received from the customer for meeting these expenses cannot reasonably be construed to be advances; See WAC 458-20-111 (. . .).

The auditor determined that the transmission charge is the functional equivalent, in today's technology, of the telephone and telegraph charges mentioned in WAC 458-20-158. We agree; however, these charges were not separately stated as required by the rule. We will not disturb the audit results for the period under review. However, for future reporting purposes, the taxpayer is advised that transmission charges may be excluded from the measure of the tax only if they are separately stated.

The taxpayer represented at the hearing that it would be difficult or impossible to separately state the transmission charge because it varies according to the day of week and the volume of orders. For this reason, the taxpayer is now charging retail sales tax on the full amount of the transfer charge. We approve this procedure, but wish to caution that all of the tax so collected must be remitted to the state. In other words, the taxpayer may not collect retail sales tax on the entire transfer charge, but exclude the transmission charge for purposes of determining the amount due the state and keep the difference.

In cases where the taxpayer relays an order to a florist who does not have a terminal, the taxpayer must place the order via telephone. Again, however, the taxpayer does not bill the telephone charge to the customer as a separate item as required by WAC 458-20-158. Accordingly, the entire transfer charge is subject to tax in such cases as well.

The taxpayer's petition for correction is denied as to the first issue.

(2) The taxpayer provided copies of its combined excise tax returns for December 1982, December 1983, and December 1984 in support of its claim that it paid the litter tax assessment in error for each of these years. For reasons that we cannot determine, the auditor allowed credit only for litter taxes paid in 1983. We presume this was an oversight and so we refer the matter to the Audit Section for verification.

#### DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied in part and granted in part. The Audit Section will verify payment of the litter tax assessment for the years in question and issue an appropriate credit or refund.

DATED this 14th day of August 1987.