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. 99-003
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .

RULE 177; RCW 82.08.0264: RETAIL SALES TAX -- NON-RESIDENT BUYERS -- MOTOR VEHICLE DEALERS. Motor vehicle dealers must adequately complete non-resident certificates and identify the buyer as a non-resident, otherwise the retail sales tax must be collected.

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 motor vehicle dealer alleges that the Department of Revenue erred when it assessed retail sales tax based on incomplete nonresident certificates and inadequate identification documentation.[1]

FACTS

A.L.J. Munger -- The taxpayer is a corporation engaged in the business of selling motor vehicles. The Audit Division of the Department of Revenue (Department) reviewed the taxpayer's books and records for the period January 1, 1991 through June 30, 1995. As a result of that review, the Department issued the above-referenced tax assessment. The taxpayer filed a timely appeal.

The disputed tax is based on automobile sales to persons who allegedly were nonresidents of Washington. The Audit Division found that the taxpayer failed to properly complete nonresident affidavits and that other evidence showed that the buyers were residents or, at least, dual

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

residents. The appeal involves the sale of two motorhomes where the Department assessed the retail sales tax.[2]

ISSUE

Did the taxpayer demonstrate that its sales to persons, who alleged that they were nonresidents of Washington, qualified for exemptions from the retail sales tax?

DISCUSSION

All sales of tangible personal property to consumers in the state of Washington are subject to retail sales tax unless there is a specific exemption. RCW 82.08.020 and 82.04.050. The following quote from Det. No. 93-240, 13 WTD 369 (1993) applies with equal force to this determination:

> We must begin our discussion of this and the following issues by observing that we are considering application for retail sales and use tax exemptions. The state of Washington Supreme Court has laid down the rule that tax exemption statutes must be strictly construed in favor of the application of the tax, Yakima Fruit Growers Association v. Henneford, 187 Wn. 252, 60 P. (2d) 62 (1936); no person should be declared exempt unless it clearly appears that such exemption is required by law, North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P. (2d) 467 (1942); any claim of exemption is to be studied with care before depriving the state of revenue, Alaska Steamship Company v. State, 31 Wn.2d 328, 196 P. (2d) 1001 (1948), and in general tax exemption statutes must be strictly construed in favor of the tax, Miethke v. Pierce County, 173 Wn. 381, 23 P. (2d) 405 (1933); Norwegian Lutheran Church v. Wooster, 176 Wn. 581, 30 P. (2d) 381 (1934); Standard Oil Company v. King County, 180 Wn. 631, 41 P. (2d) 156 (1935), Boeing Aircraft Company v. Reconstruction Finance Corporation, 25 Wn.2nd 652, 171 P. (2d) 838 (1946).

The Washington Supreme Court stated:

> It is the well-settled rule in this jurisdiction that statutes exempting persons or property from taxation are to be strictly construed, and that exemptions are not to be extended by judicial construction to property other than that which is expressly designated by law.
>
> As we observed in a number of those cases, all presumptions are against an intention of the state to bind itself by the exemption of property from taxation, and it devolves upon those claiming the exemptions to show clearly that the property is within the statutes.

[2] The details of the facts of specific transactions are discussed in the Discussion section of this determination.

(Citations omitted. Emphasis added.) Pacific NW Conf. of the Free Methodist Church of N. America v. Barlow, 77 Wn.2d 487, 492, 463 P.2d 626 (1969).

Sales of motor vehicles, trailers, and campers (motor vehicles) to nonresidents are exempt from the retail sales tax

> only when (1) the vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160, or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state. (Emphasis added.)

RCW 82.08.0264. The Department adopted WAC 458-20-177 (Rule 177) to specify how a dealer of motor vehicles can comply with RCW 82.08.0264.[3] If a taxpayer sells a motor vehicle to a nonresident of Washington, Rule 177 requires the taxpayer to obtain an affidavit from the purchaser. The affidavit, if properly completed, identifies the purchaser, and which exemption method under RCW 82.08.0264 applies to the sale. The affidavit also contains a certification for the dealer to complete which shows that the dealer had a reasonable basis to believe the purchaser was a nonresident. The relevant portions of Rule 177 are as follows:

