

Cite as Det. No. 12-0380R, 33 WTD 23 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 12-0380R
...	)	
	)	Registration No. . . .
	)	Document Nos. . . . Audit No. . . .
	)	Docket No. . . .
	)	
	)	

RULE 247; RCW 82.08.020; RETAIL SALES TAX – TRADE-IN – LIKE-KIND EXCHANGE. In order to qualify as a like-kind exchange under Rule 247, the nature of the property traded and its function or use must belong in the same general category of property as the property purchased. Where various types of construction equipment were traded in for other types of construction equipment of different nature, function or use, the exchanges did not qualify as a like-kind exchange under Rule 247.

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.

Yonker, A.L.J. – A leasing company requests reconsideration of Determination No. 12-0380, which affirmed the retail sales tax assessed on certain sales Taxpayer made to an affiliate company. Taxpayer argues retail sales tax is not due on those sales because the affiliate company traded in like kind tangible personal property, the value of which reduced the selling price of the items Taxpayer sold, thus reducing the measure of the retail sales tax due. We deny the petition.<sup>1</sup>

ISSUE

Did Determination No. 12-0380 err in finding that Taxpayer was not entitled to deduct from the selling price of certain items the value of tangible personal property traded in by the purchaser because the items traded in were not property of like kind?

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

### FINDINGS OF FACT

We issued Determination No. 12-0380 to Taxpayer on December 26, 2012, remanding the case back to the audit division for adjustment to the tax assessment at issue in accordance with the findings made in that determination. Following the issuance of Determination No. 12-0380, Taxpayer timely petitioned for reconsideration. We accepted the petition for reconsideration. Upon receipt of Taxpayer's petition for reconsideration, the remand for audit adjustments ordered in Determination No. 12-0380 was placed on hold pending the outcome of Taxpayer's petition for reconsideration.

The facts of this case are set forth in Determination No. 12-0380, and we incorporate those facts by reference herein, and are not fully restated here. Taxpayer, a company that leases vehicles and equipment, originally appealed the audit division's assessment of retail sales tax on twenty transactions in which Taxpayer sold to an affiliate construction company various items of tangible personal property and received other tangible personal property in exchange. Taxpayer argued that the items of tangible personal property it sold to its affiliate were all "construction equipment" and that all of the items of tangible personal property Taxpayer's affiliate traded in were also "construction equipment." Therefore, Taxpayer argued, the prices of the items purchased in all twenty transactions were properly reduced by the value of the items traded-in because all of the items in these transactions were of the same generic classification. Thus, Taxpayer asserted, it properly used the reduced price as the selling price for determining the amount of retail sales tax.

In Determination No. 12-0380, we disagreed with Taxpayer's argument, and affirmed the tax assessment as issued by the audit division, except as follows:

1. In Invoice No. 07132009\_2 dated October 26, 2009 (Invoice A), we allowed the price of a wheel loader, which was \$50,000, to be reduced by the value of a . . . reversible plate compactor, which was \$2,358.75, because both items were used as "earth moving equipment."
2. In an unnumbered invoice dated May 21, 2010 (Invoice B), we allowed the price of a . . . dump truck, which was \$27,750, to be reduced by the value of an excavator, which was \$28,000, because both items were used as "earth moving equipment." Because the trade in value of the excavator was more than the value of the dump truck, the selling price of the dump truck became \$0 for retail sales tax purposes.
3. In Invoice No. 20100527, dated May 27, 2010 (Invoice C), we allowed the combined price of a backhoe and compactor attachment, which was \$35,000, to be reduced by the value of a bulldozer with ripper, which was \$75,000, because all of the items with attachments were used as "earth moving equipment." Because the trade in value of the bulldozer with ripper was more than the value of the backhoe and compactor attachment, the selling price of the backhoe and compactor attachment both became \$0 for retail sales tax purposes.

In affirming the audit division's findings regarding the other exchanges, we found the items of tangible personal property at issue in those other transactions did not share common "attributes" and, therefore, did not belong in the same "class of property."<sup>2</sup> [The items of tangible personal property at issue in the other exchanges included excavators, pickup trucks, scissor lifts, light towers, forklifts, and generators. For instance, in one such transaction, three air compressors and two generators were exchanged for a forklift and two excavators. In another such transaction, a backhoe was exchanged for a loader, three excavators, an air compressor, two generators, a double axle fuel trailer, and a box van.]

### ANALYSIS

The measure of the retail sales tax is based on the "selling price." RCW 82.08.020. "Selling price" is defined as follows:

[T]he total amount of consideration, **except separately stated trade-in property of like kind**, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. . . .

RCW 82.08.010(1)(a) (Emphasis added). As such, the value of trade-in property of like kind may be excluded from that which would otherwise be the selling price of an item of tangible personal property. This trade-in exclusion was enacted into the Washington tax law by Initiative Measure No. 464, approved by the voters of Washington on November 6, 1984, and was effective on December 6, 1984.

