Cite as Det. No. 99-215R, 19 WTD 834 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment and Refund of	)	D E T E R M I N A T I O N
	)	No. 99-215R[1]
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .
	)	FY. . ./Audit No. . . .

RULE 195; RCW 82.04.250; RCW 82.04.070: RETAILING B&O TAX – GROSS PROCEEDS OF SALES -- DEDUCTION -- FEDERAL AVIATION FUEL AND LEAKING UNDERGROUND STORAGE TANK ("LUST") TAXES. Taxes received by a taxpayer as collecting agent and paid directly to the federal government are deductible under Rule 195. On the other hand, where the taxes are primarily imposed upon the taxpayer, the taxpayer will not be entitled to deduct the taxes because in such case the taxes are simply a cost of doing business. Federal aviation fuel and LUST taxes are imposed on the taxpayer and, as such, are not deductible for B&O tax purposes.

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:

Seller of jet fuel protests the inclusion of the federal aviation fuel and leaking underground storage tank taxes in its retailing B&O tax base where the end purchasers of the fuel received refunds of the taxes from the IRS.[2]

FACTS:

C. Pree, A.L.J. – . . . (hereafter "the taxpayer") sells jet fuel. The Audit Division of the Department of Revenue reviewed the taxpayer's records for the period of February 1, 1992, through September 30, 1994. A post assessment adjustment resulted in the assessment of retail sales tax of $. . ., retailing business and occupation ("B&O") tax of

[1] The original determination, Det. No. 99-215, is published at 19 WTD 817 (2000).
[2] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

$. . ., hazardous substance tax of $. . ., and interest of $. . .. The assessment totaled $. . . .
The taxpayer protests the Audit Division's inclusion of federal excise taxes in the measure of the retailing B&O tax. The federal excise taxes at issue are the federal aviation fuel tax ("aviation fuel tax") and the leaking underground storage tank tax ("LUST tax"), both of which are imposed by 26 U.S.C. 4091 (hereafter section 4091). The taxpayer argues that it collects these taxes from its customers and pays them over to the Internal Revenue Service ("IRS"). In reporting its gross receipts for B&O tax purposes, the taxpayer did not include these taxes in the measure. The Audit Division determined that these taxes should have been included in the measure and issued the assessment accordingly. The taxpayer argues that Det. No. 99-215 erred in upholding the assessment of retailing B&O tax with respect to these amounts. The taxpayer relies on WAC 458-20-195 (Rule 195) in support of its argument.

ISSUE:

Whether the aviation fuel and LUST taxes were properly included in the retailing B&O tax measure where the federal government refunded those taxes to the taxpayer's customers.

DISCUSSION:

Section 4091 imposes the aviation fuel and LUST taxes. It provides in pertinent part as follows:

> There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

In section 4091, the LUST tax is simply referenced as an increase in the rate at which the aviation fuel tax is imposed. As such, the issue of whether the aviation fuel tax and the LUST tax are deductible is governed by the same analysis.

The taxpayer explains that section 4091 imposes the two taxes on the sale of aviation fuel if the purchaser is not properly registered to purchase fuel free of tax. The aviation fuel tax is an excise tax on each gallon of fuel used in "non-commercial" aviation. The taxpayer explains:

> Most major air carriers are entitled to purchase aviation fuel free of the aviation fuel tax imposed under section 4091. However, some of the taxpayer's customers, typically smaller air carriers, do not have the same right to purchase fuel free of this tax.
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> The statutory mechanism by which the above taxing regime is established is as follows. IRC Section 4092 exempts from the Section 4091 tax fuel that is "sold for nontaxable uses as defined by Section 6427(l)(1)(B)." Section 6427(l)(1)(B), in turn, defines a "nontaxable use" as a use that is exempt from the tax imposed by Section 4041(c)(1). Finally, Section 4041(c)(1) imposes a tax on fuel used in noncommercial aviation.
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> Accordingly, fuel used in commercial aviation is exempt from the tax imposed by Section 4041(c)(1). Therefore the use of such fuel is a "nontaxable use" within the meaning of Section 6427(l)(1)(B) and is exempted from the Section 4091 tax by Section 4092.

