THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

IST SOLUTION, INC., Appellant, v. STATE OF WASHINGTON DEPARTMENT OF REVENUE, Respondent.	Docket No. 99353 RE: Excise Tax Appeal ORDER GRANTING APPELLANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Board of Tax Appeals (Board), on June 11, 2024, Rosann Fitzpatrick, Vice Chair, presiding. Greg Barton of Perkins Coie, LLP, represented the Appellant, IST Solution, Inc. (IST). Ethan Sattelberg, Tax Policy Specialist, represented the Respondent, State of Washington, Department of Revenue (Department).

Pursuant to WAC 456-09-503 and the Board's Pre-Hearing Order, dated January 19, 2024, the Appellant timely filed a motion for summary judgment. The Board heard the oral arguments of counsel and considered the written materials filed in this matter, including the following:

Joint Fact Stipulation, with Exhibits 000001 to 000013, dated April 2, 2024;

IST's Motion for Summary Judgment (MSJ), dated April 22, 2024;

Department's Response to IST's MSJ, dated May 6, 2024;

Declaration of Tess Corpuz, dated April 10, 2024;

Declaration of Ethan Sattelberg, with Exhibits R1 to R10, dated April 16, 2024;

IST's Reply Brief, dated May 13, 2024.

Based on the parties' written submissions and oral arguments, the Board concludes that "there is no genuine issue as to any material fact and that a party is entitled to judgment as a matter of law."[1] The Board grants the IST's motion for summary judgment and reverses the tax assessment at issue.

[1] WAC 456-09-545.

NATURE OF THE APPEAL

IST appeals from the Department's denial of its petition for the correction of an assessment of tax, penalties, and interest for the tax years 2015 through 2018. The issue in this appeal is whether reimbursements received by a towing company (IST) for payments it made to secure the release of vehicles from repair shops and storage facilities are excluded from its taxable gross income under RCW 82.04.080 and WAC 458-20-111 (Rule 111). The Department determined that IST does not meet the rule's requirements because (a) it failed to establish a "true agency relationship," and (b) IST's liability as the drawer of the checks used to pay the charges proves it was not solely liable as an agent.

Based on the undisputed evidence, the Board finds that IST was acting as its customer's agent in paying the third-party service providers, and it was neither "primarily or secondarily" liable for purposes of Rule 111. The Department mistakenly conflates IST's liability on the check with liability for the underlying obligation. Because IST had no obligation to pay the repair shops except as its customer's agent, the Board concludes that the reimbursements qualify for "pass-through" treatment under Rule 111.

STATEMENT OF UNDISPUTED FACTS AND PROCEDURE

IST is a transportation company that provides towing services in Washington for a single client, Insurance Auto Auction (Customer).[2] Customer is in the business of auctioning vehicles for insurance companies that have taken over the ownership rights of damaged vehicles from their insureds.[3] The insurance companies notified Customer of the location of the damaged vehicle, usually a repair or storage facility. Customer hired IST to retrieve the vehicle and transport it to the drop-off location.

IST entered into a written agreement with Customer called "Towing Services Agreement." Customer agreed to pay IST based upon the towing distance and size or type of vehicle. Customer also agreed to pay IST for incidental expenses, including ferry or toll fees incurred during transport, extra wait times, fuel surcharges, and added stops.

[2] Joint Fact Stipulation at ¶ 1.
[3] Joint Fact Stipulation at ¶¶ 5 through 11.

The towing procedure required IST to advance the funds necessary to secure the release of the vehicle at the pickup location. The contract provided:

> Advanced Charges. Tower may be required to use its own funds to pay Advanced Charges, which will be reimbursed by [Customer]. Alternatively, [Customer] may provide Tower with funds to pay the Advanced Charges. In either case, all Advanced Charges must be supported by valid receipts which must be presented to [Customer] upon delivery. If Tower performs release services, Advanced Charges in excess five hundred dollars ($500) must be pre-approved by [Customer].

The "Advanced Charges" were amounts billed by the repair shops, towing companies, and storage facilities for services authorized by the vehicle owner, insurance company, or Customer. They included the initial towing charges, shop charges, estimates, repairs, and storage charges.

