Cite as Det. No. 89-329, 8 WTD 52-1 (1989).

This determination has been overruled in part by Det. No. 91-263, 11 WTD 263 (1991).

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

In the Matter of the Petition For Correction of Assessment of . . .	D E T E R M I N A T I O N No. 89-329 Registration No. . . . . . ./Audit No. . . .

[1] RULE 108 AND RCW 82.04.4283: B&O TAX -- DEDUCTION -- REBATES -- DISCOUNTS -- FLOOR PLAN ALLOWANCE. A floor plan allowance, which is a payment from a manufacturer to a dealer and is computed based on the rate of interest paid by the dealer to floor his product, is not deductible from the manufacturer's gross proceeds of sales.

[2] RULE 108, RULE 196, AND RULE 198: B&O TAX -- DEDUCTION -- REPOSSESSIONS. A manufacturer who resells its goods after they have been repossessed from its dealer by a lender may not deduct the difference between the list price of the goods and the resale price from the measure of its B&O tax.

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: July 18, 1988

NATURE OF ACTION:

Petition by boat manufacturer for B&O tax deductions based on rebates and repossessions.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) manufactures boats in [Washington]. Its books and records were examined by the Department of Revenue (Department) for the period April 1, 1987 through June 30, 1987. As a result a tax assessment, identified by the above-captioned numbers, was issued in the original amount of $ . . . . That figure was later adjusted to $ . . . . The taxpayer herein appeals portions of that assessment.

The taxpayer sells its product to boat dealers who resell to the public. According to the taxpayer, these transactions are handled in the following manner. While the taxpayer is always paid cash for its boats, 80% of the time that cash comes from a "floor planner" which is a lender such as a bank. The taxpayer never finances these sales itself. If a dealer pays interest on a loan it secured to buy a boat from the taxpayer, the dealer pays that interest to a floor planner. Periodically, the taxpayer has special "discount" sales promotions. During those times the price a dealer would normally pay for a boat is reduced if the dealer purchases within a certain time frame. The reductions are generally made in one of two ways. A dealer may choose a straight cash discount, or it may opt for a period of "free" interest such as six months. Under the latter program, which is the one at issue, the taxpayer will pay interest charges which the dealer incurs in "floor planning" the boat. Usually, the dealer has to show that it held the boat for a certain period of time, such as six months. If it does, the taxpayer will pay the dealer an amount equal to the interest the dealer is required to pay its lender on the loan the dealer secured to buy the boat.

On its books the taxpayer enters the full wholesale price at the time it sells a boat. When it pays to a dealer a "rebate" based on interest as described above, it deducts, on its state excise tax return, the interest amount from what would otherwise be the measure of its B&O tax. Therein lies the difference of opinion with the Department's auditor on this issue which we will call the "discount issue." Actually, there are three price reduction programs which are called "parallel interest participation," "prime time interest," and "smooth bore interest." The taxpayer claims that for purposes of this appeal, there are no material differences in the three, which are separately itemized in Audit Schedule III.

The other issue we will call repossessions. If a dealer defaults on a loan from its floor planner, the floor planner may repossess the boat. Typically, banks do not know much about selling boats, so they enlist the aid of the taxpayer. The taxpayer says that it "helps out" the lender by "taking back" the boat and selling it. The record is unclear as to whether the taxpayer buys the boat from the lender, whether it sells the boat for the lender on a consignment basis, or whether there is some other arrangement.

In any event because the repossessed boat is frequently used and/or damaged, the taxpayer is not able to sell it at its original wholesale list price. After it does sell such a boat, it computes the difference between the list price and the reduced sale price and deducts that amount on its next state excise tax return.

The Departments's auditor denied this claimed deduction. In doing so he said:

> Discounts which are true reductions in the selling price and not a reflection of costs of the manufacturer have correctly been deducted; however, flooring costs, subsidized dealer financing/interest costs and repo costs are costs of doing business and are not deductible just because they are netted from the invoice.

On the matter of repossessions, the taxpayer takes the position that the correct measure of its B&O tax is the price at which it actually sells the used boat, not the price at which the taxpayer would sell the same boat if it were new. The taxpayer explains that it includes these boats on its state tax returns at their new prices and then deducts the difference between those and the actual sale prices.

The issues are: 1) Is a rebate based on a boat dealer's loan interest deductible as a discount from the measure of a manufacturer's B&O tax? 2) Is a B&O deduction for a reduced sale price of a repossessed boat legitimate?