Further, we note that IRC section 4093 allows a registered producer to sell fuel to another registered producer free from tax. In addition, IRC section 6427 allows a refund to the "ultimate purchaser" who uses the fuel in a nontaxable use.

The taxpayer argues that it collects the taxes from its customers and pays them over to the IRS, as an agent, and that such taxes should therefore be excluded from the retailing B&O tax measure, pursuant to Rule 195.

During the period at issue, Rule 195[3] provided in pertinent part:

> (A) DEDUCTIBILITY, GENERALLY. In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation tax . . . .
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> (C) OTHER TAXES. The amount of taxes collected by a taxpayer, as agent for the . . . federal government, may be deducted from the gross amount reported. . . .
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> This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to the . . . federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods he sells, or to the charge for services he renders, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction.

In Det. No. 99-215, we upheld the assessment. We reasoned:

> RCW 82.04.250 imposes the retailing B&O tax with respect to retail sales. The measure of the tax is "gross proceeds of sales." RCW 82.04.250. "Gross proceeds of sales" is defined in RCW 82.04.070 as follows:
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> > "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, **without any deduction on account of** the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs**, taxes, or any other expense whatsoever paid** or accrued and without any deduction on account of losses.
>
> (Emphasis added.) RCW 82.04.090 defines "value proceeding or accruing" in pertinent part as follows:

[3] Rule 195 was amended, effective July 10, 1999. The amendments do not affect the analysis in this case. Additional amendments to Rule 195 are scheduled.

> "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued.
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> Thus, if a taxpayer "actually" receives or accrues value from a retail sale, the amount is subject to retailing B&O tax, unless a credit, deduction or exemption is available. . . . [4]
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> [I]f the taxpayer receives the taxes "as collecting agent" and pays the taxes directly to the federal government, the taxes will be deductible under Rule 195. On the other hand, if the taxpayer is the person upon whom the taxes are primarily imposed the taxpayer will not be entitled to deduct the taxes because in such case the taxes are simply a cost of doing business. . . . .
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> The taxpayer argues that these taxes are "in substance" imposed on the buyers/users of jet fuel, rather than the sellers of the fuel. As such, the taxpayer argues, Rule 195 authorizes the exclusion of these taxes. . . . [W]e first note that, as a general principle, tax statutes conferring credits, refunds or deductions must be construed narrowly, and any ambiguity must be resolved in favor of taxation. See, In re All-State Constr. Co., 70 Wn.2d 657, 665, 425 P.2d 16 (1967); Corporation of Catholic Archbishop v. Johnston, 89 Wn.2d 505, 507, 573 P.2d 793 (1978); see e.g., Det. No. 98-059, 17 WTD 194 (1998).

In its petition for reconsideration, the taxpayer argues:

> [T]he Section 4091 tax [is] deductible under Rule 195 . . .
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> Because the Section 4091 tax is, in substance, imposed on buyers rather than on sellers of jet fuel as demonstrated by the fact that [the taxpayer's] transactions with its buyers were actually exempt from the tax and the tax collected by [the taxpayer] from certain of its buyers and remitted to the IRS was refunded by the IRS to the buyers. Accordingly, Section 4091 is a deductible tax under the general principles of Rule 195. . . .
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> [T]he ALJ rejected [the taxpayer's] . . . point on the ground that the amount of the tax was a cost imposed by the Federal government upon [the taxpayer] and that [the taxpayer's] collection of the tax from certain of its customers constituted a portion of the price for the fuel. On this point, the ALJ was incorrect . . . .

Later in this determination, we will address the taxpayer's argument that because its customers received refunds of the taxes, the taxpayer was not liable for those taxes. First, we will address

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[4] In Det. No. 99-215, we held that the only potentially applicable statute, RCW 82.04.4285, did not apply to aviation fuel. Further, in Det. No. 99-215, we denied the taxpayer's argument that section 4091 taxes are deductible because they are analogous to section 4081 taxes, which were specifically listed in Rule 195 as deductible taxes. In its petition for reconsideration, the taxpayer does not dispute these holdings.

an argument the taxpayer raised in its original petition and renewed in its petition for reconsideration.

