

Cite as Det No. 12-0295, 32 WTD 208 (2013)

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. 12-0295
)	
... )	
)	Registration No. . . .
)	Document No. . . . /Audit No. . . .
)	Docket No. . . .

RCW 82.08.0254: RETAIL SALES TAX – SALES OF LODGING TO A GOVERNMENT EMPLOYEE. Sales to Government employees are exempt from payment or retail sales tax when the payment is made with a credit card whose charges are billed directly and paid by the federal government. The fact that a federal employee may purchase lodging using a card that is not intended for that purpose is immaterial.

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.

Lewis, A.L.J. – Taxpayer, the operator of a motel in Washington, protests the [assessment] of retail sales tax . . . on sales of lodging to Federal Government employees. The issue is remanded to the Audit Division to allow Taxpayer to provide documentation to support its claim that the motel room charges were paid for by the Federal Government.<sup>1</sup>

ISSUE:

Under the provisions of RCW 82.08.0254, are sales of lodging made to a Federal Government employee taxable when the Federal employee presents a general purchase credit card for payment?

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

## FINDINGS OF FACT:

Taxpayer operates a motel located in Washington. Taxpayer receives income from transient room rental. The Department's Audit Division audited Taxpayer's business records for the period October 1, 2007, through December 31, 2010. On October 5, 2011, the Department issued a \$. . . assessment. . . . Most of the deficiency resulted from the assessment of use tax on the purchase of capital assets. Subsequently, Taxpayer provided documentation that tax had been paid on the purchase of the assets. On December 5, 2011, the Department issued a post-assessment adjustment reducing the amount of the assessment to \$. . . .

On October 21, 2011, Taxpayer filed a petition requesting correction of the assessment. The one remaining issue is the [assessment] of retail sales tax . . . on sales of lodging to federal government employees.<sup>2</sup>

The Audit Division [assessed] retail sales tax [on] sales of lodging and related services when the charge was paid for using a Smart Pay 2 "Purchase Card" because these cards are supposed to be used for general purpose purchasing and not for lodging. Taxpayer maintained that as long as the sale was to the Federal Government and the purchase was paid by the Federal Government it did not matter whether the lodging charge was paid for with a card that the Federal Government had denominated for general purpose purchases or for lodging.

## ANALYSIS:

RCW 82.04.050(2)(f) imposes retail sales tax on the rental of hotel rooms:

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

...

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

Thus, generally, the sale of a hotel room is subject to collection of retail sales tax within Washington unless otherwise exempt. Consistent with the Federal Constitution, RCW 82.08.0254 exempts from retail sales tax sales that the state is prohibited from taxing under the

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<sup>2</sup> [Taxpayer claims these sales are exempt from retail sales tax under RCW 82.08.0254.]

“Constitution or laws of the United States.”<sup>3</sup> [Under the Supremacy Clause of the United States Constitution, a state or political subdivision may not levy a tax directly on the United States or on an agency or instrumentality of the United States. *See United States v. New Mexico*, 455 U.S. 720, 735, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982). However, a transaction is not immune from state or local tax under the Supremacy Clause if the legal incidence of the tax does not fall on the Federal Government or its property, and the tax does not otherwise discriminate against the Federal Government. *United States v. County of Fresno*, 429 U.S. 452, 464, 97 S. Ct. 699, 50 L. Ed. 2d 683 (1977). Thus, the Department is prohibited from asserting retail sales tax on sales made directly to the Federal Government, but not on sales to Federal Government employees, agents, or contractors. *Washington v. United States*, 460 U.S. 536, 103 S. Ct. 1344, 75 L. Ed. 2d 264 (1983).]

The Department issued WAC 458-20-190 (“Rule 190”) to further explain that for purchases to be retail sales tax exempt, the purchase must be paid for by the Federal Government. Rule 190 explains:

Sales to federal employees or representatives of the federal government are subject to sales tax, even though the federal government may reimburse them for all or a part of such expenses. Direct purchases by the federal government are sales tax exempt, but purchases by others whether with federal funds or through a reimbursement arrangement are fully subject to the retail sales tax.

WAC 458-20-190(5) (Emphasis added.)

