

Cite as Det. No. 00-020, 19 WTD 932 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 00-020
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .

RULE 178; RCW 82.12.020; RCW 82.08.020; RCW 82.04.250: RETAIL SALES TAX – RETAILING B&O TAX —USE TAX –CORPORATION’S PAYMENT OF PERSONAL DEBTS OF EMPLOYEES. A taxpayer who pays its employees’ personal credit card debts for purchases of items the employees purchase for their personal use is not liable for retail sales tax, retailing B&O tax, or use tax with respect to those payments.

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:

Corporation protests use tax assessed on property purchased by its employees with their personal credit cards for the employees’ personal use.¹

FACTS:

C. Pree, A.L.J. – The Audit Division of the Department of Revenue audited the taxpayer’s records for the period of January 1, 1992, through December 31, 1996. As a result of this audit, the Audit Division assessed retail sales tax of \$. . . , retailing B&O tax of \$. . . , wholesaling B&O tax of \$. . . , use tax of \$. . . , selected business service B&O tax of \$. . . , and interest of \$. . . . The assessment totaled \$. . . .

In its appeal, the taxpayer protests only the use tax assessed on property purchased by the taxpayer’s employees with their personal credit cards for the employees’ personal use. The taxpayer argues that it neither purchased nor used the property in Washington.

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

The taxpayer's employees held credit cards in the employees' names, for the employees' personal use. Employees sometimes used these personal credit cards to purchase items for the taxpayer's use. The taxpayer reimbursed the employees for the amounts of their purchases of items for the taxpayer's use, which the employees charged to their personal credit cards. Because the personal credit cards were in the employees' names, the monthly bills for these cards included purchases for both the employees' personal use and for the taxpayer's use. The taxpayer sometimes paid the entire balance of employees' personal credit cards, including the amounts charged for their personal purposes. In these instances, the taxpayer would record the personal portion of the payment as compensation, which was then reflected on the employees' annual federal form W-2 Wage and Tax Statements. The Audit Division assessed use tax on the amounts the taxpayer paid with respect to purchases for the employees' personal use. These amounts are at issue.

The taxpayer argues that although it paid the employees' personal credit card bills, it did not have primary or secondary liability for payment of the charges. Further, the taxpayer argues, it did not acquire or use the tangible personal property that was purchased using the personal credit cards where such purchases were for the employees' personal use.

The taxpayer explains:

According to RCW 82.12.020(1), payment of use tax is due only upon the use of tangible personal property in Washington state by a consumer if the retail sales tax has not already been paid. A taxpayer "uses" tangible personal property if the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer) within the state of Washington. The tangible personal property at issue in this assessment, are personal purchases made by [the taxpayer's] employees using their personal credit cards. The taxpayer never used or assumed possession or control of the personal credit card purchases of its employees. Furthermore, the employees never used the personal credit card purchases in the capacity as an employee of [the taxpayer]

[The taxpayer] understands its responsibility to self assess use tax on purchases of tangible personal property that it consumes or uses within the state of Washington for which no retail sales tax has been paid. However, [the taxpayer] contends that it should not be liable for the payment of use tax on personal purchases of its employees. The factors that must be present in order to assess use tax against [the taxpayer] simply do not exist in this case.

The taxpayer concludes that it did not "use within this state as a consumer any article of tangible personal property purchased at retail" where its employees purchased property for their personal use, using their personal credit cards.

The Audit Division does not dispute the facts recited by the taxpayer. However, in response to the taxpayer's petition for correction of assessment, the Audit Division reasoned:

[P]ayments made to [the taxpayer] by the purchasing employees for tangible personal property, were technically retail sales from [the taxpayer] to the employees. The credit card bills were paid by [the taxpayer], from the corporate bank account. Whether the employee actually repaid [the taxpayer] in cash, or if the transaction were simply considered additional compensation to the employee, should not make any difference. In either case, the transaction would equate to a retail sale from [the taxpayer] to the employee.

The Audit Division notes that it offered to delete the use tax that was assessed with respect to these purchases and to assess, in its place, retail sales tax and retailing B&O tax.

ISSUE:

Whether a taxpayer who pays its employees' personal credit card debts for purchases of items the employees purchase for their personal use is liable for retail sales tax or use tax.