> WAC 458-20-177 SALES OF MOTOR VEHICLES, CAMPERS, AND TRAILERS TO NONRESIDENTS
>
> The scope of this rule is limited to sales by dealers in this state of motor vehicles, campers, and trailers to nonresidents of the state for use outside the state.
>
> For the purposes of this rule, members of the armed services (but not including civilian military employees) who are temporarily stationed in the State of Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction; the term "vehicle" as used herein refers to motor vehicles, campers, and trailers.
>
> . . .
>
> RETAIL SALES TAX
>
> (1) Sales to nonresidents. Under RCW 82.08.0264 the retail sales tax does not apply to sales of vehicles to nonresidents of Washington for use outside this state, even though delivery be made within this state, but only when either one of the following conditions is met:

[3] This taxpayer is familiar with these requirements, having been previously audited in 1995 for these same types of issues.

(a) Said vehicle will be taken from the point of delivery in this state directly to a point outside this state under the authority of a trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160; or

(b) Said vehicle will be registered and licensed immediately (at the time of delivery) under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use outside this state and, second, that the vehicle is to be driven from his premises under the authority of either (a) a trip permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence, with such plates actually affixed to the vehicle at the time of final delivery.

As evidence of the exempt nature of the sales transaction the seller, at the time of sale, is required to take an affidavit from the buyer giving his name, the state of his residence, his address in that state, the name, year and motor or serial number of the vehicle purchased, the date of sale, his declaration that the described vehicle is being purchased for use outside this state and, finally, that the vehicle will be driven from the premises of the dealer under the authority of a trip permit (giving the number) or that the vehicle has been registered and licensed by the state of his residence and will be driven from the premises of the dealer with valid license plates (giving the number) issued by that state affixed thereto. If the vehicle being sold is already licensed with valid Washington plates and the nonresident purchaser wishes to qualify for exemption by transporting the vehicle out of state under authority of a trip permit, the dealer is required to remove the Washington plates prior to delivery of the vehicle and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax. The seller must himself certify by appending a certification to the affidavit, to the fact that the vehicle left his premises under the authority of a trip permit or with valid license plates issued by the state of the buyer's residence affixed thereto. The buyer's affidavit and the dealer's certificate must be in the following form:

AFFIDAVIT

For use by a NONRESIDENT buyer of a vehicle transporting the same outside this state under the authority of

(a) __ Trip permit
(b) __ Nonresident license plates (check appropriate box)

STATE of WASHINGTON }
} ss.
COUNTY of! }

__(Purchaser)__, being first duly sworn on oath, deposes and says:
That he is a bona fide resident of the State of _____ and that his address is __(street and number or rural route)__, __(city, town or post office)__, __(state)__; That on this date he has purchased from __(dealer)__ the following described vehicle, to-wit:

Make _____Model _____
Year _____(Motor Number)
(Serial No.) _____

and that said vehicle is being purchased for use outside this state and that the same will be driven from the premises of the dealer under the authority of (a) a trip permit numbered _____ which has been issued to him authorizing the transit of said vehicle, or, (b) that said vehicle is being purchased for use outside this state and will not be used in the State of Washington for more than three months; and
That the affiant has licensed said vehicle in the state of _____ and has had issued to him by that state license plates numbered _____ which are valid until __(expiration date of license)__ and that said plates have been affixed to said vehicle prior to the time it has left the premises of the dealer.

Dated at _____, Washington, this _____ day of _____, 19__.

_____
(Signature)

_____
Service No. if Member of Armed Services

Subscribed and sworn to before me this _____ day of _____, 19__.

_____
Notary Public in and for the State of Washington, residing at _____

CERTIFICATE OF DEALER

I hereby certify that before final delivery of the vehicle described in the foregoing affidavit (a) I have examined trip permit No. _____ which authorizes transit of the vehicle described, or (b) that license plates numbered _____, issued to said vehicle by the state of _____ and expiring _____, were affixed thereto. I further certify that I have personally examined two or more of the following items of documentary evidence showing the purchaser's residency in the state of _____:

_____ Driver's license

_____ Voter's registration
_____ Fishing or hunting license
_____ Income tax returns
_____ Other (specify) _____

I further certify that if the vehicle sold was already licensed with valid Washington plates, they were physically removed by _____, agent of the seller.