The taxpayer argues that the section 4091 taxes are deductible because they are similar to section 4261 and 4271 taxes, which are specifically listed in the current version of Rule 195 as deductible. In its petition for reconsideration, the taxpayer explained:

> The taxing regime imposed on users of air transportation by the Federal government relies primarily on the excise tax on air transportation that is imposed by Section 4261 and 4271 of the IRC. This tax must be collected by commercial carriers, *i.e.*, carriers that sell transportation services to others from users of air transportation. Rule 195 specifically lists the Section 4261 and 4271 taxes as deductible for purposes of the B&O tax. That is, Rule 195 recognizes that those taxes are imposed on users rather than on sellers of air transportation.
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> By contrast to commercial carriers, operators of aircraft that do not sell air transportation services to others are themselves users of air transportation. These operators are not subject to the Section 4261 and 4271 taxes (they would have no one to collect it from or to pay it to) but are subject to the Section 4091 tax. It is clear, therefore, that the Section 4091 tax is, in substance, imposed on purchasers and not on sellers of jet fuel.
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> Since the Section 4091 tax is analogous to the Section 4261 and 4271 taxes and the latter are specifically listed as deductible taxes in Rule 195, the former is also a deductible tax.

We note that while certain aspects of the section 4091 taxes at issue here may or may not be analogous to the section 4261 and 4271 taxes, the language imposing the section 4091 tax is distinguishable from the language imposing the latter taxes. Section 4091 imposes the tax on "on the sale of aviation fuel." In contrast, section 4261 provides:

> (a) In general. There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid. . . .
> (d) By whom paid. Except as provided in section 4263(a), the taxes imposed by this section **shall be paid by the person making the payment subject to tax.**

(Emphasis added.) See also, United States v. Washington Toll Bridge Authority, 307 F.2d 330 (9th Cir., 1962), cert. denied, 372 U.S. 911 (1962) (The section 4261 tax is payable by the person paying for transportation; the state has the responsibility to collect the tax and pay it over to the United States); Air Tour Acquisition Corp. v. United States, 1991 U.S. Dist. LEXIS 18983 (D.C. Hawaii, 1991) (Corporation that sells air tours is not liable for domestic air passenger tax where it fails to collect such tax; the seller of air transportation is not liable for the tax because the tax is imposed only on the buyer of transportation).

Similarly, section 4271 provides:

> (a) In general. There is hereby imposed upon the amount paid within or without the United States for the taxable transportation . . . of property a tax equal to 6.25 percent

> of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.
>
> (b) By whom paid.
>
> (1) In general. Except as provided by paragraph (2), the tax imposed by subsection (a) **shall be paid by the person making the payment subject to tax.**

(Emphasis added.) Thus, we note that sections 4261 and 4271 clearly indicate that the person purchasing the transportation is liable for the tax.[5] This language is absent from section 4091. There simply is no requirement in section 4091 that the purchaser pay the tax. As such, the fact that Rule 195 lists section 4261 and 4271 taxes as qualifying for deduction does little to further the taxpayer's position.

Further, the section 4091 taxes are not collected by the taxpayer as an agent for the IRS, and that is the key factor in determining their deductibility under Rule 195. Our conclusion that these taxes are not collected as an agent is well-supported in federal case law. For example, in Valley Ice & Fuel Co. v. United States, 30 F.3d 635, 635-36 (5th Cir., 1994), the Court of Appeals stated:

> **Exxon, a producer, was liable under *26 U.S.C. sec. 4091*[6] for the excise tax on fuel oil it sold to retailers like Valley**. Thus, Exxon charged Valley a grossed-up purchase price for the fuel oil and forwarded the tax portion of the purchase price to the IRS. Valley could recoup the portion of the purchase price representing excise tax by charging a grossed-up sales price to its domestic retail customers; thus, the cost of the excise tax was passed on to those customers.

