

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

In the Matter of the Petition	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Letter Ruling by	)	
	)	No. 89-147
	)	
. . .	)	
	)	
	)	Unregistered

**RULE 192:** RETAIL SALES TAX -- EXEMPTION -- SALES TO INDIANS -- DELIVERY BY SELLER REQUIRED. Sales of tangible personal property to Indians by off-reservation persons are subject to the retail sales tax unless the seller makes actual delivery of the property sold to a point within an Indian reservation.

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 ruling is requested as to whether retail sales tax must be paid on a sale of a new automobile to two enrolled members of the . . . Indian Tribe, if the dealer failed to have the automobile delivered to the reservation for transfer of possession.

FACTS AND ISSUE:

Roys, Sr. A.L.J.-- The attorney for [taxpayers] filed a petition on their behalf. The petition states the [taxpayer]s are two enrolled members of the . . . Indian Tribe. They purchased a new automobile from [an automobile dealer]. At the time of the purchase, they inquired as to their eligibility for exemption from sales tax. They stated the salesman told them they were eligible and that he would take

care of things, however, he failed to have the automobile delivered to the reservation for transfer of possession.

The dealer is reluctant to sign an affidavit saying that the automobile was delivered to the reservation, when it was not. The [taxpayer]'s attorney asked that the Department review its procedures to see if anything can be done for the [taxpayer]s. He notes that his clients are, "due to no fault of their own, now apparently ineligible for the exemption."

Determination

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#### DISCUSSION:

WAC 458-20-192 (Rule 192) is the administrative rule dealing with sales to Indians. Rule 192 provides in pertinent part:

Sales of tangible personal property to Indians or Indian tribes by off-reservation persons are subject to the retail sales tax except where the seller makes actual delivery of the property sold to a point within an Indian reservation

The Department has denied retail sales tax exemptions unless the seller made actual delivery of the goods to a point within the Indian reservation and retained proof of the delivery. The Department is required by law to administer the Revenue Act and make rules of procedure for the determination of taxable status. Rule 192 was duly enacted and has the force and effect of law, as it has not been "declared invalid by the judgment of a court of record not appealed from." RCW 82.32.300.

The requirement that delivery be made to the Indian reservation is similar to delivery requirements for exemption for sales to nonresidents by motor vehicle dealers. WAC 458-20-177 requires proof of exemption to be taken at time of delivery. Similarly, sales of goods to residents of other states are not exempt unless the seller complies with WAC 458-20-193A.

Although the result may seem harsh, we do not have authority to bend the rule to provide equitable relief. A sale to an Indian of tangible personal property is subject to retail sales tax if actual delivery is not made within the Indian reservation.

DATED this 20th day of March 1989.

