

Cite as 1 WTD 179 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION

DEPARTMENT OF REVENUE

STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>		
For Written Opinion and Ruling of	)	
	)	No. 86-245
	)	
. . . .	)	Registration No. . . .
)	)	
	)	

[1] **RULE 106 - RETAIL SALES TAX / USE TAX - TRANSFER OF CAPITAL ASSETS - ADJUSTMENT OF BENEFICIAL INTEREST IN BUSINESS - WHOLLY-OWNED SUBSIDIARIES.** Neither retail sales tax nor use tax are due on value of vehicles (capital assets) which are transferred to a common holding company from its wholly-owned subsidiaries for insurance purposes.

This headnote is provided as a convenience for the reader and is 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:**

An advisory opinion has been requested as to the tax consequences of proposed transfers of certain capital assets from wholly-owned subsidiaries to a parent holding company.

**FACTS AND ISSUES:**

Marguerite M. Burroughs, Administrative Law Judge -- This Determination is issued in accordance with WAC 458-20-100(18) in reply to updated correspondence received by the Department

of Revenue on August 20, 1986. The correspondence, written on behalf of the taxpayer ( . . . ), reads in pertinent part as follows:

I have a client who owns a holding company in the name of . . . (the taxpayer) . . . , which in turns owns the stock of several other corporations, all family held.

Because of the difficulty in obtaining automobile insurance Mr. . . . , at my suggestion, is going to transfer all of his service vehicles, used by managers, sales persons, etc., to the . . . (taxpayer) . . . which is the name the insurance is written in.

I suggested he do this, since I did not feel this was the type of transfer which should result in the payment of a sales tax, because these were only being transferred "in house."

We interpret this letter to mean that titles to the vehicles will be transferred to the holding company (the taxpayer/parent) from certain of its corporations (subsidiaries) whose stock is wholly-owned by the taxpayer. We assume that the taxpayer holding company is a corporate entity, and that either retail sales tax or use tax has been paid on the vehicles by the corporations which presently hold title.

#### **DISCUSSION:**

WAC 458-20-106 (Rule 106) provides in pertinent part as follows:

#### **RETAIL SALES TAX**

. . .

A transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply.

1. Transfers of capital assets between a corporation and a wholly-owned subsidiary, or

between wholly-owned subsidiaries of the same corporation.

#### USE TAX

. . .

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. (See the exempt situations listed under the retail sales tax subdivision of this rule.) (Emphasis added.)

The taxpayer's representative has indicated that title to certain vehicles, which are capital assets, will be transferred to the parent holding company (the taxpayer) from companies which it owns (wholly-owned subsidiaries). The transfers will apparently not be in exchange for consideration. Under subparagraph one of Rule 106, such a transfer will be an adjustment of the beneficial interest in the taxpayer's business, and neither retail sales tax nor use tax will apply, assuming that retail sales tax or use tax has been paid by the current corporate owners which will be transferring the vehicles. Even if consideration in exchange for the vehicles should pass from the taxpayer to the transferring corporation, no tax will be due if the consideration is in the nature of a capital asset.

Accordingly, based on the correspondence submitted on behalf of the taxpayer, we hold that neither retail sales tax nor use tax will be due on the proposed vehicle transfers.

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 are actually true. This legal opinion shall bind this taxpayer and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been 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.

DATED this 15th day of September 1986.