_____
(Signature of dealer
or representative)

_____
(Title-
Officer or Agent)

Failure to take this affidavit and to complete the dealer's certification, in full, at the time of delivery of the vehicle will negate any exemption from the buyer's duty to pay and the dealer's duty to collect the retail sales tax under RCW 82.08.0264. Furthermore, a copy of the completed affidavit and certification must be attached to the dealer's excise tax report submitted for the reporting period in which any such vehicles were sold. Such filing is a procedural requirement and does not conclusively establish the buyer's or seller's right to exemption.

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims. A nonresident permit issued by the department of revenue may be accepted as prima facie evidence of the out of state residence of the buyer, but does not relieve the seller from obtaining the affidavit and completing the certificate required by this rule.

. . .

In all other cases where delivery of the vehicle is made to the buyer in this state, the retail sales tax applies and must be collected at the time of sale. The mere fact that the buyer may be or claims to be a nonresident or that he intends to, and actually does, use the vehicle in some other state are not in themselves sufficient to entitle him to the benefit of this

> exemption. In every instance where the vehicle is licensed or titled in Washington by the purchaser the retail sales tax is applicable.

In Evered Lincoln Mercury, Inc. v. State of Washington, BTA Docket No. 85-183, 7 WTD 205 (1989), the Board of Tax Appeals (BTA) held that, under the specific facts of that case, substantial compliance with Rule 177 was sufficient to qualify for the retail sales tax exemption. Underlying the BTA's decision was the fact that neither party disputed that the purchaser was a nonresident. In light of Pacific NW Conf., supra, RCW 82.32.070, and Rule 177, the taxpayer must document that it reviewed some form of current identification showing that the purchaser was a resident of another state or country at the time of the sale.

The two sales to alleged nonresidents at issue in this appeal have several potential problems. Specifically, there are incomplete Rule 177 affidavits and, possibly, inadequate identification documentation. For the purposes of this discussion, we will refer to the disputed sales by the purchaser's name.

A. [Mr. A]

[Mr. A] purchased a motor home from the taxpayer in July 1993. [Mr. A] signed the affidavit required by Rule 177 on July 28, 1993, indicating that he was an Ohio resident. Although the trip permit information was not filled in, attached to the affidavit was a signed trip permit good for July 31, 1993 through August 2, 1993. On the affidavit, in the Certificate of Dealer section, the taxpayer's representative, by circling pre-printed terms, indicated that it had examined the buyer's driver's license and income tax returns. The attached copies included [Mr. A]'s 1992 Ohio state income tax return dated March 10, 1993. The tax return has a . . . , Washington post office box address and was prepared by [a taxpreparer] in Puyallup. Also attached were four 1992 W-2 forms for [Mr. A] and his wife, all with out-of-state addresses. (Three in Ohio and one in Missouri.) A copy of his then current Ohio driver's license, with an Ohio address, was also attached.

The taxpayer's paperwork associated with the sale of the motor home shows a, . . .Ohio address for the buyer. On appeal we have been provided copies of documents showing that the buyer paid $3,090.63 in Ohio sales tax and that the vehicle was licensed in Ohio.[4] Copies of the taxpayer's checks show that he paid the Ohio title fees on September 9, 1993 and the Ohio sales tax on September 7, 1993. Also provided is a May 5, 1996 statement from [Mr. A] stating that he lived at the . . . Ohio address from March 1990 through March 1995. The Washington post office box he explained, is his daughter-in-law's, and they would forward his mail to his Ohio address.

The audit disallowed the sales tax exemption using the following reasoning:

[4] Had Washington retail sales tax been due, the amount would have been around $4,650.

> The United States Postal service requires that a person give a street address when renting a Post office Box. Absent evidence that the official record from the Post Office indicated an out-of-state address at the time of sale, it is reasonable to infer that he may have had a house, land or other investments in Washington. It is our conclusion, based on the evidence presented and inferences reasonably made, that [Mr. A] is a dual resident. Dual residents are not eligible for exemptions from the retail sales tax.