(Emphasis and footnote added.) Valley was a retailer who sold the fuel to exempt "ultimate purchasers" (Mexican nationals) and did not gross up its price to reflect the amount of the tax (which it effectively paid through the grossed-up price it was charged by Exxon). The court denied Valley's refund request, because the refund statute (IRC section 6427) allows only the "ultimate purchasers" (the Mexican nationals) to file a refund request. As noted in the emphasized portion of the above quotation, the court made it clear that Exxon, the seller, was liable for the tax, i.e., it was not an agent of Valley (the purchaser) when it paid the tax to the IRS.

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[5] Cf., Det. No. 98-115, 18 WTD 327 (1999) (RCW 82.42.020 and RCW 82.42.040 (regarding the state aircraft fuel tax) place the responsibility for collecting the tax from the consumer on the distributor. "These statutes, read as a whole, clearly impose the aircraft fuel tax on the consumer, not the seller. The taxpayer's role as a seller is that of a collector of the tax as on behalf of the state, similar to the state retail sales tax under RCW 82.08. Consequently, the taxpayer should be allowed to deduct these taxes paid from its income per Rule 195 for tax calculation purposes." (Footnote omitted.)).

[6] We note that Valley involved fuel oil, while the present appeal involves aviation fuel. However, the federal tax payment, collection, and refund procedures are identical in all relevant aspects.

Thus, the court in Valley concluded that the tax is imposed on the seller. As such, this decision supports our conclusion that the tax at issue here was imposed on the taxpayer, as seller. Contrary to the taxpayer's argument, it did not collect the tax from its buyers and remit it to the IRS as an agent.

The taxpayer argues that, unlike Exxon, it is a middleman in the distribution scheme. In other words, the taxpayer purchases the fuel from a producer, resells the fuel to another company, and that company resells the fuel to the end user. However, we note that, for purposes of its tax liability, the taxpayer's responsibilities are the same as those of Exxon. Exxon was the entity responsible for remitting the tax to the IRS because it was the first person in the distribution chain and it sold fuel to Valley, who was not a registered producer. Although the taxpayer, unlike Exxon, is not the first person in the distribution chain, the taxpayer, like Exxon, was the person responsible for remitting the tax. This is because the taxpayer is a registered producer, and the person from whom it purchased the fuel was not required to collect tax on the sale to the taxpayer. When the taxpayer sold the fuel to its buyers, who were not registered producers, the taxpayer was required to pay tax on these sales. As such, the taxpayer stood in the same position as Exxon because the taxpayer was the person responsible for remitting the tax to the IRS.

Further, in Walsh Oil Co. v. United States, 26 Cl. Ct. 426 (1992), the court addressed the tax liability of a "middleman." In that case, Walsh completed an application to become a registered producer (which would enable it to purchase fuel tax free), but the IRS delayed in responding to its request. As such, Walsh was required to pay a grossed-up price (to cover the amount of tax) when it purchased fuel from producers for resale. Walsh then sued for a refund of the grossed up amounts it was required to pay, but the court denied its request, despite the fact that it probably would have qualified to register as a producer at the time it applied for that status. The court reasoned:

> Plaintiff admitted during oral argument that the statutes impose a tax upon the original seller of the fuel. See, Gurley v. Rhoden, 421 U.S. 200, 205 (1975) (holding that the legal incidence of a federal excise tax on gasoline falls upon the statutory producer and not the purchaser of the gasoline). While it is not disputed that plaintiff lost money as a result of its inability to comply with the new tax code, its arguments for relief necessarily fail because plaintiff lacks standing to sue. Plaintiff did not pay any tax under the statutes. . . .
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> [T]o maintain an action for the refund of taxes under the Internal Revenue Code, the plaintiff must be a taxpayer who has overpaid its own taxes. . . . [P]laintiff was not the "person who paid the tax," but a purchaser from that person.