DISCUSSION:

The transactions at issue involve payments by an employer of its employees' liabilities arising from the employees' purchase of items for the employees' own use. The Audit Division assessed use tax with respect to the payments at issue. It notes that it offered to delete the use tax assessment and to instead assess retail sales tax and retailing B&O tax with respect to these amounts. We will address the proposed retail sales tax and retailing B&O tax assessment first.

RCW 82.04.250 imposes B&O tax under the retailing classification with respect to persons "engaging within this state in the business of making sales at retail." RCW 82.08.020 imposes the retail sales tax with respect to such sales.

RCW 82.04.050 basically defines a sale at retail as including "every sale of tangible personal property . . . to all persons," other than a sale to a person who presents a valid resale certificate. RCW 82.04.040 defines a sale as "any transfer of the ownership of, title to, or possession of property for a valuable consideration." In this case, the taxpayer never had "ownership of, title to, or possession of" the property the employees purchased. Because the taxpayer never owned the property, it could not transfer it to its employees. Contrary to the Audit Division's assertion, there simply was no "sale" of tangible personal property by the taxpayer to its employees. Instead, the employees purchased the items at issue from third party sellers using the employees' personal credit cards. At the time of purchase, the employees incurred the personal liability to pay the amount of the charges. The fact that the taxpayer later paid the employees' debts does not transform the transaction into a sale of property by the taxpayer to the employees.

In exchange for the taxpayer's payment of the employees' debts to the credit card companies, the employees may have agreed to work additional hours or to accept a reduction in the amount the taxpayer otherwise owed them. Alternatively, the taxpayer may have paid these amounts as a form of bonus to the employees. In any event, the only consideration the taxpayer received from

its employees was their labor. The employees simply assigned their right to receive the compensation due from employment to the credit card companies. The receipt of wages, or the assignment thereof, is exempt from B&O tax. *See* RCW 82.04.360. As such, there is no legal basis for the Audit Division's proposal to assess retail sales tax and retailing B&O tax on the transactions.

We will next address the issue of whether use tax applies to the transactions. RCW 82.12.020 imposes the use tax with respect to "the privilege of using within this state as a consumer . . . [a]ny article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same." WAC 458-20-178 (Rule 178) clarifies the statute, as follows:

The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by . . . gift . . . where the user [or] donor . . . has not paid retail sales tax under chapter 82.08 RCW with respect to the property used

The person liable for the tax is the purchaser . . . or donor and the . . . donee if the tax is not paid by the . . . donor

Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax

Thus, the use tax is imposed against the person "using" the property. RCW 82.12.010 defines "use" as having its "ordinary meaning." The statute further provides:

[Use] . . . shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer).

The items at issue were not, in fact, used by the taxpayer. The records indicate that the items at issue were purchased for the personal use of the employees; these items were not purchased by the employees for the taxpayer's use. There is no evidence that the taxpayer exercised dominion and control over the items at any time.

This situation is distinguishable from the situation in which a person makes a gift of property. See, e.g., ETA 314.12.178. In the ETA, we held that a taxpayer who donated products, which it previously held in inventory but did not use, was subject to use tax on the products. We reasoned that the taxpayer's donation of the products constituted use as a consumer. Specifically, we stated:

"Consumer" is defined by RCW 82.04.190 to include any person who purchases, acquires, owns, holds, or uses tangible personal property other than for the purpose of resale as tangible personal property in the regular course of business. Since the taxpayer

did not resell the products in question but rather, donated them, he was a "consumer" under the statute and his first act of dominion or control as a consumer gave rise to the Use Tax liability.

(Emphasis original.) In contrast, the taxpayer here never purchased, acquired, owned, held, or used the property. As explained above, the taxpayer did not purchase the property. Its employees purchased the property, not as agents of the taxpayer, but for their own personal use. The taxpayer never exercised dominion and control over the property by giving the property to its employees as a gift. It simply paid its employees bills. Because we find that the taxpayer did not "use" the property, we agree with the taxpayer that it is not liable for use tax on its employees' purchases of the property.²

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

Dated this 23rd day of February, 2000.

² However, we note that the employees may be liable for use tax on the items if they used the items in Washington as consumers, without paying retail sales tax. See RCW 82.12.020.