

Cite as Det. No. 04-0066, 23 WTD 299 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 04-0066
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...)	Registration No. ...
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RULE 178, RULE 221; RCW 82.12.040: USE TAX –REGISTERED BUSINESS – TRANSFER OF POSSESSION OF TANGIBLE PERSONAL PROPERTY. Registered businesses engaged in business in Washington are required to collect use tax from persons in this state to whom they transfer possession of tangible personal property and from whom they have not collected sales tax. Accordingly, Washington businesses are liable for use tax on shoes they purchase from an unregistered out-of-state vendor for their employees, which the employees pay for through paycheck deductions.

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.

STATEMENT OF THE CASE:

C. Pree, A.L.J -- Washington restaurant operators protest the assessment of use tax on shoes they purchased from an unregistered out-of-state vendor for their employees, which the employees paid for through paycheck deductions.¹

ISSUE:

Does a taxpayer's purchase of shoes for its employees, which the employees pay for through paycheck deductions, make the taxpayer liable for use tax, where the taxpayer purchased the shoes from an out-of-state unregistered vendor and did not pay retail sales tax on the purchase?

FINDINGS OF FACT:

The taxpayers operate restaurants in Washington. The taxpayers order shoes for their employees from an out-of-state vendor and deduct the cost of the shoes from the employees' paychecks. The taxpayers do not require their employees to purchase the shoes as a condition of their employment. The shoes belong to the employees, and they are free to wear them both at and away from work. The taxpayers do not maintain an inventory of shoes; the shoes are ordered only when a specific employee places an order for shoes.

When an employee wishes to order shoes, the employee fills out a payroll deduction order form and gives it to the taxpayers. The order form includes the employee's name and social security number, as well as the style, size, and number of pairs of shoes requested. The taxpayers place the order for the employee and remit payment to the vendor.

The price of the shoes is deducted from the employee's paycheck. The taxpayers do not pay for the shoes, unless an employee is fired or quits prior to paying for the shoes.

The vendor provides companies that purchase shoes for their employees a "slip and fall insurance warranty," which compensates the company if an employee has a slip and fall accident while wearing the shoes.²

The vendor is an unregistered internet and catalog sales company. It did not charge retail sales tax on the sales to the taxpayers, and the taxpayers did not pay use tax on these purchases.

The Audit Division of the Department of Revenue reviewed the taxpayers' records for the period of January 1, 1999, through September 30, 2002, and issued assessments. The taxpayers protest only the assessment of use tax on shoes.

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

² The warranty provides: "If any employee has a slip & fall accident in the workplace while wearing [the shoes], we will reimburse your company up to \$. . . for each Worker's Compensation claim paid."

ANALYSIS:

The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail, if the user has not paid retail sales tax under chapter 82.08 with respect to the property. *See* RCW 82.12.020; WAC 458-20-178 (Rule 178).³ Use tax liability arises at the time the property purchased by the person using the same is first put to use in this state. Rule 178.

The taxpayers argue that, although the invoices for the shoes come to them, they are not responsible for the bill. Specifically, the taxpayers argue,

The employee clearly is the responsible party. [The taxpayer] never owns the shoe, never takes receipt of the shoes. They are owned by the employee and received by the employee. [The taxpayer] simply acts as a facilitator/bank by taking the money out of the employees['] check and remitting it to [the vendor].

However, registered persons who engage in business in Washington, such as the taxpayers, are required to collect use tax from persons in this state to whom they transfer possession of tangible personal property and from whom they have not collected sales tax. RCW 82.12.040; WAC 458-20-221 (Rule 221). RCW 82.12.040(1) imposes the use tax collection obligation, as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales, or making transfers of either possession or title or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. . . .

The requirements for imposition of a use tax collection responsibility under RCW 82.12.040(1) are satisfied. Specifically, the taxpayers are registered businesses that engage in business activities in Washington. The taxpayers transfer possession of tangible personal property (the shoes) from the shoe vendor to the taxpayers' employees. The shoes are for use in Washington, and neither the taxpayers nor the employees have paid retail sales tax on the shoes. *See* Rule 178. Accordingly, we conclude that the Audit Division properly assessed use tax.

CONCLUSIONS OF LAW AND DISPOSITION:

The taxpayers' petition is denied.

Dated this 24th day of March 2004.

³ Because the shoe vendor's tax liability is not before us, we make no finding regarding its tax liability. However, we note that the shoe vendor did not collect retail sales tax from the taxpayers or their employees. *See* RCW 82.08.050(5) (regarding an out-of-state business's retail sales tax collection obligations).