As such, Walsh could not claim a refund from the IRS. Thus, Walsh supports our conclusion that it is the first person in the distribution chain who is required to pay the tax to the IRS who is liable for the tax. As will be discussed further, below, the fact that section 6427 allows the "ultimate purchaser" to file a refund claim in this context does not change the fact that the **liability for the tax falls on the seller who pays the tax.** Because the taxpayer here was

responsible for remitting the tax to the IRS, it was liable for the tax. As such, the taxpayer did not pay the tax simply as an agent of its customers.

Cook Oil Co. v. United States, 919 F. Supp. 1556 (1996), further supports our conclusion that the seller who remits the tax to the IRS is the person liable for the tax. The plaintiff in Cook was a registered producer and wholesale distributor of petroleum products, who purchased and sold fuel. For reasons that are not clear from the court's opinion, despite the fact that the plaintiff was a registered producer, the companies who sold fuel to the plaintiff paid tax to the IRS on those sales and grossed up their charges to the plaintiff to cover the tax. With respect to the plaintiff's sales to customers who used the fuel for exempt purposes, rather than passing the charges along to its customers by grossing up its sales price, the plaintiff claimed a tax credit for the grossed up amounts it paid to its sellers. The court denied the plaintiff's refund request because it concluded that the plaintiff was not the seller who paid the tax; the persons from whom the plaintiff purchased the fuel were the sellers who paid the tax. The court reasoned:

> IRC sec. 4091 imposes a tax on the "sale" of diesel fuel "by any producer." The language unequivocally imposes the tax on the "producer" who sells the fuel. Without exception, courts considering IRC sec. 4091 reach this same conclusion.
> . . .
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> Additionally, the Supreme Court of the United States has heard and rejected the Plaintiff's argument in a similar context involving an excise tax on the sale of gasoline. In *Gurley v. Rhoden, 421 U.S. 200, 44 L. Ed. 2d 110, 95 S. Ct. 1605 (1975)*, the Court considered whether the legal incidence of a federal excise tax imposed upon "gasoline sold by a producer" fell upon the seller of gasoline or its purchaser, who, practically speaking, paid the tax in the form of higher prices at the gas pump. The court found that the tax was imposed upon the seller, not the purchaser:
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> > The economic burden of taxes incident to the sale of merchandise is traditionally passed on to the purchasers of the merchandise. Therefore, the decision as to where the legal incidence of [the] tax falls is not determined by the fact that petitioner, by increasing his pump prices in the amounts of the taxes, shifted the economic burden of the taxes from himself to the purchaser-consumer. . . .
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> *Gurley, 421 U.S. at 204.* The tax scheme governing this case does not require suppliers to pass the cost of the tax to the Plaintiff; therefore, according to Gurley, the statutes did not tax the Plaintiff when it purchased the diesel fuel. The Plaintiff cannot obtain a refund from the Government if the Government never imposed a tax on the Plaintiff. . . .
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> The Plaintiff correctly observes that, in the anomalous case presented here – where Plaintiff, a registered "producer," did not purchase fuel tax free – its only economical option . . . is to pass the cost of the tax on to the exempt users. Yet the court is convinced that, in most cases, sales to a "producer" will be tax-exempt. The tax scheme plainly allows the Plaintiff, as a registered producer, to purchase fuel tax-free and then resell the fuel tax-free to exempt users, who therefore pay a price unaffected by the excise tax. . . .

> Therefore, based on the plain statutory language . . . as well as Supreme Court precedent interpreting similar language, this court finds that the Government's motion for summary judgment must be granted.

(Footnotes and citations omitted.) As such, the court denied the Plaintiff's petition for refund. Similarly, we find that the taxpayer did not pay the tax to the IRS simply as an agent of its customers. The tax was imposed on the taxpayer, as seller, and it was liable for the payment.

