

Cite as Det. No. 05-0131, 25 WTD 116 (2006)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 05-0131
)	
...)	Registration No. ...
)	
)	Docket No. ...
)	

RULE 119; RCW 82.08.0293: RETAIL SALES TAX -- EXEMPTION - PURCHASE OF MEALS – NONPROFIT HOSPITAL. A nonprofit hospital's purchase of meals from third party vendors, which the hospital provided to its senior citizen, disabled, or low-income patients, qualifies for the RCW 82.08.0293(3)(b) exemption from retail sales tax.

Det No. 91-280, 11 WTD 463 (1992), and Det. No. 89-453A, 10 WTD 302 (1990) are hereby overruled to the extent they are inconsistent with the decision herein.

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.

C. Pree, A.L.J – Nonprofit . . . hospital petitions for refund of retail sales tax it paid on the purchase of meals from third party vendors, which the taxpayer provided to its mentally ill and low income patients. To the extent the taxpayer's patients are senior citizens or disabled or low-income persons, we conclude that the taxpayer's purchases qualify for the RCW 82.08.0293(3)(b) exemption from retail sales tax. We remand the case to the Audit Division to allow the taxpayer the opportunity to provide records to support its claim.¹

ISSUE:

Does the taxpayer's purchase of meals from third party vendors, which the taxpayer provided to its mentally ill and low-income patients, qualify for the RCW 82.08.0293(3)(b) exemption from retail sales tax?

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

FINDINGS OF FACT:

The taxpayer is a nonprofit organization (organized under RCW 24.03) established to provide constant care for . . . ill . . . patients.

The taxpayer purchases meals from a third party vendor, which it provides to its patients. The taxpayer paid retail sales tax to the vendor on the purchases. The cost of the meals is included, but not separately stated, in the taxpayer's charges to its patients. Patients were not charged retail sales tax on the meals.

The taxpayer filed a petition for refund of retail sales tax it paid on its purchase of the meals The Audit Division denied the taxpayer's request, and the taxpayer appealed.

ANALYSIS:

Generally, the sale of food is exempt from the retail sales tax, but the sale of meals is subject to retail sales tax. RCW 82.08.0293; WAC 458-20-119 (Rule 119).² However, "the serving of meals by hospitals, nursing homes, sanitariums and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail." Rule 119(2)(a)(iv). Thus, when the taxpayer furnishes meals to its patients, it need not collect or remit retail sales tax.

However, the issue in this case is not whether tax is due when the taxpayer furnishes the meals to its patients; the issue is whether the taxpayer must pay retail sales tax when it purchases the meals from the third party vendor. Generally, the purchase of meals by persons who are not in the business of selling meals at retail or wholesale is subject to retail sales tax. Rule 119. Thus, because the taxpayer is not considered to be reselling the meals to its patients, its purchase of the meals from the third party vendor would be subject to retail sales tax, unless an exemption applies.

In support of its refund claim, the taxpayer cites RCW 82.08.0293(3)(b), which provides a retail sales tax exemption for certain meals, as follows:

[T]he exemption of "food products" provided in this section shall apply to food products which are furnished, prepared, or served as meals . . . which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

Rule 119(3)(b) explains the exemption as including:

Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. However,

² As amended effective June 19, 1999.

this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.

(Emphasis added.) In denying the refund claim, the Audit Division relied on the highlighted language above, as well as Det. No. 89-453A, 10 WTD 302 (1990). In Det. No. 89-453A, a nonprofit hospital was assessed deferred sales or use tax on meals it purchased for its patients, most of whom were elderly or low-income, from a third party. We upheld the assessment. We explained:

Both Det. No. 89-453 and WAC 458-20-119 make it clear the meals provided by the hospital to the patients are not the transactions being taxed. Rule 119 states in part: "The serving of meals by hospitals . . . to patients as a part of the service rendered . . . is not subject to the retail sales tax." Instead, the tax is imposed on the sale of prepared meals . . . to the hospital. RCW 82.08.0293(2), RCW 82.12.0293(2) and Rule 119. . . .

Finally, the hospital claims it is entitled to the exemption for its [elderly] and [low-income] patients We concede the taxpayer is a not-for-profit organization and it cares for elderly, disabled or low income patients. However, we do not view the exemption as applicable to this factual situation. The sales tax exemption applies on meals purchased by a not-for-profit organization to distribute to elderly, disabled or low-income persons. Det. 87-110, 3 WTD 21 (1987). The exemption does not apply to purchases by a not-for-profit organization, such as this hospital, which provides the meals to such patients as part of the services it renders.

See also Det. No. 91-280, 11 WTD 463 (1992). The taxpayer acknowledges that the highlighted language in Rule 119 "does suggest that the retail sales tax exemption may not apply to hospitals." However, the taxpayer relies on *Sacred Heart Medical Center v. Department of Rev.*, 88 Wn. App. 632, 946 P.2d 409 (1997), in support of its argument that because its patients are qualifying persons for purposes of the RCW 82.04.0293(3)(b) exemption, and it is a nonprofit organization, its purchases qualify for the exemption, despite the fact that it is a "hospital."

In *Sacred Heart*, nonprofit nursing homes sought a refund of retail sales tax they paid to a third-party on their purchase of prepared meals. They claimed that their purchase of meals, which they then provided to senior citizen, low-income, and disabled residents, qualified for the RCW 82.08.0293(3)(b) exemption. The court agreed. The court largely focused its analysis on the statutory term "provides," in response to the Department's argument that the exemption applied only to meals given free of charge to elderly, low-income, or disabled persons. The court concluded that the exemption applied, even though the nursing homes charged their residents for their services and the meals were included as part of those services. In response to the Department's additional argument that the sale of meals to the nursing homes was taxable because the meals were part of the services the nursing homes provided to their patients and should receive the same tax treatment as the purchase of any other goods necessary for providing those services, the court stated:

This argument . . . is not supported by a plain reading of the exemption statute. Although the statutory language requires the ultimate recipients of the prepared meals to be members of a particular class, nothing in the statute supports [the Department]'s contention that meals are to be treated the same as other nursing home services. Indeed, the statute's drafters used the passive tense when describing the exempt transactions, suggesting that any retail sale of a prepared meal furnished for and served to the specified class qualifies for the exemption.

88 Wn. App. at 639-40 (emphasis added).

We agree with the taxpayer that *Sacred Heart* supports its refund claim, despite the language in Rule 119 applicable to hospitals. The taxpayer, like the nursing homes in *Sacred Heart*, is a nonprofit organization that charges its patients a flat fee for services, which include the provision of meals. The taxpayer, like the nursing homes in *Sacred Heart*, purchased meals from a third party and paid retail sales tax on those purchases. Provided the taxpayer's patients fall within the classes specified in RCW 82.08.0293(3)(b), the taxpayer's purchase of meals, like the purchase of meals by the nursing homes in *Sacred Heart*, is exempt from retail sales tax. To the extent Det. No. 89-453A and Det. No. 91-280 are inconsistent with this decision, they are overruled.

CONCLUSIONS OF LAW AND DISPOSITION:

This matter is remanded to the Audit Division for review of the taxpayer's records to support the taxpayer's claim for retail sales tax exemption

Dated this 14th day of June, 2005.

STATE OF WASHINGTON DEPARTMENT OF REVENUE