We note that in this determination we are only examining the taxpayer's duty to collect the retail sales tax in light of RCW 82.08.0264 and Rule 177's requirements. We are not determining whether or not the buyer may actually be a Washington resident, or co-resident, who may owe use tax. If the Department within the statute of limitations, later proves, through additional evidence that the buyer was a Washington resident, it can still collect use tax from him. Currently, however, there is insufficient evidence to conclude that the buyer was either a resident of Washington or a dual resident. The evidence, taken as a whole, shows that the buyer was a non-resident, using a relative's Washington post office box as a convenience. Consequently, the taxpayer was entitled to not collect the retail sales tax with regard to this sale.

B. . . . Church

In March 1995 the taxpayer sold a motor home to the . . . Church, represented by the Reverend [Mr. B]. [Mr. B] signed the Rule 177 affidavit on February 27, 1995, indicating that the church was a Missouri resident. The affidavit lists a Missouri address for the church, but was not filled in where the license plates are discussed. The taxpayer's sales documents also list the same Missouri address. On the affidavit, in the Certificate of Dealer section, the taxpayer's representative, filed in "MO" twice, but did not indicate which forms of identification were examined. The taxpayer attached a copy of a small card that identifies, without a photograph, [Mr. B] of . . . Washington, as an ordained minister of the ". . . Church of . . ., St. Louis MO, USA.". Also attached was a copy of the trade-in vehicle's Missouri registration, signed by a different pastor, with the church's address.

The taxpayer's other paperwork associated with the sale of the motor home shows the St. Louis, Missouri address for the buyer. The date of sale is listed as March 16, 1995, although the Rule 177 affidavit was signed February 27, 1995. On appeal, a copy of the buyer's Application for Missouri Title and License was provided, showing that the motor home was titled and licensed in Missouri around March 23,1995. There is no evidence that a trip permit was ever issued.

The . . . Church, using the same Missouri address provided by [Mr. B], in a written statement dated 2/6/95, indicated that he was authorized to sign for the purchase of a motor home. In another statement dated 11/8/95,[5] the Church says:

[5] This statement was apparently prepared in response to the audit.

> This is to certify that the use of this vehicle is for the purpose of transportation to our different churches in various states to provide assistance to our ministers and the strengthening of their congregations by virtue of being visited by an officer of the church and for other related church business. The vehicle is not used in this manner within the state of Washington for thirty consecutive days or longer at any time.

In regards to this sale the Department's audit report states that:

> . . . Church has been alleged to be a Missouri Corporation. The vehicle in question was delivered to an agent in Washington. The agent is a resident of Washington. The agent is a pastor and uses the vehicle (motor home) to conduct official church business such as traveling and spreading the church's message allegedly both inside and outside the state of Washington.
>
> In order to purchase anything without the payment of sales tax, a nonresident corporation must apply for and be issued a corporate nonresident permit from the Department of Revenue. A record of this permit and dates valid must be kept by the seller (dealer) in lieu of examining a picture I.D. You have not provided evidence of any nonresident permit nor any picture I.D.
>
> Since the Church employs a pastor who is a resident of Washington, and does work in Washington, the . . . Church has the nexus required to be taxed in Washington. Since the Church has nexus, goods delivered to it in Washington are subject to sales tax. WAC 458-20-193.

We agree with the taxpayer in that the tax in this matter is not dependant on a discussion of constitutional nexus. Additionally, the reference to nonresident permits relates to the retail sales tax exemptions found in RCW 82.04.0273.[6] In the present case, the exemption, if allowed, is to be based on the previously cited RCW 82.08.0264 and Rule 177.

The taxpayer concedes that [Mr. B] was a Washington resident. The Rule 177 affidavit certification does not specify the identification reviewed by the taxpayer. The identification, attached to the affidavit, for the church was minimal, consisting only of the title to a trade-in vehicle and the card held by [Mr. B.] Although a Missouri address appears on the old title, there is no specific address or proof of Missouri residency on the church ID card. The church's purchase authorization letter, signed before the sale, is not a good form of identification and does nothing to explain [Mr. B's] church activities in Washington. The second letter,[7] signed nine

[6] This exemption is for out-of-state residents from certain states with no (or less than 3%) retail sales tax. See ETA 316.08.193.

[7] This letter does not qualify as a sworn statement under Washington law. We are uncertain as to whether it would be so considered under Missouri law. RCW 9A.72.085

months after the sale, although it does state that the vehicle is not used in Washington for thirty consecutive days, does not mention [Mr. B] at all.