For each assignment, Customer provided IST a form called "IAA Tow Bill."[4] The Tow Bill served as IST's instructions and identified the pickup and drop off locations, the vehicle make, model and year, last six digits of the VIN, insurance company, vehicle owner, and a breakdown of the Advanced Charges, including "Advance Tow," "Administrative Fee," "Estimate," "Labor," "Storage," "Tax Amount," and "Total." The "Advance Tow" was the amount charged by the towing company that towed the vehicle to the repair shop (not IST).[5]

Upon arriving at the pick-up location, IST was required to check that the amounts on the Tow Bill matched the shop receipts. If different, IST was to contact Customer for authorization to pay any additional charges. IST then paid the amounts necessary to secure the release of the vehicle, using a check drawn from its business checking account.[6] After paying the charges, IST took possession of the vehicle and towed it to the drop-off location.

IST invoiced its customer for the completed transportation services and requested reimbursement of the Advanced Charges. IST provided the receipts it collected from the repair shop or storage facility to support its reimbursement request. Those receipts showed that the repair or towing services were authorized by someone other than IST—typically the vehicle owner, insurance company, or Customer—and were completed before IST was dispatched to pick up the vehicle.[7]

---

[4] Fact Stip. at ¶¶ 14-15.
[5] Fact Stip. at ¶ 16.
[6] R7-3, R8-3, R9-4, R10-5.
[7] R7-1, R7-2, R8-2, R9-2, R10-2.

IST's written contract with Customer disclaimed the existence of an agency relationship:

> Relationship. This Agreement is not intended to create nor shall be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither Tower nor any of its employee's subcontractors or agents will be considered an employee or agent of [Customer] by virtue of the services or obligations provided for in this Agreement.[8]

IST reported and paid B&O taxes on the amounts it billed its customer for its transportation services, including incidental expenses (toll charges, wait times, ferry, etc.). But IST did not report or pay B&O taxes on the reimbursement payments for the Advanced Charges.

The Department audited the taxpayer for the period January 1, 2015, through December 31, 2018. The Department determined that IST incorrectly reported its transportation services receipts under the service and other B&O tax classification. The Department reclassified the receipts to the wholesaling classification, based on IST's presentation of a reseller permit.

The Department further determined that IST incorrectly failed to report and pay service B&O taxes on the amounts it received in reimbursement of the Advanced Charges. The Department found that IST was liable for $556,909.34 in service B&O taxes on the unreported reimbursements.

The total amount of B&O tax assessed was $615,630.86, consisting of $58,721.52 of wholesaling B&O tax and $556,909.34 of service and other B&O tax. The Department credited $181,809.45 in service B&O tax that IST had paid on its transportation service fees.[9] The entirety of the assessed taxes is for the unreported reimbursements.

IST filed an administrative appeal petition with the Department's Administrative Review and Hearings Division (ARHD), contending that the reimbursement payments qualified for "pass-through" treatment under WAC 458-20-111 (Rule 111). ARHD rejected the argument, stating:

> In your case, you were paying the third party using your own check, which creates primary liability. In case of default, the auto body shop will look to you the Tower to be made whole, not IAA because the check was issued by you, not IAA. No agency relationship exists between you and IAA because the towing service agreement specifically stated that you are not an agent of IAA.

[8] Towing Services Agreement, ¶ 11 ("Relationship").
[9] Fact Stip. at ¶ 28.

The Department affirmed the assessment in Determination No. 21-0100. IST timely filed an informal appeal with the Board.

As authorized by the Board's pre-hearing order, IST filed a summary judgment motion in lieu of a trial brief. IST supported its summary judgment motion with a joint fact stipulation.

In addition to the facts recited above, the Department stipulated that (1) IST never took ownership or title to the vehicles; (2) IST has no written or oral contracts with the insureds, the insurance companies, or the repair or storage facilities; and (3) IST's only agreement is with Customer.

In support of its opposition to the summary judgment motion, the Department relies on a declaration of the auditor who prepared the audit report. The declaration states:

> I assessed service B&O tax on Appellant's reimbursement income because Appellant paid storage locations and repair shops with its own checks to release damaged vehicles and tow them to auction. Appellant was later reimbursed for its payments to the storage locations and repair shops by the auction company. To exclude the reimbursement income from B&O tax, Appellant must show that it acted as an agent in making the payments to the storage locations and repair shops. However, Appellant paid these locations with its own checks, indicating it was primarily liable for the payments.[10]

At the hearing, the Department asserted that IST's use of its own business checking account to pay the Advanced Charges proves it had more than agency liability for purposes of Rule 111.

APPLICABLE LAW AND ANALYSIS

Board's Jurisdiction. The Board has jurisdiction to decide appeals from the Department's final decision on a taxpayer's petition for the correction of a tax assessment.[11] The Board conducts a de novo review of the contested tax assessment in accordance with the procedures set forth in chapter 456-10 WAC.

