

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 Refund of)
) No. 89-421
)
) Registration No. . . .
) . . . /Audit No. . . .
)

[1] RULE 132 and RULE 178: USE AND/OR DEFERRED SALES
TAX -- -- COMPUTATION OF USE TAX -- LOANER CARS --
VALUATION -- TRADE-IN. Use tax on "loaner cars" is
to be computed in the same manner as with other full
use service vehicles. First, the original set of
"loaner cars" are subject to use tax on the full
retail value. Second, when these original "loaner
cars" are retired, a trade-in deduction is allowable
against the use tax due on the new replacement
"loaner cars."

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 16, 1989

NATURE OF ACTION:

The taxpayer protests the imposition of Retailing B&O taxes on
over-allowances and use and/or deferred sales tax on loaner
vehicles assessed in an audit report.

FACTS & ISSUES:

Okimoto, A.L.J. -- The taxpayer's books and records were
examined by a Department of Revenue (Department) auditor for
the period January 1, 1984 through December 31, 1987. An
audit resulted in additional taxes and interest owing in the

amount of \$. . . and Document No. . . . was issued in that amount on November 8, 1988. The taxpayer has paid the assessment in full, and now petitions for a correction of the assessment and refund of taxes overpaid.

The taxpayer operates an automobile dealership in . . . , Washington. The issues on appeal concern the two following schedules:

Schedule VII - B&O Tax on Over-allowances

In the audit report the auditor assessed underreported Retailing B&O taxes on trade-in over-allowances. An over-allowance is the amount assigned to a trade-in vehicle in excess of the actual value as appraised in a recognized appraisal book.

The taxpayer stated in its petition:

... the amounts recorded in the over-allowance general ledger codes were not all over-allowance. Depending on the way the purchase order was written up, the over-allowance code could contain both the over-allowance and the difference between sticker price and actual selling price, which actually was a legitimate discount.

Schedule X - Use Tax on Loaners

In the audit report, the auditor assessed use and/or deferred sales tax on loaner cars based on the reasonable rental value of the cars. To compute this value, the auditor used 2% of the book value of the loaner vehicles used.

The taxpayer stated in its petition:

WAC 458.20.211 says in item 15, the last sentence "No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article."

We interpret this to imply the State wishes only full use tax paid on the full original value of the vehicle. The interpretation of the Revenue Dept. to select an arbitrary rental value of 2% per month of the book value of each loaner vehicle, in our case causes MORE tax to be paid than use tax on the original retail value of the vehicle. ...

The taxpayer seeks to have its use tax liability for "loaner cars" based on the "loss of value" of the car during its "loaner car" service. In this manner, the taxpayer argues, the State is assured of receiving the sales or use taxes on the full retail value of the "loaner car" just once. In support of this argument, the taxpayer submitted the following calculations.

Use tax paid during service period	\$.00
When car was sold, loss of value is computed:		
FMV new = \$8,000 less used sale price = \$6,500		
equals \$1,500. Use tax paid on \$1,500.	\$	121.50
Sales tax on used car \$6,500 X 8.1%	\$	526.50
Total tax revenue	\$	648.00
Taxes based on new FMV \$8,000 X 8.1%	\$	648.00
Excess tax collected		
0		

DISCUSSION:

Schedule VII - B&O Tax on Over-allowances

[1] The question of whether the over-allowance account totals used by the auditor also contained some legitimate discounts or adjustments to the sales price is primarily a question of fact and must be resolved at the audit level. This issue will be remanded to the audit section for the proper adjustment.

Schedule X - Use Tax on Loaners

WAC 458-20-132(15) states:

Vehicles removed from inventory and committed to use as service vehicles or parts trucks are not entitled to the special use tax treatment explained in this rule. Full use service vehicles are used by dealers as consumers and are subject to use tax measured by their full value. (Emphasis ours)

We believe that "loaner cars" are subject to use tax in the same manner as are other full use service vehicles. First, the original "loaner cars" are subject to use tax on their full retail value at the time of first use. Second, when these "original loaner cars" are replaced by new "loaner cars" use tax is then due on the new "loaner cars" at the full retail value of the cars. At this time, however, the taxpayer is entitled to a "trade-in" deduction for the used retail

value of the "original loaner car" that is traded-in. This is normally the sales price of the traded-in car when it is subsequently sold as a used car.

Although the above treatment of use tax on "loaner cars" is similar to the one requested by the taxpayer in its petition, it is not the same. The main differences are that use tax must be computed on the original set of "loaner cars" based on the full retail value with no "trade-in" deduction. This is because the taxpayer presumably did not have trade-ins at that time. Second, when the taxpayer replaces the original "loaner car" the use tax is due on the full retail value of the new replacement "loaner car" less the used retail value of the original "loaner car" that was traded-in. This amount can be significantly different from the "loss of value" of the original car during its "loaner car" use. In addition, when the taxpayer increases its "loaner car" fleet, or does not have a "trade-in", it must pay use tax based on the full retail value of that additional loaner car.

In accordance with the above language, we partially sustain the taxpayer's petition on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of the audit assessment and petition for refund is partially sustained. The audit assessment will be remanded to the Audit Section so that the proper adjustments consistent with this Determination can be made.

DATED this 11th day of August 1989.