Cite as Det. No. 97-228, 17 WTD 170 (1998)

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 99-005R, 19 WTD 223 (2000)

BEFORE THE 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. 97-228
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .

[1] RULE 247 & RULE 159: SALES TAX -- DEDUCTION -- TRADE-IN PROPERTY -- CONSIGNMENT SALES. Where a dealer holds a boat on consignment for sale, sells that boat, and accepts a trade-in boat at the time of the sale for its own account, the sales tax deduction for trade-ins will be disallowed. In order for that deduction to apply, the party selling the boat and the party accepting the trade-in must be the same.

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:

Protest by boat dealer of the disallowance of the sales tax exemption for trade-ins. [1]

FACTS:

Dressel, A.L.J. -- The taxpayer is a boat dealer. Its books and records were examined by the Department of Revenue (Department) for the period May 1, 1993 through December 31, 1995. As a result a tax assessment was issued. The taxpayer appeals a portion of the assessment.

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer is a dealer in used boats. In additional to its "conventional" sales, the taxpayer sells boats on a consignment basis. Among those sales are sales of boats that have been repossessed by banks. On some of those sales, the taxpayer took trade-ins of other boats. In its audit the Department did not allow the taxpayer to deduct the value of the trade-in boats from the measure of the taxpayer's retail sales tax. In explaining its position the Department said that, in order for the trade-in exemption to apply, the sale and the trade-in had to be part of a single transaction. It believed the consignment sales in question entailed two separate transactions, so it denied the exemption. It also believed that the taxpayer was not the true seller of the boats and, for that reason, could not avail itself of the trade-in exemption.

With the Department's contention that these were not single transactions, the taxpayer disagrees. All of the trade-ins in question were accepted by the taxpayer at the time a consigned boat was sold. Additionally, under WAC 458-20-159 (Rule 159) the taxpayer is a seller, so ought to be eligible for the trade-in exemption.

ISSUE:

May trade-in credit be given for retail sales tax purposes when a boat dealer sells a boat that has been consigned to it for sale and when the dealer accepts a trade-in boat from the buyer?

DISCUSSION:

Authority for the sales tax exemption for trade-ins is found at RCW 82.08.010(1), which reads, in part:

> **Definitions.** For the purposes of this chapter:
> (1) "Selling price" means the consideration, whether money, credits, rights, or other property *except trade-in property of like kind,* expressed in the terms of money paid or delivered by a buyer to a seller . . .

(Italics ours.) The retail sales tax, in turn, is keyed to the selling price of tangible personal property. RCW 82.08.020. The Department has implemented the trade-in exemption through WAC 458-20-247 (Rule 247). It reads, in pertinent part:

> . . . the value of "trade-in property" may be excluded from the measure of retail sales tax to be collected and reported by *the seller who accepts the trade-in property* as payment for new or used property sold.
>
> . . .
>
> The terms, "trade-in," "traded- in," and "property traded-in" have their ordinary and common meaning. They mean *property* of like kind to that acquired in a retail sale *which is applied, in whole or in part, toward the selling price.*

(Italics ours.) In the consignment situations before us, the *seller* is the boat owner who turns his or her boat over to the taxpayer so that the taxpayer might locate a buyer and consummate a sale. While the taxpayer may be an agent[2] of the seller, it is not seller *per se* because it doesn't own the boat. The taxpayer can't sell what it doesn't own. It may, however, consummate a sale on behalf of the true owner, which is what happened here.

Turning to the above-quoted excerpt from Rule 247, we observe that the trade-in exemption is available to a seller who accepts trade-in property as payment or partial payment for a like-kind article that the seller is selling. The boat owners, to whom we will refer as "consignors," be they banks or individual persons, again, are the sellers. In the transactions at issue, the consignors are not accepting trade-in boats as payment for the boats they are selling. It is the consignee, or taxpayer, who is accepting the trade-in boats *for its own account*. All the consignors want is cash for the boats that they are selling. Thus, these "sellers" have not accepted trade-in property and applied it "toward the selling price." See Rule 247, *supra*. There is a lack of privity in that the party selling a boat and the party accepting a trade-in are not the same party. The taxpayer's claim of exemption here is akin to a person buying an automobile from a dealer, then going to another dealer and trading his/her old car in for cash, and claiming that the amount of sales tax on the new car ought to be reduced by the cash (s)he received for the old car. In our opinion, not only did the legislature intend the trade-in exemption to be available only in a single transaction, but also it intended that the buyer transact business with a single entity.

As stated earlier, the taxpayer believes that Rule 159 supports its claim that *it* is the seller in the contested transactions. We assume the taxpayer relies on the following paragraph in taking that position. "The mere fact that consignee, bailee or factor makes a sale raises a presumption that such consignee, bailee or factor actually sold in his or its own name. This presumption is controlling unless rebutted by proof satisfactory to the department of revenue." Rule 159. That presumption has been effectively rebutted in this case because, in its Audit, the Department has recognized the sales in question as consignment sales. There is, therefore, no presumption that the consignee taxpayer is the seller for purposes of Rule 159.

Finally, we note that the taxpayer, at the hearing of this matter, submitted several publications that, it says, misled it into believing the contested trade-in deductions were proper. The publications include: an article from the October-December 1986 issue of the Department's *Tax Topics*, what appears to be a copy of a pamphlet from the Department of Licensing (DOL) on "tax, title and registration of boats," an excerpt from a state of Washington publication called *Vehicle Dealer & Manufacturer Manual*, and two dealer/manufacturer licenses from DOL. We have examined them. We find them to be very summary in nature and not, necessarily, misleading. A prudent person would have made a further inquiry of the Department of Licensing and/or Revenue. We have no evidence that was done, nor do we have evidence that the taxpayer relied on these publications to give buyers trade-in tax credit on the disputed transactions.

[2] See Rule 159.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 31st day of October 1997.