

Cite as 8 WTD 401 (1989)

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. 89-521  
  
)  
. . . ) Registration No. . . .  
) . . . /Audit No. . . .  
)  
)

- [1] RULE 224, and RULE 178: SERVICE PROVIDERS -- AMBULANCE SERVICE -- USE TAX ON CONSUMABLE SUPPLIES. Persons providing ambulance services are subject to use tax on all supplies consumed in the performance of their services where retail sales tax has not been paid at the source. No exemption exists for consumable supplies used by service providers in the performance of medically-related services. ACCORD: Det. No. 87-333, 4 WTD 211 (1987)
- [2] RULE 100, RCW 82.32.160 and RCW 82.32.070: APPEAL PROCEDURES -- REFUSAL TO COOPERATE OR TO PRODUCE RECORDS. Taxpayer is required to inform itself of the tax ramifications of its business activities in this state. Refusal to produce records or to cooperate bar taxpayer from questioning the assessment.

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.

NATURE OF ACTION:

Taxpayer petitions for correction of assessment of use tax on consumables used in the process of rendering ambulance services.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer's parent corporation, hereinafter referred to as CA, is a corporation providing ambulance services and is based in Portland, Oregon. A division of the corporation, hereinafter referred to as AA, operates as an ambulance service located in Clark County, Washington. AA draws consumable supplies from the inventory purchased by CA. No retail sales tax is paid by CA at the time that the supplies are purchased, and no sales or use tax has been paid by AA at the time that the supplies are added to its Washington inventory or when consumed in the process of rendering its services in Washington.

Taxpayer's president contends that it is not possible to separate the supplies withdrawn and used by AA from those used by CA and its other division. He gave the auditor four invoice copies claimed to reflect consumable supplies billed as separate line items, but stated that he was not able to provide a means of determining the cost of the supply items relative to the billing charges. Additionally, he chose not to participate in a conference with the auditor's supervisor prior to pursuing the discretionary appeal procedures available under WAC 458-20-100.

#### DISCUSSION:

[1] Persons engaging in business activities in this state for which no special rate is provided are taxable under RCW 82.04.290, "other business or service activities." WAC 458-20-224 (Rule 224) is the administrative rule promulgating the statute. That rule specifically includes the activity of operating ambulance services and further provides that

[t]he retail sales tax applies upon all sales of tangible personal property made to persons for use or consumption in performing a business activity which is taxable under the service and other business activities classification of chapter 82.04 RCW.

RCW 82.12.020 and Rule 178 provide that, where tangible personal property has been acquired without payment of Washington State sales tax, the person using such property is subject to use tax at the time of first use in Washington. The pertinent parts of Rule 178 state:

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or

acquisition of which has not been subjected to the Washington retail sales tax.

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state.

(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax).

(5) The law provides that the term "sale at retail" means, among other things, every sale of tangible personal property to persons taxable under the. . . service and other business activities [classification] of the business and occupation tax. Hence, persons engaged in such businesses are liable for the payment of the use tax with respect to the use of materials purchased by them for the performance of those activities, when the Washington retail sales tax has not been paid on the purchase thereof, even though title to such property may be transferred to another either as personal or as real property. Persons engaged in the types of businesses referred to in this paragraph are expressly included within the statutory definition of the word "consumer." (See RCW 82.04.190.) (Emphasis and brackets supplied.)

Consequently, unless an exemption applies for the items subjected to use tax in the audit, taxpayer is liable for the tax at the time that the items are used in the rendition of ambulance services. In this case, no such exemption applies. The statutory exemption for prescription drugs and medically-prescribed oxygen was permitted by the auditor. WAC 458-20-18801 and RCW 82.08.0293. The remaining items are correctly subject to use tax, because they are supplies consumed in the

rendition of a service activity, they were withdrawn from inventory in Oregon, they were not subjected to a sales tax at the time of purchase, and use tax was not paid on their value at the time of first use in Washington.

[2] During the audit process, taxpayer repeatedly stated that he was unable to supply records which would permit the auditor to determine the correct figure on which to base an assessment of use tax.

The auditor was unable to obtain the taxpayer's cooperation in completing the audit, and the figures used to arrive at a projected figure on which to assert the tax were based on the four invoices submitted by taxpayer's president. The auditor exempted prescription drugs and medically-prescribed oxygen. He also stated that, at such time as the taxpayer provided adequate documentation supporting a revision of the figures, a mutually agreed-upon test period would be established and any necessary adjustments to the assessment would be made. No supervisor's conference was held prior to submission of the audit to audit review. The audit supervisor stated that

[Taxpayer's president] has refused a preliminary conference. I know policy dictates that these be referred back to the field if the taxpayer petitions for correction of assessment without having had a conference. However, I do not know how you force a taxpayer to go through this step.

During the audit process, taxpayer's president petitioned the Department's Interpretation and Appeals Division for a ruling on whether the supplies were subject to sales tax at the time of purchase or use tax at the time of consumption. He also later informed this division that a meeting had been held between a former Deputy Director of the Department and members of the Washington Ambulance Association.

Following that meeting, a survey conducted by the Audit Section resulted in a finding that the vast majority of ambulance operators are correctly reporting and paying tax on their consumable supplies. Additionally, of the operators currently protesting audits, none are protesting taxation of consumable supplies. We find that taxpayer's contention that his belief is that it is not the intent to Washington law to apply tax to supply items used by ambulance companies in Washington is both without statutory support and is not a belief held by the vast majority of the members of his association.

Because the auditor informed the taxpayer that finalization of the assessment could not be delayed indefinitely, and because taxpayer continued to refuse to supply records supporting its claim of nontaxability, the auditor submitted the file to Audit Review. The assessment was issued, and taxpayer requested that the petition for a determination of tax liability be treated as an appeal of the assessment.

We find that taxpayer's failure to supply records for the auditor's examination and the total lack of statutory support for its position bar it from questioning the assessment. Consequently, we uphold the tax in full. Upon payment of the tax, taxpayer may petition for a refund of taxes paid at such time as it provides the auditor with adequate records supporting its claim that taxes have been overpaid. Maintenance of such records is required by RCW 82.32.070. That statute provides, additionally, that any person who fails to comply with the recordkeeping and presentation requirements of the law shall be forever barred from questioning tax assessments made by the Department.

Additionally, at the time of its petition for refund, it can request use of a mutually agreed-upon test period reflecting normal business activity for the audit period. From this period, a percentage of tax due will be determined and applied against the full audit period for which the refund is requested. It is noted that the auditor attempted to offer the taxpayer this option during the audit process and that the taxpayer refused to accept it.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 30th day of November 1989.