Summary Judgment Standard and Burden of Proof. Summary judgment is appropriate where "the written record shows that, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and that a party is entitled to

[10] Declaration of Tess Corpus, at ¶ 5.
[11] RCW 82.03.130(1)(a); RCW 82.03.190.

judgment as a matter of law"[12] A material fact is one upon which the outcome of the litigation depends.[13] A genuine issue of material fact exists only if reasonable minds could differ on the facts that control the result of the litigation.[14] When a nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established.[15] Summary judgment is appropriate in this case because the facts are undisputed. The parties dispute which facts are material and the legal conclusions to be drawn from them.

Tax assessments are presumed correct, and the taxpayer has the burden to prove otherwise.[16]

Business and Occupation Tax.

Washington's B&O tax is imposed on every person "for the act or privilege of engaging in business activities" and applies to the "gross income of the business."[17] The legislature "intended to impose the business and occupation tax upon virtually all business activities carried on within the state."[18] Different rates apply to different types of business activities.[19] The "service and other" B&O Tax rate is a catchall provision that applies to activities not falling within a specific tax classification.[20] Taxpayers must report and pay B&O tax at the appropriate rate for each separate type of taxable activity or transaction in which they engage.

"Pass through" Payments. The "gross income of the business" is very broadly defined to include "the value proceeding or accruing by reasons of the transaction of the business engaged in" without any deduction of business costs or losses.[21] "Value proceeding or accruing" includes all "consideration," including funds "actually received or accrued."[22] Thus, in general, all amounts a business bills to customers is included in gross income and subject to B&O tax.

---

[12] WAC 456-09-545; *see also* CR 56(c).
[13] *Haines-Marchel v. Dep't of Correc*tions, 183 Wn. App. 655, 662, 334 P.3d 99 (2014).
[14] *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).
[15] *Central Washington Bank v. Mendelson-Zeller, Inc*., 113 Wn.2d 346, 345, 779 P.2d 697 (1989).
[16] "Taxes are presumed to be just and legal, and the burden is on the taxpayer to prove that the tax is incorrect." *AOL, LLC v. Dep't of Revenue*, 149 Wn. App. 533, 554, 205 P.3d 159 (2009). *See also Gartner, Inc. v. Dep't of Revenue*, 11 Wn. App. 2d 765, 778, 455 P.3d 1179 (2020*)* ("[o]n summary judgment, [the Taxpayer] has the burden of proving it is factually exempt from the tax at issue.")
[17] RCW 82.04.220(1).
[18] *Simpson Inv. Co. v. Dep't of Revenue,* 141 Wn.2d 139, 149, 3 P.3d 741 (2000).
[19] *Steven Klein, Inc. v. Dep't of Revenue*, 183 Wn.2d 889, 896-97, 357 P.3d 59 (2015).
[20] RCW 82.04.290(2)(a).
[21] RCW 82.04.080.
[22] RCW 82.04.090.

Rule 111 recognizes that businesses sometimes receive funds from a client that is not "consideration" for a business activity, but rather an advance or reimbursement of amounts the customer owes to a third party. For example, an auto dealer may collect license and registration fees from a vehicle purchaser, in addition to the vehicle purchase price. The license and registration fees are excluded from the dealer's taxable gross income because they are amounts that merely "passed through" the dealership, and for which the client alone was liable. Similarly, when an attorney pays filing fees or court costs in litigation on behalf of its client, the reimbursement of such fees and costs paid as agent for the client are excluded from the attorney's gross income.

The purpose of Rule 111 is to distinguish such nontaxable "advances" and "reimbursements" from a taxpayer's nondeductible costs of doing business. The rule explains that the exclusion applies "only when the customer or client alone is liable for the payment of the fees and costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as an agent for the customer or client."[23]

For payments to qualify for pass-through treatment, three elements must be met (1) the payments are customary reimbursements for amounts paid to procure a service for the client, (2) the payments involve services the taxpayer did not or could not render, and (3) the taxpayer has no liability for the payment except as the client's agent.[24]

Here, it is undisputed that the first two elements are met. First, the Department recognizes that it is customary in the industry to reimburse towing companies for payments made to secure the release of vehicles they are hired to tow. To protect their lien interests, auto shops and towing companies typically require payment before releasing a vehicle.[25] Second, the payments involved services the taxpayer "did not or could not render." IST did not and could not render services that were authorized and completed by others before it received an assignment.

