

**Det. 13-0389R, 34 WTD 147 (2015). This determination is being withdrawn because the Department failed to consult with the tribes before publication in accordance with the Department’s tribal consultation policy under RCW 43.376.020.**

Cite as Det. No. 13-0389R, 34 WTD 147 (2015)

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. 13-0389R
)	
... )	Registration No. ...
)	

[1] RULE 192; RCW 82.08.220: RETAIL SALES TAX – EXEMPTION – SALES TO INDIANS IN INDIAN COUNTRY – PERSONS ENROLLED WITH A TRIBE UPON WHOSE TERRITORY THE ACTIVITY TAKES PLACE. A letter of attestation from a tribal leader is “suitable identification” to support a finding that listed members were indeed “enrolled members” of a particular Indian tribe.

[2] RULE 192; RCW 82.08.220: RETAIL SALES TAX – EXEMPTION – SALES TO INDIANS IN INDIAN COUNTRY. A retailer must retain evidence that deliveries were actually made in Indian country, in order for a sale to be eligible for the sales tax exclusion.

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.

Weaver, A.L.J. – A taxpayer engaged in the furniture rental business petitions for reconsideration of a determination remanding the matter to Audit Division for adjustments to taxes arising from the disallowance of retail sales tax exemptions on rentals to Native Americans . . . . Taxpayer’s petition for reconsideration is denied and the post-audit adjustment (PAA) issued by the Audit Division after the remand is affirmed.<sup>1</sup>

ISSUE

Whether Taxpayer has provided [sufficient evidence to] support additional adjustments to the PAA issued by the Audit Division after a remand in accordance with WAC 458-20-254.

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

## FINDINGS OF FACT

[Taxpayer] operated a number of furniture rental stores. Taxpayer's business activities included leasing home furnishings, televisions, computers, electronics, and appliances on a lease-to-own basis. During the relevant periods, Taxpayer operated three rental stores, [in Washington]. [Location A] was located approximately two blocks from [an] Indian Reservation. The Department's Audit Division examined Taxpayer's books and records for the period of January 1, 2008 through December 31, 2011.

The Audit Division used a random sample of transactions to verify that sales to Indians were correctly reported during the audit period. The Audit Division requested delivery log sheets, shipping documents, signed retail sales tax exemption certificates, or sales invoices showing delivery charges. Taxpayer did not charge delivery fees for its rentals and claimed that, because it had free delivery, no actual documentation existed that its furniture deliveries took place in Indian country.

The data for the audit period was provided by Taxpayer in electronic format. Using a random number generator, a 6 month sample time period (April and June 2008, February and November 2009, September 2010, and March 2011) was selected and reviewed by the Audit Division. Taxpayer failed to provide shipping documents to prove actual delivery on Indian country. [In determining] whether Taxpayer was entitled to deduct its sales to Indians from the retail sales tax, [the Audit Division applied certain assumptions.]

In conducting the audit, the Department's Audit Division assumed larger items, [such as] furniture and large appliances, were delivered at the address that Taxpayer had on file and that smaller items were picked up in-store unless they were included in a transaction with larger items. On items where the Audit Division determined delivery actually occurred, the Audit Division entered the customer addresses on file with the Taxpayer into the Department's Tax Rate Look Up tool on the Department's website to determine whether the deliveries occurred in Indian country.

The Audit Division disallowed rentals of small items that customers were likely to pick up at the store location, rentals for which Taxpayer did not produce a copy of Tribal ID, and rentals to customers whose address on file was not determined to be in Indian country. The Audit Division measured the dollar amount of errors as a percentage of the dollar amount of sampled items and applied that percentage to determine Taxpayer's liability for the audit period. On October 29, 2012, the Audit Division issued an assessment totaling \$ . . . , which included \$ . . . in retail sales tax, \$ . . . and service and other activities business and occupation (B&O) tax, \$ . . . in use tax, and \$ . . . in interest.

On appeal, Taxpayer contested the assessment of retail sales tax on rentals it asserts were made to tribal members and delivered within Indian country. Taxpayer provided supporting documentation it stated was either not received or not considered by the Audit Division. The documentation included Tribal IDs, driver's license photocopies, copies of lease agreements showing the customer's address, and printouts of Google maps showing the location of each address. In response to the instances where the Audit Division disallowed a sale because Taxpayer did not have a valid tribal identification in its possession, Taxpayer provided a letter

from an elected official of the [Tribe] attesting that 62 of Taxpayer's customers were enrolled members of the [Tribe].

Taxpayer claimed that it rarely allowed its customers to pick up rentals in-store. Taxpayer offered free delivery, so it claimed that nearly all its rentals are delivered to its customer and are set up by Taxpayer to confirm the rental items function properly at the delivery location. Taxpayer claimed that it requires its customers to provide either a rental agreement or utility bill to verify they reside at the delivery address. Taxpayer further stated that some of the rentals at issue were made to repeat customers, for whom Tribal ID cards were already on file from prior purchases and who appeared in Taxpayer's system as tax-exempt with the Tribal ID number listed in its database.

