

Cite as 2 WTD 163 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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 Assessments of)
) No. 87-23
)
)
. . .) Registration No. . . .
) Tax Assessment No. . . .
) Warrant No. . . .
)
and)
)
)
) Registration No. . . .
. . .) Tax Assessment No. . . .
) Warrant No. . . .

[1] RULE 177 and RCW 82.08.0264: RETAIL SALES TAX -- MOTOR VEHICLE SALES TO NONRESIDENTS -- EXEMPTION -- DOCUMENTATION. To be exempt from the collection of retail sales tax on the sale of a motor vehicle, trailer, or camper to an out-of-state resident where delivery occurs in Washington, a dealer must collect an affidavit(s) at the time of sale to include a trip permit or out-of-state license plate number.

[2] RULE 177 AND RCW 82.08.0264: RETAIL SALES TAX -- MOTOR VEHICLE SALES TO NON-RESIDENTS -- EXEMPTION -- DOCUMENTATION. Where motor vehicles are delivered outside this state, the retail sales tax exemption will be allowed even though the Rule 177 affidavits are acquired after the sale where the affidavits are complete and there is other corroborating evidence of the buyer's out-of-state residence.

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 HEARING: December 18, 1986

NATURE OF ACTION:

Appeal of retail sales tax assessment on vehicles sold to out-of-state residents.

FACTS AND ISSUES:

Dressel, A.L.J.-- . . . (Taxpayer I) and . . . (Taxpayer II) formerly maintained a dealership which sold trucks, trailers and associated equipment. On January 1, 1984 Taxpayer I incorporated to become Taxpayer II. The Department of Revenue conducted an audit examination of the books and records of Taxpayer I for the period January 1, 1982 through December 31, 1983. As a result, Tax Assessment No. . . . was issued for unpaid excise tax and interest totaling \$ The Department audited Taxpayer II for the period January 1, 1984 through December 31, 1984. As a result, Tax Assessment No. . . . was issued for unpaid excise tax and interest totaling \$ Both taxpayers are presently making payments on said assessments pursuant to partial payment agreements entered into with the Department's Compliance section.

During the audit, the taxpayers had occasion to sell many trucks and trailers to buyers alleged to be out-of-state residents for use outside of Washington. Such sales can be exempt of retail sales tax if certain prescribed conditions are met as detailed in RCW 82.08.0264 and WAC 458-20-177 (Rule 177). Generally, those conditions entail obtaining documentation at the time of sale to establish the out-of-state status of both the buyer and the use to which the motor vehicle or trailer will be put. The taxpayers were unaware of the above cited statute and rule until the subject audits were undertaken in early 1986. Since being advised of the requirement for documentation the taxpayers have sent affidavits to all buyers alleged to have been out-of-state residents. The sole question to be resolved here is whether this after-acquired documentation is sufficient to relieve the taxpayers of retail sales tax liability on its sales to nonresidents of Washington.

DISCUSSION:

The referenced statute provides a retail sales tax exemption as follows:

RCW 82.08.0264 Exemptions--Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even though delivery be made within this state, but 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.)

Rule 177 was promulgated by the Department to implement RCW 82.08.0264. Rule 177 reads in part:

Sales of motor vehicles, campers, and trailers to nonresidents. The scope of this rule is limited to sales by dealers in this state or motor vehicles, campers, and trailers to nonresidents of the state for use outside the state.

. . .

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:

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 non-resident 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 for 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 certification 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), bring 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. (b) that license plates numbered _____ 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.

3. RECORDS TO BE RETAINED BY SELLER. The affidavits and certificates referred to in this rule must be retained by the seller in his files as a part of his permanent records subject to audit by the department of revenue. In the absence of such proof, claims that transactions were exempt from tax will be disallowed. (Emphasis added.)

From the highlighted portion of the rule it can readily be seen in order for taxpayers to take advantage of the exemption provided by RCW 82.08.0264, both the buyer and the dealer must complete at the time of sale the referenced affidavits. Here, there were no affidavits completed at the time of sale. The ones obtained after the audit were in the following form:

CERTIFICATE OF OUT-OF-STATE DELIVERY

(To obtain from the purchaser at the time delivery is made to him at a point outside Washington)

The undersigned hereby certifies 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 the _____ day of _____, 19 __, he purchased from (dealer) _____ the following described vehicle to-wit:

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

and that said vehicle was purchased for use outside Washington state;

That under the terms of the sales agreement the dealer was required to, and did on this day, deliver said vehicle to him at _____ (Place of delivery) _____.

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

 (Signature)

 Service No. if Member of Armed Services

CERTIFICATION OF DEALER

I hereby certify that I have this day delivered the vehicle hereinabove described to _____ (Name of purchaser) _____, at _____ (Place of delivery) _____.

Dated _____

(Signature of dealer
or representative)

(Title-
Officer or Agent)

(Emphasis added.)