---

[23] WAC 458-20-111.
[24] *Wash. Imaging Servs., LLC v. Dep't of Revenue,* 171 Wn.2d 548, 561-62, 252 P.3d 885 (2011).
[25] State law provides that any person who provides labor or materials in repairing any chattel at the owner's request has a lien upon such chattel. RCW 60.08.010. In the context of chattel liens involving vehicles, a person who provided services or materials at the owner's request can sell or take ownership of the vehicle. WAC 308-56A-310.

To satisfy the third element, a person claiming agency status under Rule 111 must demonstrate both that it had a "true agency relationship" and that it was "solely" liable as an agent in paying a third party.[26] The parties dispute whether this element is met.

IST had a true agency relationship with its customer.

The Department contends that IST has failed to demonstrate that it had a "true agency relationship" with IAA or that it was acting "solely" as an agent in dealing with the auto repair shops and storage facilities. An agency relationship generally arises when two parties consent that one shall act under the control of the other.[27] To establish the requisite control, there must be facts and circumstances showing that "one person is acting at the instance of and in some material degree under the direction and control of the other."[28]

Here, the facts and circumstances clearly demonstrate that IST was acting at the instance of, and under the direction and control of, its customer—the vehicle owner's authorized agent—in paying the advanced charges. The Department stipulates that IST had no written or oral contracts with the insureds, the insurance companies, or the repair shops or storage facilities. IST's only agreement was with its customer. The repair shops dealt directly with the vehicle owner, or the owner's agent (not IST) in contracting for the services. The shop invoices named the vehicle owner, insurance company, or Customer, as the customer. The Tow Bill, which named IST as the "Tower" dispatched to pick up the vehicle, served as express written authorization for IST to secure the release of the vehicle. The repair shops would not have released the vehicle to IST if they did not believe it was authorized to pick up the vehicle.

The Department asserts that various provisions of the Towing Services Agreement negate the existence of an agency relationship, most notably the express disclaimer of an agency relationship. The Department recognizes that contractual disclaimers of an agency relationship do not necessarily control. But it contends that the disclaimer here is consistent with other contractual provisions, including IST's promise to maintain insurance coverage for the vehicles, pay the repair shops and storage facilities with its own funds, and assume responsibility for expenses arising from any dishonored checks. The Department also correctly states that IST was largely responsible for controlling the manner in which it provided pickup and delivery services.

[26] *Wash. Imaging,* 171 Wn.2d at 562.
[27] *Id*. (quoting Restatement (Third) of Agency, § 1.01 (2006).
[28] *Id.*

The written contract and conduct of the parties clearly show that IST was acting as an independent contractor in picking up and transporting the vehicles, but they do not negate IST's status as an agent in paying the third-party service providers. The uncontroverted evidence establishes that IST was acting at the instance of its customer, and subject to its customer's direction and control, in using its own funds to pay the advanced charges.

The Department asserts that nothing in the record "shows that any of the third-party service providers involved had knowledge that Appellant was the agent of another party." To the contrary, the sample transaction documents show that the repair shops and initial towing companies dealt with the vehicle owner, insurance company, or Customer in negotiating the terms and conditions of service.[29] The third-party service providers knew who the principal was because they dealt directly with them. The Tow Bill identified IST as the "tower" authorized to pick up the vehicle. The undisputed evidence proves that IST was acting as a clearly disclosed agent in paying the repair shops.

The prior Board decisions cited by the Department are factually distinguishable.

According to the Department, the Board has never held that "the advancing or reimbursing of payments one party makes to a second party for amounts the second party will pay or paid to a third party are not gross income to the second party." The Department asserts the Board would have to "reverse" many decisions to rule for IST on this issue. The Board is not obliged to follow or reverse any prior Board decision in deciding this appeal. Although the Board strives for consistency, its prior decisions do not create binding authority. The Board's duty is to interpret and apply tax statutes consistent with relevant case law authorities and pertinent tax regulations.

