

Cite as 1 WTD 161 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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)
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)
) No. 86-249
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) Registration No. . . .
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[1] RULE 178; RULE 127; RCW 82.12.020; USE TAX; TRAVEL AGENCY;
CONSUMABLE ITEMS; TRAVEL PUBLICATIONS.

A travel agency is subject to use tax upon the use of travel magazines, trade journals, the Official Airlines Guide and promotional materials where retail sales tax was not paid when the items were acquired.

Where a seller has not collected the full amount of the retail sales tax, the Department may collect the tax from the buyer. RCW 82.08.050.

[2] RULE 143; RCW 82.08.0253; RETAIL SALES TAX; EXEMPTIONS;
TRADE JOURNALS; AIRLINES GUIDES; NEWSPAPERS.

Airlines guides and other publications devoted to a specialized field are not exempt from the retail sales tax under RCW 82.08.0253, the statutory exemption for newspapers.

[3] RULE 228; UNKNOWN TAX LIABILITY; SELECTIVE ENFORCEMENT.

Lack of knowledge of a tax obligation is not a basis for abating tax or interest. The state is not required to inform a business of potential tax liability before it can impose taxes.

These 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: August 14, 1986

NATURE OF ACTION:

An audit of the taxpayer's travel agency business resulted in an assessment of taxes and interest owing. The taxpayer protests the assessment of use tax on consumable items.

FACTS AND ISSUES:

Anne Frankel, Administrative Law Judge--State and local use tax/deferred sales tax was assessed on consumable supplies on which the taxpayer had not paid retail sales tax. The supplies included travel magazines, trade journals, the Official Airlines Guide, and calendars and flight bags which the taxpayer gave to its customers (Schedule III).

Additional tax also was assessed on computer lease payments where the purchase invoices indicated the incorrect rate of sales tax was included. Only the state rate was collected and it was not always the correct rate (Schedule IV).

The taxpayer protests the assessment for the following reasons:

1. The taxpayer had no knowledge that sales tax or use tax was due on reference materials that every travel agency needs to conduct business; the tax should have been collected by the sellers;
2. Reference materials, as the Official Airlines Guide, should be exempt from the retail sales tax as they are for dissemination of information similar to newspapers;
3. As most travel agents are not aware of the use tax on such consumables, it is unfair for the state to assess the tax selectively and to assess interest when the tax obligation was unknown.

DISCUSSION:

- [1] RCW 82.12.020 imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property." For purposes of Chapter 82.12 RCW, "Consumer," in addition to the meaning ascribed to it in the business and occupation tax and retail sales tax, also means:

. . . any person who distributes or displays, or causes to be distributed or displayed, any article of tangible

personal property, except newspapers, the primary purpose of which is to promote the sale of products or services.

RCW 82.12.010 (5).

WAC 458-20-178 (Rule 178) is the administrative rule imposing the above statutory provisions. A copy of Rule 178 was attached to the auditor's report to the taxpayer. Rule 178 notes that the use tax complements the retail sales tax to provide a uniform tax upon the sale or use of all tangible personal property. Unless the taxpayer can show that the retail sales taxes were paid at the time of purchase, the deferred sales tax or use tax is upheld.

Although the taxpayer contends the sales tax should have been collected by the vendors of the property, vendors are not required to collect the sales tax if they have insufficient local nexus for application of the retailing or wholesaling business and occupation tax. WAC 458-20-193B (Rule 193B) is the administrative rule dealing with sales of goods originating in other states to persons in Washington. The rule provides in pertinent part:

Sales to persons in this state are taxable when the property is shipped from points outside this state to the buyer in this state and the seller carries on or has carried on in this state any local activity which is significantly associated with the seller's ability to establish or maintain a market in this state for the sales.

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Retail sales tax must be collected and accounted for in every case where business and occupation tax is due as outlined above .á.á.

In some cases, the vendors did not have sufficient nexus with this state to require them to collect and remit the retail sales tax.

