

Cite as 5 WTD 355 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 88-194
)	
)	Registration No. . . .
. . .)	Tax Assessment No. . . .
)	
)	

[1] **RULE 178:** USE TAX -- TANGIBLE PERSONAL PROPERTY --
DONATED ITEMS -- COUPONS -- DISCOUNTS. "Coupons" that
can be redeemed for a free item are not a "discount."
The value of the item actually given for the coupon is a
donation and its value is subject to use tax.

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: September 9, 1987

NATURE OF ACTION:

Taxpayer petitions for correction of that part of an assessment
imposing use tax on portraits given away by means of a coupon.

FACTS AND ISSUES:

Hesselholt, A.L.J. (Successor to Rosenbloom, A.L.J.) -- Taxpayer
engages in business as a photographer. His records were audited
for the period January 1, 1983 through September 30, 1986. At
issue is use tax imposed on free portraits donated by taxpayer in
the form of coupons.

According to taxpayer, the coupons are a form of advertising. The
coupons entitle the holder to a free 8x10 portrait. The taxpayer's
aim is, of course, to convince the holder of the coupon to "trade
up." In 1983 taxpayer gave out the coupons at . . . and donated
them to non-profits such as the In other years, the

coupons were sold for a discounted price at the home show and given only to the non-profits.

The auditor used 1983 as a test period to determine donations. This total was stated as a percentage relationship to income for the audit period to determine the amount subject to tax. The auditor assessed use tax on the retail value of the portraits actually given away.

Taxpayer argues that the coupons are actually a discount, like a store coupon and that they are used as an advertisement, in that by reducing the price of their product they are increasing traffic thus increasing sales.

DISCUSSION:

The use tax statutes complement the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property used in this state in cases where no retail sales tax was paid. WAC 458-20-178. The manner of acquisition of the property is not important (it can be leased, gifted, bailed, purchased, manufactured, etc.); and the liability falls to the donee or donor. WAC 458-20-178.

[1] The coupons donated by taxpayer can be redeemed for a free portrait. There is no obligation on the part of the coupon holder to purchase anything else. Therefore, the coupon is not a "discount," and non-taxable, as taxpayer argues, but is instead a donation of a free portrait, and those portraits are subject to use tax.

DECISION AND DISPOSITION:

Taxpayer's petition is denied. The file will be referred to the Audit Section for a redetermination of the test period to determine the percentage of sampled items. An amended assessment will be issued which will be due on the date indicated thereon.

DATED this 15th day of April 1988.