This is not the form prescribed in the rule for those occasions where the buyer picks up the vehicle or trailer in Washington which is the primary situation with which we are faced in this case. This form, although found elsewhere in Rule 177, is the one to be used where the buyer picks the vehicle up in Washington and drives it directly out of state to the location at which it will be used. The affidavits for these two situations are quite different. The one to be used in the case of in-state delivery requires that more detailed information be supplied including the trip permit number or the nonresident license plate number.

The source of the reason for requiring these numbers is sound in RCW 82.08.0264 which states that the retail sales tax exemption is available on vehicles delivered in state to out-of-state residents only where (1) the vehicle is taken directly out of Washington under the authority of a duly issued trip permit or (2) the vehicle is licensed immediately under the laws of the state of the purchaser's residence. The Department has consistently taken the position that the "immediately" used in the statute means at the time the buyer takes delivery in Washington State. The effect of this is that if the vehicle has not been issued a trip permit it must display valid out-of-state plates at the time it is delivered to the out-of-state buyer at the Washington dealership. This licensed number requirement is reflected in Rule 177 and is obviously a good way to ensure that the vehicle does, in fact, bear out-of-state plates at the time of delivery.

[1] Summarizing, the vehicle must have a trip permit or out-of-state plates when delivered in Washington for the transaction to be exempt of retail sales tax. In the instant case we have no assurance of either. The affidavit or certificate makes reference to a trip permit or to a foreign license plate. The statute effectively requires one or the other. In fact, the availability

of the exemption is conditioned on the existence of one or the other as evidenced by the "but only when" language of RCW 82.04.0264.

Thus, in this case, notwithstanding the presence of other evidence in the taxpayers' files indicting the buyers' out-of-state residency, the claim for retail sales tax exemption is denied. The statutory requirement has not been satisfied nor has the Rule 177 requirement that the affidavits be completed at the time of delivery. Obviously, the latter requirement was imposed to assure that the former is met. The affidavits cannot be completed to include the permit of license number unless a permit or license has actually been issued.

At the hearing in this matter, the taxpayers advised that of its sales to out-of-state residents, approximately 25 percent involved actual delivery by the dealer to a location outside Washington. The other 75 percent involved pick-up of the vehicles by the out-of-state resident at the . . . , [Washington] dealership. Although taken after the fact, the affidavits for those deliveries made outside this state comply with the form contained in Rule 177. Also, there apparently is other evidence in each buyer's file indicating out-of-state residency including invoices bearing an out-of-state address, copies of checks written on out-of-state banks and postal service return receipts from out-of-state locations.

Although the rule states the affidavit must be taken at the time of sale for both in-state and out-of-state deliveries, we think substantial compliance has been achieved here with respect to the out-of-state deliveries. The requirement that the affidavit be executed at the time of sale was undoubtedly written into the rule to minimize the possibility of fraud and/or faulty memories by those who neglected to obtain the required information at the time the deal was consummated. Here, those possibilities have been diminished because the exact form suggested in the rule has been duplicated and completed and because there is other evidence in each purchaser's file to corroborate his or her status as a legitimate out-of-state resident. In addition, the statutory requirements of a one-transit permit or valid foreign plates at the time of in-state delivery are not present in those cases where the buyer takes possession of his new vehicle outside of Washington. While there is a technical deviation from Rule 177 here in that the affidavit was obtained after the sale, there is not the clear statutory violation that existed vis a vis the in-state deliveries.

Therefore, we hereby conditionally grant relief to the taxpayer as to actual, out-of-state deliveries only. The Department's Audit section will examine the "certificates of out-of-state delivery" obtained by the taxpayer for these sales as well as the other information contained in each purchaser's file. Audit is cautioned to be circumspect. As the situation exists presently, the

affidavits obtained for in-state and out-of-state deliveries all look alike which fact significantly deflates their probative impact. Some other documentary basis for distinguishing an out-of-state delivery from in-state must be found in the taxpayer's files in order for relief to be granted. Such documentation must have been taken contemporaneously with the sale and be reliable otherwise. Also, we would be remiss in not pointing out a discrepancy as to the percent of out-of-state deliveries. The taxpayer has said that up to 25 percent of its sales involved such deliveries. There is a statement in the taxpayer's audit file by one of the auditors, however, to the effect that he had been advised that all of the deliveries were in-state. If the latter is true, no relief will be granted.

Finally, we wish to emphasize the discretion given to the Audit section in this case. If, upon re-examination of the pertinent taxpayer records, it is not satisfied that the conditions specified above have been met and that the vehicle(s) in question was actually delivered out of state to an out-of-state resident for out-of-state use, Audit is directed to disallow deductions for those particular transactions. For future tax reporting periods in the event these taxpayers resume their business activities, strict compliance with Rule 177 will be required. No after-acquired documentation be will acceptable.

DECISION AND DISPOSITION

For the reasons expressed above, the taxpayers' petition is denied in large part, but granted conditionally in small part. After re-examination of the taxpayers' books and records, amended assessments will be issued which will be due on the dates stated thereon.

DATED this 27th day of January 1987.