

BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

EVERED LINCOLN MERCURY, INC., )	
a Washington corporation, )	
)	
Appellant, )	Docket No. 85-183
)	
v. )	Re: Excise Tax Appeal
)	
STATE OF WASHINGTON )	FINAL DECISION
DEPARTMENT OF REVENUE, )	
)	
Respondent. )	
_____ )	

This matter came before the Board of Tax Appeals (Board) for a formal hearing in Olympia on October 4, 1988, to review the determination of the Department of Revenue which denied the taxpayer's claim for a refund of sales taxes. Board members present were Lucille Carlson, Richard A. Virant, and Michiko Fujii. David Akana, Executive Director, presided for the Board. Harry C. Wilson, Attorney, appeared for the appellant. John M. Gray, Assistant Attorney General, appeared for the respondent.

FINDINGS OF FACT

I.

This case involves an appeal of the determination of the Department of Revenue (Department) that the taxpayer owed retail sales taxes on sales of nine motor vehicles from its dealership to an in-state corporation headquartered in Bellevue and having additional offices in Florida, Texas, and Oregon.

II.

Evered Lincoln Mercury, Inc., (taxpayer) is located in Bellevue and is engaged in the business of selling vehicles. In 1984, the taxpayer contracted to sell twelve vans to

National Roof Care Corporation (National), a Washington corporation with out-of-state offices. The intent of both the taxpayer and the buyer was that the vehicles be used outside Washington State. Nine of the twelve sales are at issue in this matter.

### III.

Nine of the twelve vehicles were taken by the taxpayer using its dealer license plates to Royal Manufacturing (Royal), a Washington corporation, wholly located in the state of Washington. The license plates were removed and the vehicles left for the modifications requested by National. After the modifications, the taxpayer arranged transport by truck freight of these as-yet unlicensed vehicles to their respective out-of-state destinations. The consignor in this transport was National. The consignee was a National office located out of state. National licensed the vehicles within sixty days after arrival at their destinations.

The taxpayer conducted the sale of two of the three vehicles not at issue in a similar manner, except that it had arranged for trip permits after the modification. The vehicles were subsequently driven to Oregon where they were licensed. The third vehicle was licensed in Washington. The Department did not assert that additional taxes were due in those instances.

### IV.

An employee of the taxpayer testified that she had telephoned a local Department office for advice relating to compliance with the Department's rule governing the sale of these vehicles to a Washington corporation for use at its offices located out of state. She stated that she was advised that the exemption would apply if the taxpayer obtained affidavits from the purchasers stating that the vehicles were to be used out of state. The taxpayer obtained such affidavits. The employee testified that she had no knowledge that the vehicles were actually first to be delivered to Royal for modification before shipment out of state.

### V.

The Department examined the records of the taxpayer for the period of January 1, 1981, through June 30, 1984. As a result of the audit, the Department imposed a retail sales tax on the nine transactions. It issued a tax assessment on November 29, 1984, for the vehicles in the amount of \$7,673. The taxpayer paid this amount and petitioned for a refund. The Department denied the petition and the taxpayer appealed the matter to this Board.

### VI.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and subject matter of this proceeding.

II.

RCW 82.08.020 imposes a tax on each retail sale in this state.

III.

The taxpayer has claimed an exemption from the sales tax under RCW 82.08.0265. That provision creates an exemption for sales to nonresidents for use outside of this state of tangible personal property which becomes a component part of any personal property "belonging to such nonresident" when the property is shipped or delivered out of state. The vehicles in question did not become a component part of property owned by a nonresident. The exemption of RCW 82.08.0265 does not apply.

IV.

The taxpayer has also claimed exemption from the sales tax under RCW 82.08.0264 which provides an exemption from the tax in certain instances:

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.

Part (1) of RCW 82.08.0264 does not apply to the transactions in question. Part (1) presumably applied to those two transactions where the vehicles were driven from Royal to Oregon under a transit permit.

To claim the exemption, part (2) of RCW 82.08.0264 requires that the vehicle: (1) will be registered and licensed immediately under the laws of the state of the purchaser's residence, (2) will not be used in the state more than three

months, and (3) will not be required to be registered and licensed under the laws of this state.

Exemptions are strictly construed in favor of the tax. *Group Health Cooperative v. Tax Commission*, 72 Wn.2d 422, 429 (1967).

National shipped the vehicles out of state. They were not driven, or otherwise used, in this state. There is no assertion that National was required to register and license the vehicles under the laws of this state. Consequently, the focus is upon the immediate registration and licensing of the vehicle under the laws of the state of the purchaser's residence.

V.

The Department has adopted WAC 458-20-177 (Rule 177) pursuant to authority conferred by RCW 82.01.060 and RCW 82.32.300. The rule provides in pertinent part:

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.

. . .

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 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. . . . 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. . . .

. . . . 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. . . .

. . . . 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.

- (2) Out-of-state deliveries. Out-of-state deliveries to buyers who are bona fide nonresidents are exempt from the retail sales tax when the seller, as a necessary incident to the contract of sale, delivers possession of vehicles to such buyers at points outside Washington and such vehicles are not licensed or titled in this state. . . .