Taxpayer also contested the assessment of sales tax on rentals made to stagers for use in staging apartments that will be shown to potential renters. Taxpayer asserted it received and kept resale certificates or reseller permits for each rental, but was unable to provide documentation during the audit due to the intervening sale of one of its locations. On appeal, Taxpayer provided a resale certificate that it received from [an interior designer], which was not previously provided to the Audit Division.

The Appeals Division issued Determination No. 13-0389, which remanded the matter to the Audit Division for a possible adjustment to the assessment, based on the [interior designer's] resale certificate, and any other resale certificates or any additional proof that Taxpayer delivered tangible personal property to enrolled Indians in Indian country.

On the basis of additional documentation provided by Taxpayer, the Audit Division issued a PAA on February 21, 2014. The total due under the PAA was \$ . . . That amount included \$ . . . in retail sales tax, \$ . . . in service and other activities business and occupation (B&O) tax, \$ . . . in use tax, \$ . . . in interest, and \$ . . . in additional interest from November 29, 2012 to March 24, 2014. Taxpayer disagreed with the adjusted assessment and appealed the Department's action on remand. As we stated in Det. No. 13-0389, we consider Taxpayer's post-PAA appeal petition as a request for reconsideration.

## ANALYSIS

All sales of tangible personal property to consumers in this state are subject to retail sales tax unless there is a specific exemption. RCW 82.08.020. WAC 458-20-192 ("Rule 192") is the Department's administrative rule that addresses the state taxation of Indians, Indian tribes and business transactions in Indian country. Rule 192 harmonizes federal law, state tax law, and the policy and objectives of the Centennial Accord and the Millennium Agreement. Rule 192(1)(b), (c).

Rule 192 defines "Indian" as "a person on the tribal rolls of an Indian tribe." Rule 192(2)(a). "Indian Tribe" is defined as "an Indian nation, tribe, band, community, or other entity recognized as an "Indian Tribe" by the United States Department of the Interior." Rule 192(2)(c). "Indian country" is defined to include "all land within the limits of any Indian reservation under the jurisdiction of the United States government." Rule 192(b)(i).

Rule 192(5) provides generally that the state may not tax Indians or Indian tribes in Indian country. [For the exemption to apply, the taxpayer must establish both that the buyer was an Indian and that physical delivery of the goods sold occurred in Indian country.] . Rule 192(5)(a)(i). Rule 192(4) states generally that “Taxpayers are required to maintain appropriate records of the tax exempt status of transactions.” Thus, it is the taxpayer’s responsibility to maintain appropriate records to substantiate the tax exempt status of the subject sales.<sup>2</sup>

Rule 192(5) specifically states that the term “Indian” includes only those persons who are “enrolled with the tribe upon whose territory the activity takes place.” Rule 192(5)(c) instructs that:

In order to substantiate the tax-exempt status of a retail sale to a person who is a tribal member, unless the purchaser is personally known to the seller as a member, the seller must require presentation of a tribal membership card or other suitable identification of the purchaser as an enrollee of the Indian tribe.

Rule 192(5)(c).

Det. No. 13-0389 held that, with respect to the 62 names in the letter from the [Tribe], that letter of attestation is “suitable identification” to support a finding that the 62 listed names are indeed “enrolled members” of the [Tribe]. Det. No. 13-0389 also held that, to the extent the Audit Division disallowed any sales to those 62 members solely because Taxpayer failed to retain a valid tribal identification card, the matter was remanded to the Audit Division for an adjustment. However, Det. No. 13-0389 also held that simply establishing that a sale was made to one of those 62 members is not alone sufficient to exempt a sale. . . . To support an adjustment, Taxpayer need to establish that the sale to one of the 62 listed members of the [Tribe] was delivered in Indian country. *See* Rule 192(5).

Det. No. 13-0389 further held that Taxpayer did not provide any actual documentation to show that it delivered tangible personal property to enrolled members of an Indian tribe in Indian country. *See* Rule 192(5)(a)(i). It was Taxpayer’s policy to not require recipients of delivered goods to sign a delivery receipt attesting that delivery was completed. Det. No. 13-0389 held that, in the absence of such delivery receipts, Taxpayer had not provided any evidence that the deliveries in the audit sample were actually made in Indian country, which is required for the sales tax exclusion. Finally, Det. No. 13-0389 affirmed the methodology the Audit Division used to determine the location of deliveries.

After a thorough review . . . , we find that the legal arguments raised in Taxpayer’s petition for reconsideration were adequately addressed in Det. No. 13-0389, and that the PAA issued by the Audit Division was made in accordance with that decision. Taxpayer has provided no additional documentation or facts on reconsideration supporting additional adjustments to the assessment. The Department hereby sustains the PAA issued by the Audit Division.

#### DECISION AND DISPOSITION

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<sup>2</sup> Questionable circumstances or contradictory information may raise questions as to the authenticity or accuracy of the certificate. This may negate the exemption or additional information may be requested.

Taxpayer's petition for reconsideration is denied.

Dated this 23<sup>rd</sup> day of September, 2014.