

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. 89-337  
  )  
  )               Registration No. . . .  
  )               . . . /Audit No. . . .  
  )  
  )

- [1] RULE 193A -- RETAIL SALES TAX -- SALE TO NON-RESIDENT -- LOCAL DELIVERY POINT -- TAKEN OUT OF STATE BY BUYER. Where taxpayer sold and delivered a drilling rig to an out-of-state purchaser/consumer at its Washington business location, the sale has been completed within the state and retail sales tax must be collected on the transaction.
- [2] RULE 178:       USE AND/OR DEFERRED SALES TAX -- INTERVENING USE -- CAPITALIZATION IN ERROR -- PRESUMPTION OF USE. Where taxpayer purchased a construction crane which it capitalized and depreciated for two years, the crane was presumed to have been subjected to intervening use and subject to use and/or deferred sales tax.
- [3] RCW 82.04.050:   USE AND/OR DEFERRED SALES TAX -- AUTOMOBILE TOWING AND SIMILAR AUTOMOTIVE TRANSPORTATION SERVICES -- TOWING OF AN OFFICE TRAILER. The towing of an office trailer from jobsite to jobsite is not "automobile towing or similar automotive transportation services" within the meaning of RCW 82.04.050 and therefore not subject to use and/or deferred sales 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 TELEPHONE CONFERENCE: May 11, 1989

NATURE OF ACTION:

The taxpayer protests the imposition of uncollected retail sales tax and use and/or deferred sales tax assessed in an audit report.

FACTS & ISSUES:

Okimoto, A.L.J. -- The taxpayer's books and records were examined by Department of Revenue (Department) auditors for the period January 1, 1984 through March 31, 1988. An audit resulted in additional taxes and interest owing in the amount of \$ . . . and adjusted Assessment No. . . . was issued in that amount on March 3, 1989. The taxpayer has paid the unprotested portion of the assessment, and now petitions for a correction of the balance.

The taxpayer operates a construction company in . . . , Washington. The taxpayer protests the following adjustments in the audit report.

SCHEDULE IX - Tax on Assets Without Collection of Sales Tax:

In the audit report, the auditors assessed uncollected retail sales tax on the casual sales of two drill rigs. One sale was made to . . . on April 6, 1987 for \$160,000 and another sale was made to . . . on April 6, 1987 for \$105,000.

The taxpayer asserts in its petition:

The above rigs were sold to out of state drilling contractors located in Ohio and Missouri. The nature of the transaction necessitates cartage out of this state by an in-transit permit. These in-transit permits are issued by the Department of Transportation and are valid only for a specified time. The issuance of this permit would preclude purchasers from using the equipment in the State of Washington. In some instances we purchased the permit for the purchaser as in the case of . . . , which assessment was abated, and a copy is attached. In the case of . . . they purchased their own permits through our account with the DOT.

The taxpayer further testified at the telephone conference, the large size (100,000 lbs) of the rigs and the limited time restraints of the permit, makes it virtually impossible for the purchasers to have used the rigs within the State of Washington.

The taxpayer also states that it thought that since the rigs were not going to be used within Washington, it was not necessary to collect sales tax. The taxpayer also complains that this issue has never come up in prior audits.

Schedule X - Use Tax Due on Assets:

In the audit report the auditors asserted use and/or deferred sales tax on a capitalized crane purchased from . . . on October 30, 1984 for \$325,000. The auditors assessed deferred sales tax on the basis that the taxpayer was not engaged in the business of selling construction cranes, and therefore it could not have been purchased for resale in the regular course of business.

The taxpayer stated at the conference that it acquired the crane in settlement of a lawsuit and that it had no use for the crane, and had always intended to resell the crane. The taxpayer has submitted an affidavit from the original seller substantially corroborating that assertion. Although the taxpayer admits that it depreciated the crane on its federal return for two years, it stated at the conference that its outside auditors incorrectly capitalized the crane on its books, and that depreciation was taken in error. The taxpayer stated that it never used the crane, and that the crane has always sat in its yard in . . . until it was sold to a rental company on March 30, 1987 for \$165,000. The taxpayer has been unable to locate records which will substantiate its claim of non-use (ie. engine hour log books, fuel usage reports, etc.)

Schedule XI - Tax on Consumable Purchased Without Tax:

In the audit report the auditors asserted use and/or deferred sales tax in their projected schedule of consumable supplies on towing charges purchased from . . . .

