

Cite as 4 WTD 217 (1987)

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

In the Matter of the Petition )  
For Correction of Assessment of )  
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 . . . )  
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D E T E R M I N A T I O N

No. 87-338

Registration No. . . .  
Tax Assessment No. . . .

**RULE 108, RCW 82.08.010(1):** RETAIL SALES TAX -- CASH DISCOUNTS. In order to take a deduction from retail sales tax for cash discounts given, a seller must refund (to the buyer) that portion of the tax attributable to the discount.

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: June 10, 1987

NATURE OF ACTION:

The taxpayer petitions for correction of a retail sales tax assessment.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The taxpayer, an optometrist, was audited for the period from October 1, 1982 through June 30, 1986. He frequently held frame sales, offering a discount of from 30% to 50%. He states that he would compute the retail sales tax on the full price of the frame, then deduct both the sale discount and the part of the tax attributable to the discount, the result being that the tax actually collected from his customers was the same as that remitted by him to the state. Although his advertisements state that the frame discount was "30%-50%," he has stated to the administrative law judge that the actual discount "was 46% on frames and tax for frames priced below \$90 and 37% above \$90."

The auditor reviewed the taxpayer's sales journals and concluded that the taxpayer collected the retail sales tax on the full price and did not refund the excess tax to his clients. As a consequence, the taxpayer was assessed retail sales tax for "taxes collected but not remitted to (the) Department of Revenue." The threshold questions are these:

1. How much retail sales tax did the taxpayer collect from his customers?
2. How much retail sales tax did the taxpayer remit to the state?

If the answers are the same, the taxpayer wins this appeal. If not, he loses.

#### DISCUSSION:

Retail sales tax is due on each retail sale, measured by the "selling price." RCW 82.08.020. "Selling price" means the consideration (here, money) paid by a buyer. A seller may take a deduction for a "cash discount actually taken by a buyer." RCW 82.08.010(1).

The tax to be collected by a seller is to be separately stated from the selling price. RCW 82.08.050.

A seller must remit the collected tax to the Department of Revenue. RCW 82.08.050.

Washington Administrative Code (WAC) 458-20-108 states, in pertinent part, that "Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer. (Emphasis added.) Put in the affirmative, the rule allows a deduction when the tax is refunded to the buyer.

The taxpayer argues that the adjustment column in his sales journal includes a discount of both the frame charge and the full sales tax charge. The problem is that, despite his effort to do so, the taxpayer has failed to substantiate this claim. The records supplied by the taxpayer, the February 1986 sales journals, do not show even one example of the adjustment column being consistent with the assertion that it included a refund of that part of the tax attributable to the discount. The following, an entry from February 1, 1986, illustrates the point:

<u>Frame</u>	<u>Tax</u>	<u>Adjustment</u>
\$74.50	\$5.81	\$37.25

The \$37.25 in the adjustment column is exactly 50% of the frame price. According to the taxpayer, he added the \$74.50 and the

\$5.81 tax charge (\$80.31), multiplied by the discount percentage (46% for frames under \$90), and then showed the frames/tax discount in the adjustment column. If the adjustment was \$36.94 (46% of \$80.31) his claim would have merit. It is more likely that the adjustment column is what it appears to be -- a 50% discount on the frame price only.

Other examples abound. Another February 1 sale shows the adjustment to be precisely 50% of the \$88 frame charge. The same thing occurred on February 5. Finally, another February 5 sale, this one for \$94, also shows that the discount was exactly 50% of the frame price.

RCW 82.32.070 requires that a taxpayer keep "for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he might be liable . . . ." The taxpayer's records do not support his position that the adjustment column includes a discount of both frame and tax. Compare his method of entering the adjustment in his sales journal, with the following:

<u>Frame Price</u>	<u>Adjustment</u>	<u>Actual Charge</u>	<u>Retail Sales Tax</u>	<u>Balance</u>
\$94.00	\$34.78 (37%)	\$59.22	\$4.62	
\$63.84				

OR EVEN:

<u>Frame Price</u>	<u>Tax</u>	<u>Frame</u>	<u>Adjustment</u>	<u>Tax</u>	<u>Adjustment</u>
\$94.00	\$7.33	\$34.78 (37%)		\$2.71 (37%)	\$63.84

Either way, the taxpayer would have clearly shown that the tax charged was only on the actual frame price.

Going back to the threshold questions, the taxpayer's bookkeeping method makes it impossible to verify that the amount of tax collected is the same as the tax remitted to the state. For example, on the \$94 sale of February 5 the taxpayer received \$7.33 in tax and then remitted tax of \$3.67 (7.8% x the \$47 frame charge). The difference of \$3.66 would have then been retained by the taxpayer.

The preceding leads to the conclusion that the taxpayer, having failed to substantiate that the tax was refunded to the customers, is liable for the full amount of tax shown in the "tax" column of his sales journals. For that reason, we must sustain the assessment.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied. Because the delay in the issuance of this Determination was solely for the convenience of the Department, interest will be waived from May 19, 1987 through

the new due date. The balance owing under Tax Assessment No. . . .  
of \$ . . . , plus additional unwaived extension interest of \$ . . .  
, for a total of \$ . . . , is due by November 30, 1987.

DATED this 30th day of October 1987.