

Cite as Det. No. 91-250, 12 WTD 19 (1993).

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment )  
of ) No. 91-250  
)  
)  
) . . . Registration No. . . .  
) . . . /Audit No. . . . )  
)

[1] RULE 102 -- RCW 82.04.050 -- PURCHASE FOR RESALE --  
INVESTMENT -- INTERVENING USE. Cars and boats  
purchased for investment purposes were not acquired for  
resale. There was also evidence of significant  
intervening use.

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.

DATE OF HEARING: . . .

NATURE OF ACTION:

The taxpayer was audited for the period from January 1, 1986  
through September 30, 1989. The auditor assessed use tax or  
deferred sales tax on boat and automobile purchases.

ISSUE:

Pree, A.L.J. -- The taxpayer has two proprietorships that were  
registered as dealerships with the Department of Licensing. Much  
of the controversy surrounding the audit is whether these were in  
fact dealerships.

During the audit period, the taxpayer purchased eight boats and  
seven automobiles. No retail sales tax was paid at the time of  
acquisition, because the taxpayer represented that the boats and  
cars were acquired for resale.

The auditor asserts that the boats and cars were not acquired for resale exempt from retail sales tax but were investments by the taxpayer subject to retail sales tax. Further, the auditor determined that the assets were used by the taxpayer.

#### DISCUSSION:

RCW 82.08.020 imposes retail sales tax on retail sales. RCW 82.04.050 defines "sale at retail" as

every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, . . .

(Emphasis supplied.)

The issue is whether the boats and cars were purchased for resale in the regular course of business without intervening use by the taxpayer. We find that they were not.

There is a distinction between acquiring something for resale and acquiring it for investment.<sup>1</sup> Any investor would resell an asset acquired for investment purposes if offered a high enough price. Therefore, the act of reselling property does not itself establish that the property was acquired for resale. We must look to all the facts and circumstances to determine whether the taxpayer acquired the property for resale in the regular course of business. In addition, we must consider whether or not there was intervening use by the taxpayer.<sup>2</sup>

The taxpayer had a dealer's license with the Department of Licensing; but it was not renewed during the audit period, because the taxpayer did not comply with state regulations pertaining to dealers. It did not have business hours or keep

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<sup>1</sup> See C. Rhyne & Associate v. Department of Rev., BTA Docket No. 81-5 (1982). The Board of Tax Appeals found that South African Krugerrands were acquired for investment rather than resale.

<sup>2</sup> See ETB 418.12.102.178.

business records at its place of business. The taxpayer lacked flooring and did not have the required business signs.<sup>3</sup>

The taxpayer indicated that some of the property was being sold by other dealers. However, he had no records that he was actively in the business of trying to sell his property. He did not advertise. He was not listed in the Yellow Pages as an automobile dealer. He kept no demonstration log or other record of what prospective customers saw the property. He stated that advertising was done by word of mouth or by attending collector car shows. In those respects, he behaved more like an investor than like someone regularly in the business of reselling property.

The taxpayer signed a bond exemption certificate for his vessel dealer's license indicating that he intended to sell 15 or fewer vessels having a retail value of less than \$2,000 each. This exempted him from the bond requirements. Yet the taxpayer paid over \$2,000 for each of the vessels he acquired. Certainly, someone in the business of reselling property would anticipate selling it for more than he or she paid for it.

No accounting books and records were provided to the auditor. Sales documents were not completed. Leases were not followed. Some were unreasonable.<sup>4</sup> The taxpayer did not show the auditor that any business return was filed for federal income tax purposes.

There is evidence in the audit report that the taxpayer acquired the vessels for substantial intervening, personal use. Personal, rather than business insurance was carried on the boats. Many of the vehicles' odometers showed significant use during the audit period while the taxpayer held them.<sup>5</sup> When the auditor was checking the vehicles and asked where some of them were, the bookkeeper responded that they were in "friends' garages." This storage arrangement, coupled with the evidence of use and lack of

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<sup>3</sup> The taxpayer contends that the business facility was being reconstructed.

<sup>4</sup> For instance, a [late-model European luxury car] worth [more than \$175,000] was to be leased for \$50 per month.

<sup>5</sup> A [different late-model European luxury car], purchased with [fewer than 1,200] miles on it, had a repair bill showing [more than 4,000] miles while the taxpayer still owned it. A [late-model American-built utility vehicle] acquired with [fewer than 300] miles had a repair bill showing [more than 4,000] miles.

records, indicates that there was significant intervening use of the vehicles and that they were not acquired for resale.

We find not only that the boats and vehicles were not purchased for resale in the regular course of business, but also that there was significant intervening use. The taxpayer was not entitled to an exemption of retail sales tax. Even if he were, he would be subject to use tax because of his significant intervening use.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 9th day of September, 1991.