

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 Ruling of Tax Liability)
of)
) No. 89-363
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 . . .) UNREGISTERED
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RULE 211: RETAILING AND SERVICE B&O -- LEASE --
ASSIGNMENT. Assignment of a lease by a lessor
results in Service B&O to the assignor measured by
the amount received under the assignment agreement
and retailing B&O to the assignee measured by the
rental payments it receives.

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:

The taxpayer requests a rule 100(18) ruling.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer [A] leases equipment to a
consumer [C]. The taxpayer assigns the lease contract to a
third party [B] who pays the taxpayer the negotiated present
worth of the future rental payments exclusive of sales tax. B
collects the rentals, plus the sales tax due on each rental
directly from C and remits the sales tax to the State of
Washington.

The sale of the income stream from A to B is with recourse. That is, to the extent C does not make a rental payment, A is required to make the buyer whole. Similarly, A is responsible to see that the equipment is returned to B at the end of the lease or upon default by C.

The taxpayer proposes the assignment of the lease be treated the same as if a loan had been acquired by A from B with B collecting the sales tax from C and remitting it to the State of Washington. The taxpayer contends that A should report retailing B&O tax measured by its actual receipts from B (the discounted present worth of the future rental payments) at the time B pays A. The taxpayer also contends that B should pay service B&O tax on the difference between what B gets in rental payments from C less the amount it pays A for the right to those payments.

DISCUSSION:

RCW 82.04.220 imposes the business and occupation tax on the act or privilege of engaging in business activities. The tax is measured by the application of rates against the value of products, gross proceeds of sales, or gross income of the business as the case may be.

While there are special rates for various business including retailers in Chapter 82.04 RCW, none of those rates apply to A in this situation regarding its receipts from B for the right to the future income stream from the leases. While the lease payments would qualify as a retail sale under RCW 82.04.050(4) since they are for tangible personal property, the payment for the right to those payments does not qualify as a retail sale since it is for an intangible right. Therefore, A is not eligible for the retailing B&O tax rate on the payment it receives from B. Rather, the service B&O tax rate is imposed on the gross income of the business under RCW 82.04.290.

RCW 82.04.080 defines "GROSS INCOME OF THE BUSINESS" as:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated,

all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

No other section provides for the deduction of any of the taxpayer's costs or the exemption of the taxpayer's receipts. Therefore, the taxpayer must pay service B&O tax on the full amount that it receives for assigning its rights to the lease payments to B.

Under assignment agreement, B becomes the lessor of tangible personal property, and the payments it receives are treated as a retail sale under RCW 82.04.050(4). It is, therefore, taxed at the retailing B&O rate measured by the gross proceeds from the business with no deduction allowed for what it paid A for the assignment. WAC 458-20-211 requires B, as the lessor under the assignment agreement, to collect the retail sales tax at the time the rental payments fall due.

The taxpayer's argument relies on elevating the form of the lease transaction to what the taxpayer asserts that it is in substance, a loan. The taxpayers in this situation are free to choose the form of their transaction. In this case, the form of the transaction represents its substance as well. We have been presented with no evidence to treat this transaction as anything other than what it is under the law, a simple assignment of a retail lease, for consideration. There is no reason under the facts given to disregard that form. The results derive directly from statutory law in this case. The only effect of treating the transaction as being something other than what its form indicates would be an unwarranted reduction of tax liabilities.

In conclusion, under these circumstances, the parties have the following tax obligations:

1. Service B&O tax is imposed on A on its gross income.
2. Retailing B&O tax is imposed on B on the total payments received from C.
3. B is required to collect retail sales tax at the time the rental payments fall due from C.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(18) and is based upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

The taxpayer's identity was not given in the request for a ruling made by its attorney. Since we will not be able to inform the taxpayer of any future changes in our position, this ruling may not be effective for future application and will not necessarily be binding on the Department should the position of the Department change.

DATED this 14th day of July 1989.