WAC 458-20-127 (Rule 127) deals specifically with the retail sales and use tax on magazines and periodicals. The rule provides:

Where subscriptions or renewals of subscriptions are mailed directly by purchasers to publishers outside the state, such subscriptions constitute transactions in interstate commerce of a type which are not subject to

the retail sales tax. Because of circumstances peculiar to the magazine publishing industry, the degree of local activity in respect to interstate sales is either difficult or impossible to determine. For this reason, out-of-state vendors of magazines are relieved from liability for collecting either retail sales tax or use tax on sales of magazines or periodicals when such publications are published outside the state and delivered in interstate commerce to consumers in this state.

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Where no retail sales tax is paid upon the purchase of, or subscription to, a magazine or periodical, the use tax is subsequently payable upon the use of the magazine or periodical in this state by the purchaser or subscriber.

The use tax also applies upon the taxpayer's use of tangible personal property for promotional purposes, as calendars and flight bags, which the taxpayer acquired without paying retail sales tax. See Rule 178 and Excise Tax Bulletin (ETB) 332.12.178. This conclusion is consistent with the holding in Sears, Roebuck and Co. v. Department of Revenue, 97 Wn.2d 260, 643 P.2d 884 (1982) (catalogs shipped directly to Sears stores in Washington and then distributed to customers for the purpose of promoting sales were subject to this state's use tax).

Where a seller is doing business in this state, the seller is to collect the full amount of the retail sales tax. The state tries to provide accessible taxpayer information and to inform businesses of this obligation. It is the buyer's obligation to pay the retail sales tax, though. Where a buyer has failed to pay the seller the retail sales tax and the seller has not paid the tax to the Department, the Department may collect the tax from the buyer. RCW 82.08.050.

[2] The law expressly exempts the distribution and newsstand sale of newspapers from the retail sales tax. RCW 82.08.0253. Not every publication that contains information which needs to be updated frequently falls into the exemption for newspapers. WAC 458-20-143 defines "newspaper" to mean:

.á.á.áa publication of general circulation bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current

events. The word does not include publications devoted solely to a specialized field.á.á. .

We do not agree that the airlines guides, even though they are for the dissemination of information, meet the above definition of a newspaper. The guides are publications "devoted solely to a specialized field"--not newspapers of general circulation. Thus we do not find they are exempt of retail sales or use tax.

[3] The taxpayer contends that it did not know, and that most travel agencies do not know, that travel agencies must pay use tax on travel, publications, airlines guides, and promotional materials if retail sales tax was not paid on the items when acquired. The taxpayer's position is that if the state expects a business to pay a tax, the state has the responsibility to make sure the business knows about the tax. The taxpayer states it had no objection to the audit on the business and occupation excise tax liability, as it had been notified that tax was due and payable. It objects to being audited for use tax because it did not know of the use tax obligation.

As noted above, the state does try to provide accessible taxpayer information. There are 17 regional offices around the state to assist taxpayers and answer questions without charge. The state also maintains an office of taxpayer information. That office receives numerous inquiries from not only Washington residents, but residents from other states regarding Washington's tax structure. Business taxes, however, are self-assessing in nature. The ultimate responsibility for properly reporting taxes rests on persons in business. The state is not required to make sure every business knows its tax obligation before it can assess taxes, interest, or penalties.

As a practical matter, it would be impossible for the Department to audit every person in business in this state or give every person actual notice of potential tax liability. Also, even if the state were lax in its enforcement as to some, that is not of itself a defense to enforcement against others, unless the selection process was made on some prohibited ground such as race, religion or other arbitrary classification. Frame Factory v. Department of Ecology, 21 Wn.App. 50, 57 (1978).

RCW 82.32.050 provides that if a tax has been paid less than properly due, the Department shall assess the additional amount due and shall add interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment. The only authority to cancel interest is found in RCW 82.32.105 which allows the Department to waive or cancel interest or penalties if the failure of a taxpayer to pay

any tax on the due date was the result of circumstances beyond the control of the taxpayer.

The administrative rule which implements the above law is found in the Washington Administrative Code 458-20-228 (Rule 228). Rule 228 lists the only situations under which a cancellation of interest or penalties will be considered. Lack of knowledge of a tax obligation, difficulty or hardship in complying, or voluntary compliance once an obligation is known are not identified by statute or rule as a basis for abating tax, interest, or penalties.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of Assessment No. . . . is denied. As the taxpayer made payment in full on August 14, 1986 no additional amount remains owing.

DATED this 12th day of September 1986.