In Evered Lincoln Mercury, Inc. v. State, 7 WTD 205, 216 , BTA Docket No. 85-183 (1989) the Board stated:

> The Board will consider documents which include the substance of the requirement contained in a rule whether or not the form of the document is identical to the forms published in the rule. We concur with the terms of the rule adopted apparently for administrative convenience. However, it is the fact of compliance that controls the result. The inquiry into the fact of compliance within the intent of the statute is of paramount concern.

In Det. No. 89-408A, 10 WTD 9 (1990) we addressed the issue of the sales tax exemption for out-of-state corporate use as follows:

> We agree that a corporation, unlike a natural person, may have more than one residence. That position is stated in a 1989 Board of Tax Appeals decision, Evered Lincoln Mercury, Inc., v. Department of Revenue, (Docket No. 85-183), as follows:
>
> > As a preliminary matter, the Department has administratively held that a corporation with places of business in one or more other states, is a "nonresident" for purposes of RCW 82.08.0264 and Rule 177. The reason is that a corporation, unlike a natural person, may have more than one residence. A corporation "resides" in any state in which it has a place of business.
>
> . . .
>
> We agree that a purchase of a vehicle by a Washington corporation for out-of-state use by its nonresident salesperson or out-of-state office is entitled to the exemption provided by RCW 82.08.0264, as long as the vehicle leaves the state with a valid one-transit permit or with foreign state license plates attached at the time of delivery. However, any subsequent use of the vehicle in Washington would subject the Washington corporation to use tax on the value of the vehicle at the time of its first use in this state.
>
> At the time of the sales at issue, the taxpayer signed nonresident affidavits stating that the cars were purchased by a bona fide nonresident for use out of state. The taxpayer stated both automobiles were used exclusively out of state and that the vehicles have been traded in for new ones which were purchased out of state. Accordingly, we agree that the sales were exempt from both retail sales and use tax.

We note that, in Evered, it was undisputed that the vehicles were to be used outside Washington. The main issue in dispute was the short delay in the vehicles leaving the state due to some mechanical modifications. Because no trip permit was issued in the present case, the tax

exemption could only be allowed under Rule 177(1)(b), *i.e.*, that the vehicle would not be used more than three months in Washington, would be licensed immediately in Missouri and would not be required to be licensed in Washington. Utilization of this exemption requires that the buyer be an out-of-state resident

In the present case, the problem is two fold. The buyer may be an out-of-state corporation, but may have intended to use the vehicle in Washington long enough to make it subject to sales tax. Additionally, an out-of-state corporation, employing an in-state resident who engages in church activities in Washington, may be considered a Washington resident for tax purposes, given that corporations may have more than one state of residence. Given that the purchase was completed through a Washington resident employee of the corporation, it was incumbent on the seller to verify that the motorhome's usage would not subject the buyer to Washington tax before it decided not to collect retail sales tax.

One of the problems is that the evidence is inadequate to confirm that the corporate buyer's representative in Washington would not be using the vehicle in Washington for more than the three month statutory time period. The Rule 177 affidavit was not fully completed, and the taxpayer did not clarify the information regarding the in-state usage. The buyer's additional statement does not confirm that of [Mr. B.] The buyer's statement only says that the motorhome won't be used in Washington for more than 30 consecutive days. It does not address whether it will be used in Washington for three months, which, by statute does not have to be consecutive days. Rather than confirm [Mr. B's] Rule 177 affidavit, it raises the possibility that the motorhome was to be used long enough in Washington to be taxable.

Additionally, the Washington resident pastor's use of the motorhome in Washington for church business may mean that the church is also a resident of this state. Many churches, by the very nature of their nationwide activities, would be considered residents of more than one state. Again, we do not have the type of factual information that would clearly demonstrate the taxpayer's eligibility to avoid collecting the retail sales tax from this buyer under rule 177.

As we noted earlier, exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-A-Car of Washington-Oregon, Inc. v. Dept. of Revenue, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). The taxpayer, through the sparsely filled out Rule 177 affidavit, the evidence of a Washington resident employee, and the ambiguous statement from the church regarding the motorhome's usage, has not met its burden. Therefore, the Audit Division correctly assessed the retail sales tax on this sale.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part.

Dated this 29th day of January 1999.