"Property of like kind" is not defined in statute, but is defined by WAC 458-20-247 (Rule 247), the Department's rule implementing the trade-in exclusion, which states that

The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, and audio/video equipment for audio/video equipment. **These general classifications are determined by the nature of the property and its function or use.** It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of the trade-in exclusion, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper

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<sup>2</sup> Instead of finding that the proper classification for all of the items of tangible personal property at issue was the general classification of "construction equipment," as Taxpayer proposed, we found that based on the attributes of the various property at issue, the items instead belonged to such classifications as "motor vehicles, heavy earth moving equipment, power producing equipment, and other pieces of equipment." As such, we sustained the audit division's disallowance of all instances in which Taxpayer sold an item from one classification, such as heavy earth moving equipment, and had given trade-in value for an item from a different classification, such as a light tower.

attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Likewise a car may not be taken as trade-in on a camper and vice versa.

It is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. The exclusion of the value of property traded in, however, does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, computer hardware for computer software, or farm machinery (including tractors and self-propelled combines) for a car.

Rule 247(5) (Emphasis added). In general, “[t]axation is the rule and exemption is the exception.” *Budget Rent-A-Car v. Dep’t of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972). Thus, a taxpayer has the burden of establishing eligibility for an exemption. *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995). We construe tax exemptions narrowly. *Budget Rent-A-Car*, 81 Wn.2d at 174. “When we interpret exemption provisions, the burden is upon the taxpayer to show the exemption applies and any ambiguity is construed strictly, though fairly and in keeping with the ordinary meaning of their language, against the taxpayer.” Det. No. 04-0147, 23 WTD 369, 375 (2004).

Here, Taxpayer has asserted that all tangible personal property exchanged in the transactions at issue was “construction equipment.” Taxpayer maintains that “construction equipment” is a generic classification within the definition of Rule 247 and more specific classification of the tangible personal property at issue would result in placing such equipment into “specific categories,” which Rule 247 prohibits. While we agree that “construction equipment” is a generic classification, we disagree that a more defined classification of the tangible personal property at issue in this case is prohibited by Rule 247. The items of tangible personal property at issue here include such diverse things as excavators, pick-up trucks, scissor lifts, light towers, forklifts, and generators, to name a few. We find that Taxpayer’s argument that all of these diverse items of tangible personal property should be placed into one single classification of “construction equipment” simply because all of these items can be used on a construction site ignores the clear language of Rule 247, which requires the generic classification to be based on the equipment’s “nature” and its “function or use.” For instance, the nature, function, and use of a light tower are clearly quite different from the nature, function, and use of an excavator, regardless of the fact that both may be found at a construction site. Therefore, a single classification for all of the diverse tangible personal property at issue here is not in keeping with the language or the intent of Rule 247. We conclude that our classification of the various items of tangible personal property at issue in Determination No. 12-0380 properly interpreted the law and applied it to the facts of this case, taking into consideration the nature, function, and use of the various items of tangible personal property.

Taxpayer directs us to our decision in Determination No. 88-322, 6 WTD 305 (1988), as support for Taxpayer's argument that "construction equipment" is the proper classification here. In that decision, the taxpayer purchased an excavator and a dozer, and traded in a tractor and trailer. In determining that the excavator and the dozer were not like kind property when compared with the tractor and trailer, we concluded that the excavator and dozer were "construction equipment" and the tractor and trailer constituted a "road vehicle." Taxpayer points out that because we found "construction equipment" to be an acceptable classification in that decision, the same general classification is also appropriate here. Taxpayer's reliance on that decision, however, is unpersuasive. In that case, there was no need for a more detailed classification because the nature of the excavator and the dozer are similar, as are their function and use, both being used as earth moving equipment. Therefore, our classification in that case was appropriately based on the nature, function, and use of the tangible personal property at issue. Here, however, because the property at issue is of such a broad variety of functions and uses, classifying all property under one classification of "construction equipment" would not comport with Rule 247's requirements.

We find the circumstances of this case are more appropriately compared with our decision in Determination No. 91-044, 10 WTD 395 (1991), where a taxpayer's exchanges of computer software for computer hardware were disallowed. In that case, the taxpayer argued that the trade-in deduction should be allowed because the software and hardware were all part of a larger "computer system." In affirming the disallowance of the trade-in deduction, we stated

The mere fact that Rule 155 refers to software and hardware as a "functional unit" does not make software and hardware property of the same general class. Hardware is generally the mechanical and electronic parts of a computer; software (programs) is generally the instructions that command the hardware. Indeed, Rule 155 defines hardware and software separately. Software and hardware are like a car and gasoline; the hardware is like the car and the gas is like the software. A trade of gas for a car is not a like-kind exchange. Software and hardware do not serve the same purpose and are not of the same general class.

*Id.* The guiding principle in determining the proper classification in Determination No. 91-044 was the nature, use, and function of the software compared with that of the hardware, not that they were components of a larger "functional unit." Similar to the computer system, we find that all items used on a construction site do not, by virtue of that fact alone, "serve the same purpose and are not of the same general class."

We sustain our previous conclusion in Determination No. 12-0380 that the tangible personal property at issue cannot be placed into a single classification of "construction equipment" under Rule 247. We also sustain Determination No. 12-0380's remand to allow for adjustments to the trade-in deductions for Invoices A, B, and C, as described in our findings of fact section above. We find no other instances of like kind exchanges that require additional adjustments beyond those identified in Determination No. 12-0380.

DECISION AND DISPOSITION

We deny Taxpayer's petition for reconsideration of Determination No. 12-0380, and renew the remand order given in that determination to adjust Taxpayer's tax assessment consistent with our findings regarding Invoices A, B, and C, as described in our findings of fact section above. . . .

Dated this 26<sup>th</sup> day of August, 2013.