

Cite as 5 WTD 343 (1988)

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 Ruling of Tax Liability of))	No. 88-191
[A])	Registration No. . . .
)	
)	
)	
and)	
[B])	Registration No. . . .

RULE 211: LEASE OF EQUIPMENT WITH OPERATOR. The providing of equipment with operator will be considered a lease only if the specific requirements of subsections (4), (5) and (6) of WAC 458-20-211 are satisfied.

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: . . .
. . .

NATURE OF ACTION:

Taxpayers request a ruling as to the excise tax liabilities resulting from transactions wherein one taxpayer will purchase construction equipment solely for the purpose of leasing such equipment to a second taxpayer who will in turn sublease the equipment to others.

FACTS AND ISSUES:

Potegal, A.L.J. -- [A] (hereinafter referred to as "Lessor") will purchase heavy equipment which is to be used in the construction industry. Lessor will use the equipment solely for the purpose of leasing such equipment to [B] (hereinafter referred to as "Lessee").

Lessee will lease the equipment from Lessor for the sole purpose of leasing such equipment to other parties. In certain instances, Lessee will operate the equipment or supply an employee operator who may or may not work under its supervision and control.

RULING REQUESTED:

The taxpayers request a ruling as to their respective excise tax liabilities resulting from the proposed transaction. In particular, the taxpayers request the Department to rule as follows:

As to retail sales tax:

On the purchase of the heavy equipment, Lessor will not be obligated to pay retail sales tax to the seller or to the Department.

On the lease of equipment from Lessor to Lessee, Lessor will not be required to collect retail sales tax, nor will Lessee be required to pay retail sales tax to either Lessor or to the Department.

Lessee will be required to collect retail sales tax on its leases of the equipment to other parties only when such leases are characterized as retail sales and resale certificates have not been obtained from such other parties, and the property is used within this state.

As to use tax:

Lessor will not be subject to use tax as a result of its purchase, ownership or possession of the equipment.

Lessee will not be subject to use tax as a result of its ownership or possession of the equipment.

As to business and occupation tax:

Lessor will be subject to business and occupation tax on its lease of equipment to Lessee under the Wholesaling classification upon the gross income from rentals, as of the time the rental payments fall due.

On the lease of equipment without an employee operator provided, Lessee will be subject to business and occupation tax upon gross income from rentals as of the time rental payments fall due, under either the Retailing or Wholesaling classification.

On the lease of equipment with an employee operator provided, Lessee will be subject to business and

occupation tax upon gross income from rentals, as of the time rental payments fall due, according to the classification and the activities performed by the equipment and operator.

If the Lessee leases equipment for out-of-state use, this state will not have jurisdiction to impose business and occupation tax on the rental income.

As to public utility and other excise taxes:

Neither Lessor nor Lessee will be subject to public utility tax on other excise taxes as a result of the proposed transaction.

RULING:

Retail Sales Tax.

Lessor is not required to pay sales tax on its purchase of the equipment. Clearly, this is a purchase for resale in the regular course of business. See WAC 458-20-102.

Lessee is not required to pay sales tax on its lease from Lessor if, in those instances where it operates the equipment or supplies an employee operator, it meets the requirements of subsections (4), (5) and (6) of WAC 458-20-211, Otherwise it must pay sales tax to Lessor. This is because Lessee would be using the equipment as a consumer and not strictly for resale.

Lessee is required to collect sales tax on leases to other parties unless the equipment is to be used out of state (see ETB 447.04.211, . . .) or the other party has provided a resale certificate in accordance with WAC 458-20-102. If the provision of equipment to the other parties is not a lease as described in WAC 458-20-211(4), (5) and (6), the Lessee may or may not be required to collect sales tax. That would depend on the nature of the work being performed.

Use Tax.

Lessor is not subject to use tax under the facts described because it is not a consumer of the equipment.

Lessee is not subject to use tax under the facts described unless its provision of equipment to other parties is not a lease as described in subsections (4), (5) and (6) of WAC 458-20-211 and it has not paid sales tax to Lessor.

Business and Occupation Tax.

Lessor is subject to Wholesaling business and occupation tax on its lease of equipment to Lessee.

Lessee is subject to either Wholesaling or Retailing business and occupation tax on leases without operator to other parties for use in Washington.

Lessee is subject to either Wholesaling or Retailing business and occupation tax on its provision of equipment with operator to other parties for use in Washington if such provision is a lease as described in subsections (4), (5) and (6) of WAC 458-20-211.

Lessee is subject to business and occupation tax on its provision of equipment with operator to other parties for use in Washington when such provision is not a lease under subsections (4), (5) and (6) of WAC 458-20-211 according to the nature of the activities performed by the equipment with operator.

Lessee is not subject to business and occupation tax for the leasing or other providing of equipment, with or without operator, for use outside of Washington. ETB 447.04.211.

Public Utility and Other Excise Taxes.

Neither Lessor nor Lessee would be liable for public utility tax or other state excise taxes as a direct consequence of engaging in the business activities described. However, taxes on the purchase or consumption of fuel and other consumables, motor vehicle excise taxes, and other taxes indirectly resulting from these business activities would still be applicable.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based only upon the facts that were disclosed by the taxpayers. In this regard, the department has no obligation to ascertain whether the taxpayers have revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind these taxpayers and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 15th day of April 1988.