The Department also issued a “Special Notice” on September 19, 2008, entitled “Tax-exempt Sales to the US Government.” The Department issued the “Special Notice” to give guidance on purchases using Federal Government issued credit cards. The “Special Notice” explained:

On November 30, 2008, the US Government is adopting a new credit card system. The new system is GSA SmartPay 2 or “SP2.” There are several providers for each type of card and the cardholders may carry any of the following cards: Visa, MasterCard, Voyager, and Wright Express.

Four groups of cards have been issued.

Purchase Cards:

- Exempt from retail sales tax, embossed with “For Official US Government Purchases Only” and “US Government Tax Exempt.”

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<sup>3</sup> Article VI, Clause 2 of the United States Constitution states:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

- Used to purchase tangible personal property.

#### Fleet Cards:

- Exempt from retail sales tax, embossed with “For Official Government Fleet Use Only.”
- Generally issued to a specific vehicle, but may also be issued to individuals.
- Used to purchase fuel, repair services, supplies, and other items related to government vehicles, airplanes, boats and equipment.

#### Travel Cards:

- May or may not be exempt from retail sales tax
- Used to purchase air fare, lodging accommodations, meals, etc.

#### Integrated Cards:

- Exempt when used to purchase tangible personal property.
- Exempt when used for fleet purchases or services.
- Integrated card may or may not be exempt from retail sales tax when used to purchase travel, i.e., airfare, lodging accommodations, rental cars, meals, etc.
- Used for any combination of purchase, travel or fleet services.

The “Special Notice” explained that under the provisions of Rule 190, only those sales made directly to the US Government qualify for a retail sales tax exemption. Specifically, not all travel purchased with the Integrated Cards qualifies for the exemption.

- Only credit card accounts that are billed directly to the US Government – Centrally Billed Accounts (CBAs) – **qualify** for the exemption from the retail sales tax.
- Accounts billed to and paid by the individual making the purchase who is reimbursed by the US Government – Individually Billed accounts (IBAs) – **do not qualify** for the exemption from the retail sales tax.

Much of the information contained in the Department’s “Special Notice” is based on information found at the website <https://smartpay.gsa.gov/businesses-vendors/taxinformation/overview>, which gives specific guidance as to which charge cards are exempt:

To understand how taxes should be treated, you need to determine what type of account was involved in the transaction and how the particular state treats those accounts: . . .

A merchant can determine whether the travel or integrated card is a CBA or IBA, by referring to the 6<sup>th</sup> digit of the account number on the card. Thus, purchases made with an IBA/Travel Card are not exempt and purchases with a CBA/Purchase Card are exempt. Accordingly, qualification for the deduction depends not on which card is used, whether it be a purchase, fleet, travel, or integrated card, but whether the Federal Government is being billed and paying for the charge.

Here, the Audit Division disallowed the retail sales tax deductions taken for sales to the Federal Government because the Department issued Special Notice suggested only a travel or integrated card may be used to purchase lodging retail sales tax exempt. The basis for the exemption from retail sales tax that Taxpayer seeks is the Supremacy Clause of the United States Constitution. The fact that a federal employee may purchase lodging using a card that is not intended for that purpose is a matter for resolution between the employee and the federal government. The Department is concerned not with what card is used, but whether the federal government is billed directly for the charges made on the card.

The Special Notice also explains record keeping requirements.

Sellers must keep proper documentation as follows:

- The vendor's copy of the receipt must be kept when a US Government credit card is used.
- A copy of the federal government voucher when a voucher is used.
- A signed copy of Form SF 1165 when the buyer makes a cash purchase.
- If you are presented with a formal US Government exemption certificate, **this is not acceptable proof.**

Thus, in sum;

- Only sales made directly to the US Government qualify for exemption from the collection of retail sales tax;
- Only purchases paid by CBAs (Centrally Billed Accounts) where the charges are billed directly and paid for directly by the US Government qualify for the retail sales tax exemption; and,
- Documentation must be kept.

The issue is remanded to the Audit Division. Credit will be allowed where Taxpayer can document that the sales were made to and paid for by the Federal Government through the use of a CBA.

#### DECISION AND DISPOSITION:

We are remanding the case to the Audit Division for possible adjustment to the assessment based on records you must provide.

Dated this 25<sup>th</sup> day of October 2012.