

Cite as 4 WTD 127 (1987)

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 of)	
)	No. 87-305
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	

[1] **RULE 178, RULE 211, RCW 82.08.010 AND RCW 82.12.010:** USE TAX --DEFERRED SALES TAX -- LEASE -- SELLING PRICE -- VALUE OF ARTICLE USED. A lease of tangible personal property, wherein monthly payments are made, is not a single transaction, but a contract for a series of transactions. Each transaction (each monthly lease payment) represents a separate retail sale. Gandy v. State, 57 Wn.2d 690 (1961). (Courtright Cattle Company Seal v. Dolson Co., 94 Wn.2d 645 (1980) also discussed).

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 9, 1987

NATURE OF ACTION:

Petition for correction of deferred sales/use tax assessment on commercial equipment.

FACTS AND ISSUES:

Normoyle, A.L.J. -- The taxpayer is a Washington corporation engaged in the graphic arts business. The taxpayer's affiliate was an Oregon corporation, apparently in the same business.

In 1980, the Oregon corporation leased a color scanner. The scanner is the subject of this appeal.

The pertinent lease terms were as follows:

1. Payments were \$7,243 per month, over 84 months (7 years), for a total of \$608,412.
2. A handwritten note on the lease, presumably written by an employee of the Oregon corporation, stated that the "cash sales price was \$382,200. Total interest payments are \$226,212 at 14%."
3. The lessee was responsible for all repairs and maintenance.
4. The lessee was required to insure the scanner.
5. The lessee was required to pay all taxes arising out of the lease or use of the scanner.
6. Title was to remain with the lessor and the lessee acquired no equity in the scanner.
7. Except in the case of default, there was no acceleration clause.
8. At the end of the 84 month lease term, the lessee had the option of buying the equipment for \$19,110.

Sometime in the early 1980s, the Oregon corporation was sold. The buyers didn't want the scanner, so it was not included in the sale. Instead, it was shipped to Washington for use by the taxpayer, in November, 1981. On March 1, 1982, the taxpayer commenced making the lease payments.

In 1982, the taxpayer listed the scanner, on its books, as having a value of \$363,097, which was the approximate total remaining under the lease. For use tax purposes, the taxpayer listed the scanner as having a value of \$100,000, and paid use tax on that amount. The higher value was placed on the books for federal tax reasons.

On April 25, 1983, the taxpayer, the Oregon corporation,¹ and the lessor's assignee entered into a "Transfer Agreement," whereby the taxpayer assumed all of the Oregon corporation's lease obligations.

In 1985, because of repeated breakdowns and costly repairs, the taxpayer unplugged the scanner and stored it. Lease payments continued, however.

¹ Apparently the Oregon corporation was still in legal existence at that time, even though the Oregon business had been sold.

The taxpayer was audited for a period from January 1, 1982, to June 30, 1986. The auditor concluded that use tax should have been paid on each monthly lease payment. He assessed deferred sales tax/use tax on each of the 54 monthly lease payments covered by the audit. Credit was given for the use tax previously paid by the taxpayer (on the \$100,000 value).

The taxpayer continued to make lease payments after the audit, but eventually concluded that it was advantageous to pay off the remaining installments in one lump sum (\$55,701). This was done in April of 1987. The option to purchase was not exercised.

The taxpayer's position is that the \$100,000 value placed on the scanner for use tax purposes in 1983 was actually in excess of the true value of the equipment. Thus, it argues, no further tax is due. To bolster its argument, it has provided a letter from a dealer in used machinery of this type, stating that the value of this type of scanner was \$40,000, as of July, 1986. The taxpayer believes that the value, today, is no higher than \$50,000.

The taxpayer has not petitioned for a partial refund of the use tax paid. Thus, the issue is whether the use tax has already been paid, in full; or whether the auditor correctly assessed additional tax, based on his theory that each lease payment represented a separate retail sale.

DISCUSSION:

The taxpayer is correct in its assertion that use tax is, in general, determined by the value of an article of tangible personal property, as of the time of its first use in Washington. RCW 82.12.010, .020. However, the taxpayer overlooks the fact that this was a lease transaction. That being the case, retail sales tax or use tax was due on each monthly payment. We therefore reject the taxpayer's argument that a one-time use tax was due. A discussion of the pertinent statutes follows.

A lease of tangible personal property is a retail sale. RCW 82.04.050(4). A lease is not a single transaction, but a contract for a series of transactions. Gandy v. State, 57 Wn.2d 690 (1961). The retail sales tax applies to each successive retail sale (here, each lease payment). RCW 82.08.020. The tax is applied to the "selling price," which is the consideration paid by the buyer (here, lessee) without deduction for, among other things, interest. RCW 82.08.010. That statute also provides:

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the article so rented or lease, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of

like quality and character under such rules as the department of revenue may prescribe. . . .

The retail sales tax is to be paid by the buyer to the seller. If the buyer does not do so, the Department may proceed directly against him or her for collection of the tax. RCW 82.08.050. See also, Washington Administrative Code (WAC) 458-20-178 (Rule 178), and WAC 458-20-211.

The use tax statutes complement the retail sales tax by imposing a tax in like amount on tangible personal property used in Washington, when the retail sales tax was not paid. Chapter 82.12 RCW and Rule 178. RCW 82.12.010(1) contains language similar to the quoted portion of RCW 82.08.010, in cases where the personal property is acquired by lease under circumstances where the lease payments do not represent the true value of the leased property.

We conclude that deferred sales tax (RCW 82.08.050) or use tax (RCW 82.12.020) was due on each monthly lease payment. This now brings us to this question: What was the "selling price" (or "value of the article used")? The auditor believed it to be the lease payments, not some lower figure. We agree with the auditor.

The quoted portion of RCW 82.08.010, and its use tax counterpart, allow for the fixing of a lower "selling price," for tax purposes, in situations where the lease payments do not represent the reasonable rental value. Here, we are persuaded that they do. The taxpayer paid the full lease amount each month up to the time of the "Transfer Agreement." The taxpayer then agreed to assume the lease, and made all lease payments thereafter. On these facts, even if the scanner was a lemon and used only sparingly, we cannot ignore the fact that the taxpayer, for whatever reason, chose to continue paying the full lease amount.² The assumption of the lease, with continuing payments thereafter, is indicative of the fact that the taxpayer considered the lease payments to be a "reasonable rental."³

² It is unclear why the taxpayer or the Oregon corporation did not attempt a rescission of the lease.

³ Although not raised by the taxpayer, we have also considered the possible argument that this transaction was a financing agreement, not a true lease. See Courtright Cattle Co. v. Dolson Co., 94 Wn.2d 645 (1980). We conclude that this was a true lease for these reasons: The option price was not nominal, when one considers that the value of the scanner at the end of the lease term was approximately \$40,000-\$50,000; no equity was acquired; there was no right by the lessor to accelerate, unless the lessee defaulted; and the equipment was not purchased or manufactured by the lessor specifically for lease to this lessee.

To summarize, we hold that the deferred sales tax/use tax was due on each monthly lease payment (thereby rejecting the taxpayer's contention that a one-time use tax was due). We also hold that the measure of the tax is the actual monthly payment, and not some lesser per month rental value.

DECISION AND DISPOSITION:

The petition for correction of assessment is denied. . . .

In addition, the taxpayer may owe use tax on the lease payments after the audit, including the lump sum payoff. This case is referred back to the Audit Section for a determination of the amount of use tax, if any, which remains unpaid after the audit period.

DATED this 14th day of September 1987.