Like the Department's published tax determinations, the Board's prior decision can provide useful guidance about how the tax laws apply to different facts and circumstances, to the extent consistent with the governing statutes. In opposition to IST's summary judgment motion, the Department cites seven prior Board decisions addressing Rule 111. In each case, the

[29] The sample Tow Bill identifies IST as the "Tower" dispatched to pick up the vehicle, states that payment is to be made with "Tower Check," and includes "Tower Notes," such as: "Agent Lueye Fowler—Early pickup OK – Per Henry @ shop, Released. Unit is not towable. FWD, No call needed. Keys with the shop. Tax rate is 9.00. Tires Ok, shop OPEN on Monday." The Tow Bill indicates the vehicle was "released" for pickup at 3:35 pm and that Auctioneer "dispatched" IST to pick up the vehicle at 3:53 pm. The corresponding invoice issued by the repair shop identifies "Henry" as the shop employee who assessed the damage and interacted with the insurance company.

taxpayer incurred liability as a principal in procuring goods or services from a third party on its customer's behalf. Because the taxpayer had an obligation to pay the third party as a principal, not merely as a procurement agent, the Board concluded that the funds received from customers did not merely "pass through" the business.[30]

This case does not involve the procurement of any goods or services. The goods and services were procured and provided by others before IST was dispatched to retrieve a vehicle. IST's only role in the transaction was to pay the charges and take possession of the vehicle on behalf of its principal. Unlike in each of the seven Board decisions cited by the Department, IST was solely liable as an agent to pay the third-party service providers.

The facts of this case are indistinguishable from those in *Medical Consultants Northwest, Inc. v. State*, 89 Wn. App. 39, 947 P.2d 784 (1997) (*MCN*). MCN involved a business that contracted with independent contractor physicians to provide medical exams for its clients. MCN billed its clients for both its own services and those of the physicians. The issue was whether the amounts MCN's customers paid for the medical exams qualified for "pass through" treatment under Rule 111. Based on the stipulated facts, the trial court found that MCN's client assumed liability for paying the physician and that MCN had no liability for paying the physicians except as an agent for its client. Based on these findings, the court concluded that the portion of MCN's billings allocated to medical exams was excluded from its gross income.

[30] *Mills & Uchida Court Reporting Inc. v. Dept' of Revenue*, BTA Docket No. 46110 (1996) (court reporting service could not exclude amounts it paid to independent contractors who provided court reporting services to its clients; client had no control/say/obligation to pay the third-party); *Pilcher v. Dep't of Revenue*, BTA Docket No. 46920 (1996) (ER director could not exclude amounts it paid to independent contractor physicians who provided emergency room services to its hospital client; client had no control/say/obligation to pay the third-party); *Subway Franchise Advertising Trust Fund v. Dep't of Revenue*, BTA Docket No. 13-053 (2016) (amounts received from franchisees for use in procuring advertising were not "pass through" payments because trust was the principal contracting party liable for the advertising costs; franchisees had no control over trust); *Professional Promotion Services, Inc. v. Dep't of Revenue*, BTA Docket No. 36912 (1990) (advertising firm contracted with mailing bureau to stuff, seal, and deliver advertising materials; reimbursements of mailing costs were nondeductible costs of doing business where mailing bureau did not know advertising firm had only agent liability); *Welfare & Pension Administration Service, Inc. v. Dep't of Revenue*, BTA Docket No. 43947 (1995) (reimbursements of expenses incurred in administering pension plans were nondeductible where administrator contracted directly with the service providers); *Davis v. Dep't of Revenue*, BTA Docket No. 11-627 (2014) (construction contractor was liable as a principal, not an agent, in procuring labor and materials necessary to fulfill its contractual obligations to home owners, using his own business checking account); *Mike Paul Construction, Inc. v. Dep't of Revenue*, BTA Docket No. 91514 (2019) (construction contractor was liable as a principal, not an agent, for building permit fees, where it applied for the permit as both applicant and contractor, and the construction contract specified that the permit fees were part of the gross contract price).

Here, the stipulated facts show that IST's customer assumed liability for paying the third-party service providers, and that IST had no obligation to pay the advanced charges except on its customer's behalf. These facts compel the conclusion that the reimbursement payments are excluded from IST's gross income under RCW 82.04.080 and Rule 111.

IST's liability as the drawer of the check did not make it "primarily or secondarily" liable.

Following *Wash. Imaging* (see note 24), IST must prove not only the existence of a "true agency relationship," but also that it was "solely" liable as an agent in paying the Advanced Charges. The Department erroneously concluded that this requirement could not be met because IST paid the third parties "with its own checks, indicating it was primarily liable for the payments."

The mere issuance of a check drawn from one's own business checking account does not conclusively prove that the taxpayer was acting "other than as agent for the customer or client" for purposes of Rule 111. A "reimbursement" is by definition the repayment of expenditures the taxpayer made using its own funds to pay a third-party debt obligation.[31] Under Rule 111, the question is whether the taxpayer had an obligation to the third party, separate from its obligation to its customer.

