

Cite as 11 WTD 63 (1990).

INTERPRETATIONS AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D E T E R M I N A T I O</u>
<u>N</u>		
For Correction of Assessment of	)	
	)	No. 90-217
	)	
. . .	)	Notice of Use Tax Due
	)	Unregistered Taxpayer
	)	

[1] RULE 178: RCW 82.12.020 AND RCW 82.04.050(1) -- USE TAX -- TANGIBLE PERSONAL PROPERTY ACQUIRED AT RETAIL -- BENEFITS UNDER FEDERAL EMPLOYEES' COMPENSATION ACT. Taxpayer's use of a specially equipped vehicle furnished by the federal government in partial satisfaction of federal workmens' compensation act claim is subject to use tax. The transfer of the vehicle to a taxpayer for use as a consumer in partial satisfaction of a legal claim constitutes a retail sale.

[2] RULE 178: RCW 82.12.0255 -- USE TAX -- SOVEREIGN IMMUNITY OF THE UNITED STATES -- POWER TO TAX BENEFITS CONFERRED BY FEDERAL GOVERNMENT ON CITIZENS. States have the authority to tax benefits conferred upon individual taxpayers by the federal government, provided the incidence of the tax does not fall upon the United States, its instrumentalities or agents. The assessment of use tax on the use of a vehicle transferred to a taxpayer by the federal government in partial satisfaction of a claim does not abridge federal sovereignty. ACCORD: Washington v. U.S., 460 U.S. 536 (1983); Graves v. New York ex rel, O'Keefe, 306 U.S 466 (1939).

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF CONFERENCE: December 12, 1987

NATURE OF ACTION:

Taxpayer seeks correction of assessment of use tax on the use of a . . . van furnished to him under the Federal Employee's Compensation Act.

FACTS AND ISSUES:

Heller, A.L.J. (successor to Potegal, A.L.J) -- The taxpayer was employed by the federal government as a ship oceanographer until August of 1971 when he was injured in the course of his employment. Since the date of the taxpayer's injury he has undergone two surgeries which resulted in the amputation of his left leg. As a result of the amputation and surgeries, the taxpayer has been left confined to a wheelchair, cannot wear any prosthesis, and has osteoarthritis in his upper extremities.

The taxpayer made a claim for medical benefits under the Federal Employees' Compensation Act ("FECA"). As a part of the benefits available to the taxpayer under FECA, the United States Department of Labor furnished the taxpayer with a specially equipped . . . van. The Department of Labor negotiated the purchase of the van from a . . . [Washington] dealership, was invoiced for the sale and paid the purchase price. The taxpayer, however, was registered as the legal owner. The dealership sought the advice of the Department of Revenue ("Department") on the question of whether it was obligated to collect the retail sales tax from the Department of Labor. Initially, the Department responded that the sale was exempt from the retail sales tax as a sale to the federal government. After the sale occurred, the Department rescinded its earlier advice on the grounds that the Department of Labor was acting on behalf of the taxpayer and therefore, the taxpayer was the real purchaser. Because the sale had already taken place, and the dealership relied in good faith upon the Department's earlier advice, the Department assessed a use tax against the taxpayer in the amount of \$ . . . . The taxpayer now appeals this assessment.

TAXPAYER'S EXCEPTIONS:

The taxpayer makes the following arguments:

1. The federal government was the purchaser of the van because it negotiated the contract of purchase and was legally obligated thereunder to pay the purchase price. According to the taxpayer, the person who is legally obligated to pay the seller is the person liable for retail sales tax. In support of this proposition, the taxpayer cites Murray v. State of Washington, 62 Wn.2d 619 (1963).

2. Since the sovereign immunity granted the federal government under the United States Constitution prohibits Washington state from taxing the sale to the Department of Labor, the subsequent transfer of the van to the taxpayer is also immune to tax.

3. Even if the state has authority to tax the transfer of the van to the taxpayer, his use is not subject to tax because the van was not acquired by him in a retail sale. The taxpayer cites Weyerhaeuser v. Dept. of Revenue, 16 Wn.App. 112 (1976) for the proposition that under the facts of the present case, RCW 82.04.280 requires both use by a consumer and a purchase at retail.

#### DISCUSSION:

For the reasons discussed below, we find it unnecessary to reach a determination whether the taxpayer or the Department of Labor was the purchaser of the van.

RCW 82.12.0255 specifically recognizes the limitations on this state's authority to tax where it is prohibited from doing so under the constitution or laws of the United States. It is a well established principle of federal constitutional law that the states may not tax the federal government, its instrumentalities or agents. See e.g., McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819). However, so long as the legal incidence of the tax does not fall upon the federal government, it is valid regardless of where the economic burden may lie. Washington v. U.S., 460 U.S. 536 (1983). Therefore, the states are free to tax benefits conferred upon their citizens by the federal government without infringing upon federal sovereignty. Graves v. New York ex rel, O'Keefe, 306 U.S. 466 (1939).

Washington law imposes a use tax upon:

[E]very person . . . for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or

acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280, subsections (2) or (7).

RCW 82.12.020. The statute sets forth three criteria. First, there must be a use of tangible personal property within this state. Second, the use must be made as a consumer, and third, the property must have been acquired through one of the statutorily prescribed means. Each of these requirements are separate and must be satisfied before the tax may be properly imposed. Weyerhauser v. Dept. of Revenue, 16 Wn.App 112 (1976). Under the facts of the present case, the taxpayer does not dispute that the van is tangible personal property nor that his use is as a consumer. According to the taxpayer, the van was not acquired through any of the means listed in RCW 82.12.020. We concede that the taxpayer did not acquire the van by lease, gift, repossession, bailment, or manufacture, and that he is not engaged in a business taxable under RCW 82.04.280. The question before us is whether the van was purchased by the taxpayer at retail.

RCW 82.04.050(1) defines a "sale at retail" as follows:

"Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business . . . .

The term "sale" is defined by RCW 82.04.040 as "any transfer of ownership of, title to, or possession of property for a valuable consideration." Consideration for this purpose includes a legally bargained for exchange of anything of value. Ward v. Richards & Rossano, Inc. P.S., 51 Wn. App. 423 (1988).

Here, the taxpayer sustained an injury which entitled him to claim benefits under FECA. When the taxpayer's right to receive benefits was established, the federal government became obligated to furnish these benefits. It is a well established principal of law that the transfer of something of value in full or partial satisfaction of a legally enforceable claim constitutes valuable consideration. Howell v. Benton, 40 Wn.2d 871 (1952). Whether the vehicle was acquired by the federal government or the taxpayer is immaterial to our determination that the taxpayer acquired it in a retail sale. If the vehicle furnished to the taxpayer was acquired by the federal government, it was thereafter transferred to the

taxpayer for use in partial satisfaction of its obligations under FECA. For this reason, we conclude that the taxpayer acquired the vehicle in a retail sale.

The taxpayer's reliance on Murray v. State, 62 Wn.2d 619 (1963), is misplaced. Murray involved the imposition of the retail sales tax on contracting services involved in the building of military housing. The issue was whether the federal government was obligated to pay the sales tax. Use tax is imposed on the taxpayer for the privilege of using tangible personal property acquired in a transaction where the sales tax has not been paid. The fact that the federal government was not liable for the payment of sales tax on the purchase of the vehicle does not relieve the taxpayer of this obligation.

Because the use tax is imposed upon the taxpayer's use of the van in Washington and not upon the federal government or its instrumentalities, we conclude that it does not abridge sovereign immunity. Accordingly, the assessment is affirmed.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 30th day of May, 1990.