

Cite as Det. No. 00-048, 19 WTD 977 (2000)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Ruling of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 00-048
	)	
...	)	Registration No. ...

RULE 117; RULE 115; RULE 102: USE TAX – TRUCKERS – PALLETS – USED IN TRANSPORTING CARGO OR EXCHANGE. Where a trucker purchases pallets in order to carry cargo owned by others, it is purchasing the pallets for its own use and fully subject to retail sales tax. Where a trucker purchases pallets for immediate exchange to manufacturers without intervening use, it is purchasing the pallets for resale.

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:

A pallet board recycler appeals from a ruling stating that sales of pallets to truckers are subject to retail sales tax.<sup>1</sup>

FACTS:

Okimoto, A.L.J --. . . (Taxpayer) operates a pallet recycling business located in . . . , Washington. Taxpayer asked the Department of Revenue's (Department) Taxpayer Information & Education Section (TI&E) for a ruling on whether sales of pallets to truckers were subject to the retail sales tax. TI&E ruled that when pallets were used by the trucker to carry cargo, they were similar to dunnage. TI&E relied on WAC 458-20-117 (Rule 117) and held that the pallets were subject retail sales tax. Taxpayer appeals that ruling and relies on WAC 458-20-115 (Rule 115) and argues that the pallets are exempt containers.

The TI&E letter described the facts as follows:

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

You sell pallets to truckers. The truckers purchase the pallets from you, so they will not have to pay the higher pallet fee charged them by the manufacturers they haul for. When the truckers pick up their cargo, it is already on pallets that can be quickly loaded on the truck. The manufacturers charge a pallet fee when a trucker arrives to pick up their load and does not have an equal amount of pallets to trade for the ones they will receive.

Generally, whenever a trucker gives up his pallets, he receives in return a load stacked on new pallets. Therefore, a trucker will need to buy a pallet, if they lose or damage a pallet and need a replacement.

During the teleconference, Taxpayer also indicated that sometimes a trucker will go to the warehouse and find out that the cargo is not on pallets, but on cardboard slipsheets. In these instances, the trucker must supply its own pallets and the warehouse will stack the cargo on top of pallets owned by the trucker. The loaded pallets are then shipped to their destination and off-loaded.

Taxpayer also stated that it sells pallets to a food manufacturer that utilizes them to ship its products to distributors.

#### ISSUE:

Are sales of pallets to truckers and manufacturers subject to retail sales tax?

#### DISCUSSION:

In general, all sales of tangible personal property are presumed to be retail sales and subject to retail sales tax unless the seller receives from the buyer a bona fide resale certificate or other tax exempt documentation. WAC 458-20-102 (Rule 102). The burden is on the seller to prove the transaction was tax exempt. Budget Rent-a-Car, Inc. v. Department of Rev., 81 Wn.2d 171, 500 P.2d 764 (1972).

In the above factual scenarios involving truckers, Taxpayer has actually identified several different taxation scenarios. Where a trucker purchases pallets from Taxpayer and immediately trades them to a manufacturer without putting them to intervening use, the trucker is purchasing those pallets for resale to the manufacturer. Under these circumstances, Taxpayer may take a resale certificate from the trucker and not charge him retail sales tax on the pallets. Taxpayer should then report these sales under the wholesaling tax classification provided that it obtains a signed resale certificate to document the exemption. The resale certificate must identify the trucker's registration number.

In the other scenario, where the trucker purchases pallets so that the manufacturer can load cargo onto pallets owned by the trucker, the trucker is purchasing the pallets for use in its transportation business. In this instance, the trucker is using the pallets to transport cargo and is fully subject to the retail sales tax. Rule 117, Rule 115, Det. No. 92-111, 12 WTD 143 (1992).

Sales to manufacturers can also result in different tax consequences, depending on how the manufacturer utilizes the pallets. Rule 115 explains how sales of packing materials and containers are to be taxed. It states:

(a) Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and subject to tax under the wholesaling classification. Sellers must obtain resale certificates from the purchaser to support that these sales are for resale. Refer to WAC 458-20-102.

(b) Sales of containers to persons who sell tangible personal property therein, but who retain title to such containers which are to be returned, are sales for consumption and subject to tax under the retailing classification. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title thereto remains in the seller of the tangible personal property contained therein, and even though a deposit is not made for the containers, and when such articles are customarily returned to the seller. If a charge is made against a customer for the container, with the understanding that such charge will be cancelled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container and is not part of the selling price for tax purposes. However, refer to the comments below for sales of containers for beverages and foods.

Rule 115(6)(c) gives an example of a manufacturer's taxability on its use of pallets. It states:

(c) XY uses three types of pallets in its manufacturing operation. One type of pallet is used strictly for storing paper which is in the manufacturing process. A second type of pallet is returnable and the customer is charged a deposit which is refunded at the time the pallet is returned. The third type of pallet is nonreturnable and is sold with the product. XY is required to pay retail sales or use tax on the first two types of pallets. The third type of pallets may be purchased by XY without the payment of retail sales or use tax since these pallets are sold with the paper products.

If the food manufacturer to whom Taxpayer makes sales of pallets includes those pallets as part of the price of the product and they are not returnable, then the manufacturer may purchase these pallets without paying retail sales tax. Taxpayer must retain the appropriate documentation to substantiate any claimed exemption. See, WAC 458-20-102. All other sales to manufacturers are subject to retail sales tax.

#### DECISION AND DISPOSITION:

Taxpayer's petition is granted in part and denied in part.

Dated this 24<sup>th</sup> day of March, 2000.