In such cases, as evidence of the exempt nature of the transaction, the seller must take from the buyer a certificate of out-of-state delivery which shall give the purchaser's name and address, the name, model, year and motor number of the vehicle purchased, and contain the buyer's statement that he is a bona fide resident of the named state, that the vehicle was purchased for use outside Washington state and that under the terms of the sales agreement the dealer was required to and did deliver the vehicle to a named point outside the state of Washington. The certificate shall be signed by the buyer at the place of delivery. Attached to this certificate and made a part thereof shall be a certification by the seller that he delivered the vehicle to the purchaser named at the named place of delivery.

. . .  
When such out-of-state delivery is made by a common carrier acting as agent of the seller then, as evidence of the exempt nature of the transaction, the seller shall retain in his files a signed copy of the bill of lading issued by the carrier in which the seller is shown as the consignor and by which the carrier agrees to transport the vehicle to a point outside the state.

Subsection (1)(a) of the rule concerns deliveries within the state to nonresidents for use outside of the state. The vehicle must be driven from the seller's 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. The rule establishes an

affidavit and certificate requirement. There are sanctions for failing to obtain an affidavit and to complete a certificate. The rule discusses the evidentiary effect and burden placed on the seller. The retail sales tax is declared to apply in all other instances.

In this matter, both parties agree that the taxpayer may be considered a "nonresident":

As a preliminary matter, the Department has administratively held that a corporation with places of business in Washington, as well as places of business in one or more other states, is a "non-resident" 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.

Department of Revenue Determination No. 85-108 (May 31, 1985) at 7. Consequently, the parties raise no issue about "nonresi-dency."

#### VI.

The taxpayer concedes that WAC 458-20-177 was not strictly complied with, but contends that (1) the rule was substantially complied with or (2) the Department is estopped from requiring compliance based on representation made to the taxpayer by an employee of the Department.

Concerning the taxpayer's estoppel argument, the Board notes that no written evidence of the alleged conversation exists, and the taxpayer's employee was unable to name the person to whom she spoke. Further, the employee testified that she was not aware that the vehicles in question would be taken to Royal for modification. It follows that the employee could not have related an accurate account of the intended delivery arrangement to the Department's employee. As a result, the taxpayer could not justifiably rely upon the report of its employee. We are persuaded that sufficient grounds to apply estoppel have not been shown.

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#### VII.

The persuasive evidence shows that National, rather than the taxpayer, was the shipper out of the state of Washington. National took delivery within the state of Washington. Therefore, the provisions of subsection (1) of Rule 177 apply in this case. Concerning the provisions of subsection (1) that the vehicles must have been taken from the point of delivery in this state directly to a point outside this state under the authority of a trip permit or driven from the point of delivery with out-of-state license plates, the evidence is that neither of these alternative requirements were complied

with, either strictly or substantially. The vehicles in issue were trans-ported to their out-of-state destinations by truck freight with neither a trip permit nor out-of-state plates.

Based on the taxpayer's failure to comply with the trip permit or out-of-state license requirements of the Department's rule, the Board concludes that the requirements for exemption under that part of Rule 177 were not met.

#### VIII.

With regard to the taxpayer's contention that the Department's rule was substantially complied with, the Board concludes that the affidavit submitted by the taxpayer substantially complied with the requirement of Rule 177 with the exception of that portion requiring a declaration by the seller that the vehicle had been registered and licensed by the state of the purchaser's residence.

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.

#### IX.

The vehicles were licensed under the laws of the state of the purchaser's residence. The out-of-state registration and licensing occurred within a reasonably short period after their shipment from the state of Washington. Rule 177 does not provide for the unique circumstances of this case where the taxpayer took delivery in this state for the purpose of modifying the vehicles before shipment out of state. Under these circumstances, the registration and licensing occurred in a distant state in a manner that met the intent of RCW 82.08.0264. We conclude that the substance of the transactions in issue should govern results in this matter rather than the form demanded by Rule 177. Rule 177, insofar as it may be read, interpreted, or applied differently, should accommodate the intent of the statute to exempt vehicles purchased by nonresidents for use outside this state when they are registered and licensed immediately (connotes an event happening at once) under the laws of the state of the purchaser's residence. We do not believe it was the legisla-ture's intent to penalize National for choosing a Washington firm for vehicle modification. The intended breadth for exemption from the sales tax under RCW 82.08.0264 is not provided by Rule 177 for the circumstances of this case. We therefore conclude that the exemption should have



been granted in this case for the nine vehicles in issue. Accordingly, the request for refund should be granted.

X.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

DECISION

The determination of the Department of Revenue is reversed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

BOARD OF TAX APPEALS

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LUCILLE CARLSON, Chair

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RICHARD A. VIRANT, Vice Chair

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WAC 456-08-540. **Petition for Rehearing.** (1) Any party may after a final decision of the board file a petition for rehearing. A petition for rehearing must be filed within fifteen days of service of notice of final decision in the hearing. The petition for rehearing, and an answer, if called for, must be served on the other parties in the hearing, and three copies filed with the board.

(2) The filing of a petition for rehearing shall suspend the final decision of the board until it is denied by the board or a modified decision is entered by the board.

(3) In response to a petition for rehearing, the board may (a) deny, (b) call for an answer, (c) modify its decision, or (d) permit a rehearing.