In its petition for reconsideration, the taxpayer next argues that the fact that its customers were able to obtain refunds proves that the tax was only collected by the taxpayer as an agent and should not be included in the tax base. The taxpayer argues:

> [A]ll of the taxpayer's customers during the period at issue were commercial carriers. Accordingly, none of the taxpayer's transactions with its customers gave rise to a liability for the Section 4091 tax. However, while no commercial user of aviation fuel is subject to the Section 4091 tax, only a certain class of such users is entitled to purchase fuel free of the tax by supplying their sellers with exemption certificates. Other commercial users are required to pay the tax to their supplier and later seek a refund from the IRS. A few of the taxpayer's customers fell into this category. The Section 4091 taxes whose inclusion in or exclusion from the B&O tax base is at issue here are the taxes collected by the taxpayer from these customers. Since all of these customers were still commercial users, however, all of them sought and obtained refunds from the IRS of the Section 4091 tax that they had paid to the taxpayer.
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> Thus, the result of the Determination was to impose the B&O tax on a Federal excise tax that **was not due.** Far from being a cost imposed by the federal government on the taxpayer which the taxpayer passed on to its customers as part of the price of the fuel, the amount of the tax was not a cost imposed on anyone. Thus, even if the Section 4091 tax were a nondeductible tax **when it is due**, the assessment would be wrong in this case because no **Section 4091 tax was due on [the taxpayer's] sales of jet fuel.** Under the determination, if it is not modified on reconsideration, Washington will have imposed its B&O tax on a Federal "tax" that does not exist.
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> RCW 82.04.070 defines "gross proceeds of sales" as "the value proceeding or accruing from the sale of tangible personal property and/or services rendered . . . ." The amount of the Section 4091 tax collected by [the taxpayer] from certain customers, remitted by [the taxpayer] to the IRS, and refunded by the IRS to [the taxpayer's] customers does not constitute "value proceeding or accruing from the sale" of jet fuel by [the taxpayer] because the Federal government does not impose the Section 4091 tax on that sale.

(Emphasis the taxpayer's.) We disagree. We note that the courts have held that the fact that the "ultimate purchasers" may be entitled to a refund under section 6427 does not absolve the seller from its liability for the tax upon its sale of the fuel.

For example, as the court in Amigo Enterprises, Inc. v. United States, 41 Fed. Cl. 462 (1998), noted with respect to the section 6427 refund procedure:

> The court recognizes that the code itself created an exception to this analysis in the context of diesel-fuel sales. Pursuant to section 6427, ultimate users of diesel fuel, if the ultimate use is tax exempt, can recover that tax even though it has been paid indirectly . . . .
>
> Congress, in other words, created a specific remedy for recovery of taxes by the ultimate users when the ultimate use is exempt. But the refund is available only to the "ultimate purchaser" of the fuel. No comparable exception has been created for a middleman . . . .

Further, we note that the court in Valley Ice addressed the issue of customers' entitlement to refunds, as follows:

> Although Valley, as a retailer, could not recoup the excise tax it paid to Exxon as a portion of the purchase price of the fuel it sold to the owners and operators of the Mexican vessels through the sec. 6427(1) refund procedure, Valley could recoup the cost of the tax by grossing-up the sales price it charged the Mexican nationals. The Mexican nationals, as "ultimate purchasers," could then file for a refund of the excise tax under sec. 6427(1), thus, fulfilling the congressional purpose to relieve the excise tax burden from fuel used as supplies aboard foreign vessels.

30 F.3d at 639 (footnote omitted). Thus, the court recognized that section 6427 does not affect who bears the initial liability for payment of the tax.

Further, we note that the fact that the tax is subsequently refunded to the ultimate purchaser has no impact on the measure of the B&O tax. As noted above, RCW 82.04.250 provides that the measure of the retailing B&O tax is "gross proceeds of sales." RCW 82.04.070 defines "gross proceeds of sales," in part, as "the value proceeding or accruing from the sale of tangible personal property." RCW 82.04.090 defines "value proceeding or accruing" in pertinent part as "the consideration . . . actually received or accrued." Because the taxpayer "actually" received or accrued the federal aviation fuel tax and LUST tax amounts, such amounts were properly included in the taxpayer's gross proceeds of sales for purposes of the retailing B&O tax measure. As such, we must deny the taxpayer's petition for reconsideration.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 19th day of June, 2000.