Cite as 11 WTD 263 (1991).

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

| | | |
|---|---|---|
| In the Matter of the Petition For Correction of Assessment of | ) | D E T E R M I N A T I O N |
| | ) | No. 91-263 |
| . . . | ) | Registration No. . . . |
| | ) | . . ./Audit No. . . . |

[1] RULE 108: B&O TAX -- DISCOUNTS, ALLOWANCES, OR REDUCTION IN PURCHASE PRICE -- FLOORING ALLOWANCE. A surcharge made by the manufacturer to its dealer on the original purchase invoice of an automobile, that is later refunded to the dealer, based on the flooring interest rate obtained by the dealer, is an adjustment to the original purchase price of the automobile. Therefore, credits are not subject to Service B&O tax when received by the dealer. **NOTE: THIS DETERMINATION OVERRULES DET. NO. 89-329, 8 WTD 52-1, (1989).**

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.

NATURE OF ACTION:

A taxpayer protests additional taxes and interest assessed in an audit report.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: July 26, 1991

FACTS:

Okimoto, A.L.J. -- . . . (taxpayer) operates an automobile dealership in . . . , Washington. The taxpayer's books and records were examined by a Department of Revenue (Department) auditor for the period January 1, 1986 through December 31, 1989. As a result of this audit, Doc. No. . . . was issued [in August 1990] for additional taxes and interest due in the amount of $ . .

. . The taxpayer has paid the unprotested portion of the audit assessment and the balance remains due.

TAXPAYER'S EXCEPTIONS:

In this schedule, the auditor assessed tax on amounts received by the taxpayer from its manufacturer for interest expense credits. The auditor considered these amounts to be "credits received from a third party to defray the interest cost on flooring (financing) received from a local financial institution" and therefore fully subject to the Service B&O tax.

The taxpayer explained that these credits were received through the manufacturer's "Wholesale Floor Plan Protection Program-And Holdback Payment Plan." The taxpayer explained the program at the hearing as follows:

All vehicles purchased by the dealer and placed into inventory carry a 4.3% surcharge. Of this surcharge 3% is for the dealers holdback program and 1.3% is for the dealers Wholesale Floor Plan Protection Program (WFPP). The dealer receives the 3% holdback surcharge as a credit to its open account in the month or quarter immediately following the date that the car is invoiced to the dealership. However, the dealer has two options for having its 1.3% WFPP money returned. Each dealer must elect in writing the desired option.

Option I:

Under this option, [the manufacturer] pays the 3% holdback to the dealer at the end of the quarter immediately following the date [the manufacturer] invoiced the dealership for the car. It is not contingent upon the dealership financing the car or even selling the car. The dealership receives the holdback automatically.

The amounts attributable to the 1.3% floor plan allowance are returned to the dealers in a different format. First, each car is allowed sixteen "interest free" days. This amount is determined by multiplying the sixteen "interest free" days times a certain computed dollar amount. This amount is automatically credited to the dealer during the month immediately following the date that the dealership was invoiced for the car.

In addition to the "interest free" days, the dealer also receives a guaranteed interest rate of 5.5% for an additional 104 days, but which cannot exceed the vehicle's financing term[1]. If the dealer

[1]If the vehicle is sold on day 17, the dealer receives only the reduced interest rate for 1 day, whereas if the car is sold on day 120, it receives the full 104 days.

finances its cars through [the manufacturer's financing affiliate] ( . . . ) then [it] merely floors the car at the guaranteed 5.5% rate. However, if the dealer finances its cars through a local bank, [the manufacturer] gives a credit to the dealership for all additional interest paid above the guaranteed 5.5% rate up to the current interest rate charged by [its financing affiliate]. This amount is computed for each car as of the date the dealer sells the car and is then credited to the dealer's open account.

Option II:

Under Option II, both the 3% holdback and the 1.3% flooring allowances are credited to the dealer's open account on a monthly basis. The dealer receives credit for exactly the same 4.3% surcharge listed on its purchase invoice that it had previously paid to the manufacturer.

The taxpayer points out that the auditor did not assess Service B&O tax on its 3% holdback but only on the 1.3% WFPP. The taxpayer argues that both programs are essentially the same and are merely reductions to the original purchase price of the car. The taxpayer speculates that the only reason the auditor assessed B&O tax on the WFPP credits was because they were accounted for differently. The taxpayer explains that the 3% holdback credits were credited against the cost of goods sold, whereas the WFPP amounts were credited to the interest expense account. The taxpayer argues that both programs are simply a method of returning the dealers own dollars. The taxpayer emphasizes that all credits are repaid by specific vehicle serial number.

The taxpayer further points out that at the time it purchases the automobile, it knows that it will receive the 3% holdback and 1.3% WFPP back soon after the car is sold. It further argues that the manufacturer is contractually obligated to make these credits once the taxpayer purchases the car. It notes that the new purchase invoices from the manufacturer contain specific language referring to these subsequent discounts. A sample invoice submitted by the taxpayer stated as follows:

> Total [purchase price] .... [19,700]
> Memo: Total Less Holdback and Approximate Wholesale Finance Credit [18,800]
>
> This invoice may not reflect the dealer's ultimate vehicle cost, in view of future manufacturer rebates, allowances, incentives, etc.... (Brackets ours)

The taxpayer argues that these credits merely represent a reduction in the purchase price of the automobile and should not be taxed as income.

DISCUSSION:

[1] WAC 458-20-108 (Rule 108) states in part:

> (1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

When the dealer purchases an automobile from the manufacturer, both parties are well aware that the 3% holdback will be returned to the dealer soon after the invoice date. Indeed, whether this be termed a cash discount, a trade discount, or merely a partial refund of the purchase price, it is clearly a revision to the original purchase price of the automobile that was contemplated by both parties at the time of the original sale. Under these circumstances the gross proceeds of sale and selling price must be "determined by the transaction as finally completed." Therefore, we conclude that the auditor correctly accepted these amounts as being a reduction of the original purchase price of the automobile.
Although the auditor distinguished between the Holdback program and the WFPP credits, we see no significant difference. Indeed, Option II of the WFPP merely returns the 1.3% WFPP surcharge and only differs from the Holdback program in the manner that the dealers account for the credits. This is not a valid distinction. Accordingly, the taxpayer's petition is granted on this issue.

Nor do we believe that the variable characteristics of the amounts received introduced by Option I defeats the deduction. We consider this to be merely an adjustment to the original purchase price of the automobile conditioned upon events that can only be determined subsequent to the automobile's purchase (i.e., the flooring rate obtained and the date of sale by the dealer). The taxpayer's petition is also granted on this issue.

To the extent that Determination No. 89-329, 8 WTD 52-1 (1989) is inconsistent with this determination, it is hereby overruled.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The taxpayer's petition shall be remanded to the Audit Division for the proper adjustments consistent with this determination.

DATED this 19th day of September, 1991.