Rule 111 states that "no charge which represents an advance payment on the purchase price of an article or a cost of doing or obtaining business" will be construed as an advance or reimbursement. For example, no exclusion is allowed with respect to amounts received by "a contractor for materials purchased in his own name or in the name of his customer if the manufacturer or contractor is obligated to the vendor for the payment of the purchase price, regardless of whether the customer may also be so obligated."

Unlike in the example, IST did not procure the materials or services provided by the third-party service providers: it merely paid for them on its customer's behalf. The repair shops and storage facilities were engaged by others before IST arrived on the scene. The Department stipulates that IST had "no oral or written contract" with the third-party service providers. The advanced charges were incurred, and the vehicle owner became liable, before IST was

[31] WAC 458-20-111 ("The word 'reimbursement' as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in the payment of costs or fees for the client.").

dispatched. IST was obligated to pay the Advanced Charges only because it promised its customer it would do so.

IST's liability as the drawer of the check used to pay the Advanced Charges did not make it "primarily or secondarily liable" for purposes of Rule 111. The issuance of a check is prima facie evidence of an obligation from the drawer to the payee to pay the face amount of the check. But it does not conclusively establish that the drawer incurred a nondeductible cost of doing business for B&O tax purposes. Here, it is clear that IST issued the check to fulfill its obligation to its customer, not because it had any obligation to the auto repair shops or storage facilities. It is true that the repair shop could have looked to IST for payment if the check bounced, but that does not mean IST had any liability for the underlying obligation the check was meant to satisfy.

Any person who passes a bad check is liable to the drawee, regardless of whether they had an obligation to issue the check. By operation of law, the issuance of a check creates a separate payment obligation from the obligation on an underlying contract.[32] The underlying payment obligation is suspended until the check is either paid or dishonored.[33] In the case of a dishonored check, the check payee can enforce either the underlying debt obligation or the drawer's obligation to pay the check.[34] Rule 111's requirement that the taxpayer has "no personal liability therefor, either primarily or secondarily," for payments to a third-party, refers to circumstances, as in the Rule's examples, where the taxpayer has liability for the underlying obligation. Here, IST had no obligation to pay the third parties other than in an agency capacity.

The Department argues that Customer's discretion to cover bad checks issued by IST shows that IST was primarily liable for the advanced charges. The Department points to the following contractual provision:

> Cover/Set Off-Advanced Charges. In the event Tower passes a non-sufficient funds check in payment for Advanced Charges, IAA may, at its sole and absolute discretion, cover the non-sufficient funds check together with any related surcharges, fees or penalties, and declare the full amount to be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Tower, and further set off the cover amount against any funds Tower is due from IAA.

[32] See RCW 62A.3-414.
[33] RCW 62A.3-310(b).
[34] RCW 62A.3-310(b)(3).

This provision does not create liability between IST and the repair or storage facility. It simply protects its customer's right to be repaid funds it may have reimbursed IST, plus incidental expenses incurred as a result of IST issuance of a bad check. IST's liability for NSF checks is not inconsistent with its status as a payment agent.

DECISION

For the forgoing reasons, and pursuant to WAC 456-09-545, the Board grants IST's Motion for Summary Judgment and reverses Determination No. 21-0100.

ISSUED January 24, 2025.

BOARD OF TAX APPEALS

ROSANN FITZPATRICK, Vice Chair

Right of Reconsideration of a Final Decision

You may file a petition for reconsideration of this Final Decision.[35] The petition must be filed within 14 days of the date the Final Decision is issued.[36] You also must serve a copy of your petition on all other parties.[37]

The petition must clearly state the specific grounds for relief.[38] It may not exceed 3,000 words (approximately 6 pages) and must be typed and double-spaced.[39] No new evidence or arguments may be raised unless the written decision is based on a fact or facts that the parties did not already have an opportunity to address.

Any party may submit a response to the petition within 10 days of the petition being served.[40] The Board will either accept or deny the petition within 30 days.[41]

Note that when an appeal is made to superior court, the appealing party is responsible for ordering and paying for a transcript of the Board's hearing.[42]

[35] WAC 456-09-955.
[36] WAC 456-09-955(2).
[37] WAC 456-09-345.
[38] WAC 456-09-955(2).
[39] WAC 456-09-557(1)(a-b) and (2)(d).
[40] WAC 456-09-955(3).
[41] WAC 456-09-955(4).
[42] WAC 456-09-960.