

Cite as 9 WTD 286-61

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Correction of Assessment)	
of)	90-170
)	
. . .)	Registration No. . . .
)	. . . /Audit No. . . .
)	

[1] RULE 107 AND RCW 82.08.050: RETAIL SALES TAX -- LEASE -- RENTAL PRICE INCLUSIVE OF SALES TAX -- SEPARATE STATEMENT OF SALES TAX -- CONCLUSIVE PRESUMPTION. The statement in a written lease that the rental price for tangible personal property includes sales tax does not mean for tax purposes that the lessee has paid sales tax to the lessor. Unless the sales tax is separately stated from the rental amount due in the lease, in monthly billings, or in monthly statements, there is a conclusive presumption by law that the rent paid did not include the sales 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: April 30, 1986

NATURE OF ACTION:

Petition protesting the assessment of use tax and/or sales tax liability on monthly lease payments for the leasing of equipment.

FACTS AND ISSUES:

Krebs, A.L.J. -- [Taxpayer] is a professional service corporation for the practice of dentistry.

The Department of Revenue (Department) examined the taxpayer's business records for the period from . . . through As a result of this audit, the Department issued the above captioned tax assessment on . . . asserting excise tax liability in the amount of \$. . . and interest due in the amount of \$. . . for a total sum of \$ The taxpayer made a payment of \$. . . on . . . and the balance remains due.

The taxpayer's protest involves Schedule II of the audit report where the auditor assessed use tax and/or deferred sales tax on monthly lease payments for the leasing of furniture and equipment from a partnership . . . (lessor). The corporate taxpayer's principal, . . . , is a partner in the lessor/partnership.

The taxpayer submitted a written "Lease Agreement" (Lease) entered into on . . . between itself and the lessor which in pertinent part states:

Whereas the "Lessor" does hereby lease unto said "Lessee" [taxpayer] certain office furniture and equipment, dental and medical equipment and office improvements owned by the "Lessor" and located at...at a rental rate of \$. . . per month for . . . and . . . , and \$. . . per month commencing . . . (amounts to be inclusive of applicable sales tax).
(Bracketed word and emphasis supplied.)

The taxpayer contends that sales tax had been paid and the assessment of use tax and/or deferred sales tax were improper because the monthly lease payments were "inclusive of applicable sales tax."

DISCUSSION:

[1] The term "retail sale" includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4). WAC 458-20-107 (Rule 107) in pertinent part provides:

RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling [leasing] price on any sales invoice or other instrument of sale [lease], i.e., contracts...this is required even though the seller [lessor] and

buyer [lessee] may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. The law creates a "conclusive presumption" that for purposes of collecting the tax and remitting it to the state, the selling [leasing] price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between the seller [lessor] and buyer [lessee]...Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due. (Bracketed words and emphasis supplied.)

In this case, there was no separate statement of the sales tax from the rental price as required by both statute and rule in the lease. Furthermore, there was no other documentation kept or presented such as monthly bills or statements where the sales tax could have been separately itemized. Accordingly, we must adhere to the "conclusive presumption" that the rental price did not include sales tax and that sales tax was not paid by the taxpayer-lessee to the lessor. The assessment of use tax and/or deferred sales tax is sustained.

It is noted that the partnership-lessor during the audit period from . . . through . . . was not registered with the Department. This fact alone indicates that the lessor did not collect sales tax because it obviously was not remitting taxes to the Department. The partnership-lessor was registered in . . . (Registration No. . . .) by the Department for purposes of conducting an investigation into its meeting its tax obligations and it resulted in a tax assessment being issued on This tax assessment did not assert sales tax liability against the partnership-lessor on the lease payments involved in this case because it was believed that the taxpayer-lessee had agreed with the auditor's findings of sales tax liability on the monthly lease payments and would not be appealing. RCW 82.08.050 makes it very clear that the buyer/lessee is primarily obligated for payment of the sales tax and the seller/lessor is secondarily liable. In any event, the Department is seeking payment of the tax which is rightfully due only once.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this the 26th day of April 1990.