

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

In the Matter of the Petition        ) D E T E R M I N A T I O N  
For       Correction       of       Assessment       of       )  
)       No. 89-7  
  
  )  
  ) Registration No. . . .  
  ) Notice of Balance Due  
  )

- [1] **RCW 67.40.090:** CONVENTION AND TRADE CENTER TAX -- HOTELS -- TRANSIENT ROOMS AVAILABLE. Hotels and lodging places must have at least sixty rooms which are used for transient lodging before they are liable for collection of the convention and trade center excise tax in King County. A hotel with 141 rooms is not required to collect the tax where less than 60 rooms are used as transient rentals.
- [2] **RULE 166:** SALES TAX -- CONVENTION AND TRADE CENTER TAX - - EXEMPTIONS -- VOUCHER PAYMENT. Effective July 1, 1988, purchases of lodging paid for with vouchers provided by emergency shelter voucher programs are not subject to the retail sales tax or the convention and trade center tax. Form of payment is not controlling in determining whether a hotel has 60 or more rooms available for use as transient lodging.

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:

Taxpayer petitions for correction of Notice of Balance Due, which informed taxpayer that it was required to collect the special excise tax dedicated to pay for the Washington State Convention and Trade Center and effective only for places of lodging within King County.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is a 141-unit hotel located in downtown Seattle. Of the total units, the vast majority are rented on a monthly basis. Taxpayer's representative stated that, at any given time, a maximum of 45 of the rooms are used on a transient basis, as defined by statute. Under that definition, transient rooms are those rented under a "license to use," whereby the hotel guest purchases the right to stay for less than one month. The remaining units, as monthly rentals, are classified as "rentals of real estate," because the occupant has purchased the right to possess or use the room for a period of one month or more.

Taxpayer's position is that it is not required to collect the convention and trade center tax, because it never has the statutorily-required minimum of 60 rooms available for transient rentals. Taxpayer's representative states that the vast majority of the hotel's rooms are used as monthly rentals and that its records clearly demonstrate that, on the average, fewer than 45 rooms are used as transient rentals.

Additionally, taxpayer requests an advisory opinion on the impact of the amendment to WAC 458-20-166, effective on July 1, 1988, on its transient room rentals. That amendment specifically exempted persons who paid for their lodging with vouchers provided by an emergency-shelter program from liability for payment of retail sales tax or the convention center tax on such purchases of lodging.

#### DISCUSSION:

[1] RCW 67.40.090 levies a special excise tax on lodging purchased within King County. The statute provides that the tax shall be collected on

the sale of or charge made for the furnishing of lodging . . . and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same.

The Department has previously ruled that availability of 60 or more rooms in a hotel which only rented rooms on a transient basis resulted in liability for the tax, regardless of the fact that some of the rooms are not used by transient lodgers at all times.

The issue presented by the taxpayer, however, is one of first impression. It requires an examination of the legislature's intent at the time of the statute's enactment to determine whether the legislative purpose was to require collection of the tax by all

hotels which have 60 or more rooms on the premises, regardless of their type of occupancy, or whether the legislature intended to subject transient rentals only to the tax, meaning that the 60-room minimum would apply to transient rentals only, regardless of the hotel's size.

The legislative materials surrounding enactment of the Substitute House Bill 1015, a portion of which became 67.70.090 in 1982, are largely silent on the issue of whether the statute is intended to apply to any hotel with a minimum of 60 rooms or to hotels with a minimum of sixty rooms available for transient lodging. However, the materials represent a clear intent by the legislature to attempt to limit imposition of the burden for payment of the convention center to those most likely to use the center. Such persons are transient hotel guests, and generally guests of the larger hotels are those most likely to use the facility funded by such a tax. The Senate Journal contains the following statement, which was given as an assurance that the tax would be collected and that the convention center would, to some degree, pay for its own construction:

[a] third assurance is that the taxes levied [sic] only on those hotels and motels with more than sixty units and by that we mean the biggest and nationally based operations. . . those that have financial stability.

Senate Journal, State of Washington, Volume 1 at page 1145 (1982). The statute clearly exempts rentals of real estate from the tax, and it defines such rentals as those for periods in excess of one month. This language, combined with the remarks contained in the state senate debate record, reflects an intent by the legislature to subject to tax those persons which the city intends to attract with the addition of the convention center. It is clear that the legislature did not intend to subject persons who rent real property on an extended basis to the tax. As a result, we find that the intent of the statute is to apply it to lodging places with sixty rooms available for transient occupancy, not to those having a minimum of sixty units, regardless of the type of occupancy.

Any taxpayer seeking to avoid liability for collection of the tax will be expected to produce documentation clearly proving that it rented fewer than sixty rooms on a transient basis during the period in question. Absence of adequate records will bar the taxpayer from questioning an assessment. RCW 82.32.070.

The taxpayer in the present case is, under the facts presented, not required to collect the convention center excise tax. This finding is subject to a review by the Audit Section of the taxpayer's records to determine that the facts have been correctly presented and that the taxpayer can support its contentions with the documentation required in RCW 82.32.070. This step is being

required because no actual audit examination of the taxpayer's records was conducted in this case.

[2] WAC 458-20-166 (Rule 166) has been recently amended to include, in part, the following language:

[e]ffective July 1, 1988, there is an exemption from the retail sales tax, convention and trade center tax, and the special hotel/motel tax on the charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services.

Under the clear language amending the rule, taxpayer's transient occupants who pay for their lodging with the type of voucher described above would not be subject to payment of the taxes listed in the rule. The question presented is whether, if taxpayer has sixty or more rooms available for transient rental, and if some of the rooms are paid for by vouchers exempting the hotel guests from payment of the taxes, the taxes are due from occupants of the remaining transient rooms. Again, this is a question of first impression with the Department.

A statute granting an exemption from tax must be strictly construed in favor of application of the tax. Budget Rent-a-Car v. Department of Revenue, 81 Wn.2d 171, 500 P.2d 764 (1972). As a result, the fact that the legislature has decided to grant to a certain group of persons exemptions from various types of taxes cannot be construed to mean that it intended to exempt others not in the class sought to be benefitted by the exemption.

The existence of sixty rooms available for transient rentals is the determinative factor. Any hotel having sixty rooms available for transient rental would be required to collect the convention and trade center tax as well as other applicable taxes from its patrons. Hotels serving guests who are personally exempt from payment of the taxes described in the amendment to Rule 166 would not be required to collect taxes from those patrons. However, all hotels having at least sixty rooms available for transient rental would be required to collect the applicable taxes from any patrons who have not been specifically exempted from liability for payment of the tax by the legislature. The fact that patrons paying with vouchers might decrease the number of other rooms available for transient rental below the 60-room minimum required for application of the convention and trade center tax would not exempt the remaining hotel guests from liability for payment of applicable taxes.

DECISION AND DISPOSITION:

Taxpayer's petition is granted subject to a review of its records by the audit section to confirm that it can adequately document that less than sixty rooms were used as transient rentals during the period in question.

DATED this 5th day of January 1989.