DISCUSSION:

[1] The Interpretation and Appeals Division faced a similar discount issue in 1977. In that case an automobile manufacturer paid its dealers the equivalent of 15 days floor plan interest for each car distributed based on the interest rate actually charged by the dealer's lender. In deciding whether the interest payments were deductible from the measure of the manufacturer's B&O tax we said:

> The only deduction possibly applicable in the instant case is provided by RCW 82.04.430(3)[1] which states in pertinent part that:
>
> > In computing tax there may be deducted from the measure of the tax the following items:

---

[1] Recodified as RCW 82.04.4283.

. . .

> (3) The amount of cash discount actually taken by a purchaser. . . .

RCW 82.04.160 defines "cash discount" to mean:

> . . . a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date. (Emphasis supplied.)

> In our opinion Floor Plan Allowance payments paid by the taxpayer to its dealers is a self-incurred business expense designed, as admitted by the taxpayer, for the ultimate benefit of the taxpayer in the form of increased product exposure to the public and consequent greater sales volume. Such taxpayer business expense may also serve to work as a subsidy to dealers but does not constitute, under a strict interpretation of the available deduction, a cash discount actually taken by the purchaser. The taxpayer's dealers pay the full invoice price of each vehicle purchased regardless of how its inventory is floored and financed. The indirect relationship of the floor allowance benefit to the invoiced sales price is so remote that it cannot under a strict interpretation be legally construed to constitute a cash discount which represents a bona fide reduction in the sales price. In this situation we are of the opinion that the dealer's interest expense which accrues to various lending companies is a matter entirely separate and apart, irrespective of any interest subsidy tendered by the taxpayer, from the taxpayer's routine wholesale sales to those dealers. We therefore deny the taxpayer's petition in respect to this issue.

There is no significant difference in the floor plan allowance programs of both cases. Therefore, the one quoted controls this one. The contested payments to dealers are deemed to be a cost of doing business of the taxpayer and, hence, are not deductible from the measure of the B&O tax. RCW 82.04.220 and RCW 82.04.070. We also observe that the alleged cash discount is not deducted directly from the invoice price as is required by RCW 82.04.160.
On the first issue, discounts, the taxpayer's petition is denied.

[2] As to the repossession issue, the taxpayer says it should be allowed a deduction because it sold the repossessed boats at

lower prices. Actually, this is a situation where there have been two sales, each of which is subject to business and occupation (B&O) tax. The tax is measured, in this case, by gross proceeds of sales. RCW 82.04.220. A sale is defined at RCW 82.04.040 as "... any transfer of the ownership of, title to, or possession of property for a valuable consideration..." There was such a transfer when the taxpayer originally sold a particular boat new to a dealer and another one when the taxpayer sold the same boat used after repossession. The fact that a boat is repossessed and resold does not negate the original sale. The receipts from both
transactions qualify as "gross proceeds of sales", so both should be included in the measure of the taxpayer's B&O tax. The first is taxable at the list price, the second at the actual sale price of the repossessed boat which, presumably, is less than the list price. The taxpayer may not report the first one only for B&O purposes and then take a deduction for the difference between the two prices. If the taxpayer is trying to say that it reported the list price twice and then deducted the difference once, it has not clearly communicated that to us nor has it presented supporting documentation as is required by RCW 82.32.070.

We note that if the taxpayer's were installment sales which it was financing, it may have been able to take a bad debt deduction after repossession. See WAC 458-20-196 (Rule 196) and WAC 458-20-198 (Rule 198). Such deduction is not available, however, because somebody else is financing the transaction (the floor planner). The taxpayer was paid in full at the time of its original sale.

Within the repossession issue there is a subtopic we will also address. At the telephone conference in this matter, the taxpayer stated that it sometimes takes boats back because they are defective. It then fixes them and sells them or sells them "as is" at a discount. It is not clear if transactions such as this are meant to be included in the taxpayer's appeal. The written appeal petition did not mention defective boats. If such boats were originally sold on approval or on a sale or return basis, the taxpayer might be eligible to take a "returned goods deduction" based on WAC 458-20-108 (Rule 108). Again, however, evidence for this is lacking. We decline to grant tax deductions on the basis of speculation. If, however, the taxpayer presents probative evidence on this point to the Department's Audit Division within the refund period defined in RCW 82.32.060, that division will consider an adjustment.

On the second issue, repossessions, the taxpayer's petition is also denied.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 23rd day of June 1989.