BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition) For Correction of Assessment of)	F I N A L D E T E R M I N A T I O N
)	No. 87-305A
. . .)	Registration No. . . .
)	Document No. . . .

[1] **RULE 178, RULE 211, RCW 82.08.010 AND RCW 82.12.010:** USE TAX -- DEFERRED SALES TAX -- LEASE -- SELLING PRICE -- VALUE OF ARTICLE USED. A lease of tangible personal property, wherein monthly payments are made, is not a single transaction, but a contract for a series of transactions. Each transaction (each monthly lease payment) represents a separate sale.

[2] **RCW 82.08.010:** DETERMINATION OF VALUE IN LEASES. The statute provides for a determination of value in leases when the consideration paid does not represent a reasonable rent. This determination is made at the commencement of the lease.

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: . . .
. . .
. . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:

Garry G. Fujita, Assistant Director
Edward L. Faker, Sr. Administrative Law Judge

DATE AND PLACE OF HEARING: February 3, 1988; Olympia, Washington

NATURE OF ACTION:

Appeal from conclusions of Determination No. 87-305, issued on September 14, 1987.

FACTS AND ISSUES:

Faker, Sr. A.L.J. -- The material facts of this case are not in dispute. The facts are as reported in Determination No. 87-305 except that most of the assets of the Oregon corporation were sold and that corporation was liquidated into the taxpayer. The facts are not restated herein except as necessary to properly discuss the taxpayer's appeal.

The issue is the value for use tax purposes of the tangible personal property under the lease assumed on the Oregon corporation liquidation.

TAXPAYER'S EXCEPTIONS:

The taxpayer appeals on the grounds that the lease payments do not represent the reasonable rental value and therefore the "selling price" should be determined in accordance RCW 82.08.010. The taxpayer points out that they did not "choose" to continue paying the lease payments but were legally obligated under Washington corporate law. Therefore, they contend that no inference of value should be ascribed to the continued payments.

DISCUSSION:

[1] A lease of tangible personal property is a retail sale. RCW 82.04.050(4). A lease is not a single transaction, but a contract for a series of transactions. Gandy v. State, 57 Wn.2d 690 (1961). The retail sales tax applies to each successive retail sale (here, each lease payment). RCW 82.08.020. The tax is applied to the "selling price," which is the consideration paid by the buyer (here, lessee) without deduction for, among other things, interest. RCW 82.08.010. That statute also provides:

> When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the article so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. . . . (Emphasis ours.)

[2] It should be noted that statute (RCW 82.08.010) provides when the personal property is rented or leased and the consideration is not reasonable. Therefore, the time to test for reasonableness is at the commencement of the lease. Here, there is an arm's length transaction by unrelated parties and no evidence was presented that at the start of the lease the parties viewed the consideration unreasonable. It is only later events that cause the taxpayer to

believe that the equipment was no longer worth what was being paid in lease payments. While a lease is considered a series of transactions involving each lease payment, there is no indication in the statute that the reasonableness is to be tested other than at the commencement. To do so, would cause unending questions based on changes of value, technology and/or poor business judgments. We believe none of this was intended by the statute. In this case, where the property is brought into the state during the lease period, that does not cause a reexamination of the consideration paid where the lease is assumed, voluntarily or by operation of law.

DECISION AND DISPOSITION:

Determination No. 87-305 is sustained and taxpayer's appeal is denied.

DATED this 22nd day of June 1988.