The taxpayer stated at the conference that all towing was attributed to moving 40' X 14' office trailers and 28' X 14' tool trailers between two separate jobsites or to a different location within one specific jobsite. The taxpayer described the activity as towing in that the contracted company sent out a tow truck, backed up to the trailer, lifted up one end, and

towed the trailer to the desired location. The taxpayer stated that it used the towing service because it was more economical, expedient, provided quicker service and was more flexible than a freight line.

DISCUSSION:

SCHEDULE IX - Tax on Assets Without Collection of Sales Tax:

[1] We have examined the "special motor vehicle permit" supplied by the taxpayer to substantiate the interstate nature of the . . . sale, and we must conclude that the transaction is subject to sales tax. The permit lists the . . . as the transporting company, and lists the departure point as . . . , Washington with the destination point as the Oregon state line. This permit merely supports the auditors contention that the taxpayer sold the drill rig and delivered the same to the purchaser within the State of Washington, after which, the purchaser removed the drilling equipment from the state.

WAC 458-20-193A specifically provides:

The retail sales tax is imposed upon all retail sales made within this state. The legal incidence of the tax is upon the buyer and the seller is obligated to collect and remit the tax to the state upon civil and criminal penalties. The retail sales tax applies to all sales to consumers of goods located in the state when delivery is made in Washington, irrespective of the fact that the purchaser may use the property elsewhere. (Emphasis ours.)

Absent documentation showing that the taxpayer in fact delivered the drill rig to the purchaser at a point outside the State of Washington, we must conclude that delivery of the drill rig was completed in Washington, and that the transaction was not an interstate sale. Accordingly, the taxpayer's petition is denied on this point.

In regards to the sale of the drill rig made to . . . , the taxpayer has failed to submit any documentation establishing the interstate nature of the sale. Therefore the taxpayer's petition is denied on this point.

Schedule X - Use Tax Due on Assets:

[2] Whether the construction crane was purchased for resale in the regular course of business is a question of fact and must be determined from all of the surrounding circumstances. In this case, however, we need not address this issue because we believe that the taxpayer has subjected the construction crane to intervening use. We base this conclusion on the fact that the taxpayer had capitalized the crane on its books, and depreciated it for the two year period prior its subsequent sale. Because the taxpayer has treated the crane as a capital asset, we believe that a presumption is created that the taxpayer has used the equipment as a consumer. Although we recognize that the capitalization and depreciation may have been in error, it is incumbent on the taxpayer to establish that fact by providing records documenting its non-use. Absent such records, we find that the crane was correctly subjected to use and/or deferred sales tax. The taxpayer's petition is denied on this point.

Schedule XI - Tax on Consumable Purchased Without Tax:

[3] Regarding the use tax asserted on payments made by the taxpayer to a towing company to move office and tool trailers from jobsite to jobsite, RCW 82.04.050 includes within the definition of a retail sale:

. . . the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: . . .  
(e) the sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW; (Emphasis ours.)

In interpreting the above underlined words in the statute, we believe that the phrase "similar automotive transportation services" modifies or refers to "automobile towing." The business of "automobile towing" is normally thought of as being the activity of removing from streets or highways, disabled, abandoned or other in-transit vehicles and their related equipment. In the taxpayer's case, neither the office trailers nor the tool trailers are disabled, abandoned, or in-transit, but have been placed at their respective locations by design and for a specified duration after which they will be moved to another site.

WAC 458-20-180 (Rule 180) states:

The term "motor transportation business" means the business . . . of operating any motor propelled vehicle by which persons or property of others are conveyed for hire . . . (Emphasis ours.)

"Convey" has been defined to mean: "to take or carry from one place to another, transport." The American Heritage Dictionary, Second College Edition. Although the taxpayer contracted with a towing company to convey its property to a different location, we believe this activity is more analogous to a transportation company than to an automobile towing company and is therefore taxable under RCW 82.16. As such, the activity is specifically excluded from the definition of "automobile towing and similar automotive transportation services" under RCW 82.04.050. Therefore, we find that the towing charges are not subject to use and/or deferred sales tax. The taxpayer's petition is granted on this point.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied in part and granted in part. The taxpayer's file will be referred to the Audit Section so that adjustments in accordance with this Determination can be made.

DATED this 27th day of June 1989.