

In the Matter of the Petition) D E T E R M I N A T I O N
for Correction of Assessment of)

) No. 89-513
)
) Registration No. . . .
) . . . /Audit No. . . .
)

- [1] RCW 82.08.0264 and Rule 177 -- RETAIL SALES TAX -- SALE TO NON-RESIDENT FOR USE OUTSIDE THE STATE -- MOTOR VEHICLE -- OUTBOARD MOTOR. The retail sales tax exemption available to nonresidents under RCW 82.08.0264 and Rule 177 is strictly limited to the purchase of motor vehicles, trailers, or campers for use outside of this state. Because an outboard motor is not a motor vehicle, trailer, or camper, the exemption under RCW 82.08.0264 and Rule 177 is not applicable.
- [2] RCW 82.08.0266 and Rule 238: RETAIL SALES TAX -- SALE TO NON-RESIDENT FOR USE OUTSIDE THE STATE -- WATERCRAFT -- UNATTACHED OUTBOARD MOTOR. RCW 82.08.0266 and Rule 238 limits the exemption to the seller of the watercraft only, and does not extend to a separate seller of unattached component parts even though these parts are installed in the watercraft prior to its being accepted and paid for by the customer.
- [3] RULE 203: RETAIL SALES TAX -- SEPARATELY INCORPORATED ENTITIES -- AFFILIATES -- EXEMPTION STATUS. Because the taxpayer and its affiliate are separately organized corporations, with separate Federal Identification Numbers, and separate books and records, each must be treated as an independent entity. Therefore in order to be entitled to an exemption, each corporation must satisfy the criteria on its own merits and an exemption

applicable to one corporation under Rule 238 is not necessarily applicable to its affiliate.

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 TELEPHONE CONFERENCE: October 18, 1989

NATURE OF ACTION:

The taxpayer protests the imposition of uncollected retail sales tax assessed in an audit report.

FACTS & ISSUES:

Okimoto, A.L.J. -- . . . (taxpayer) books and records were examined by a Department of Revenue (Department) auditor for the period January 1, 1985 through December 31, 1988. An audit resulted in additional taxes and interest owing in the amount of \$. . . and adjusted Assessment No. . . . was issued in that amount on August 23, 1989. The taxpayer has protested the assessment, and it remains due.

The taxpayer operates a business that sells boat trailers and outboard motors at retail and wholesale in . . . , Washington. Its affiliate, . . . operates a boat manufacturing plant and sells the same at wholesale and retail. The two corporations have the same ownership, and operate out of the same facilities. The taxpayer describes a typical sale as follows:

When a customer comes in and wants a . . . boat they give . . . a \$500.00 deposit on the boat so we may start production of the boat.

...The customer is assigned a hin and the laminating shop begins laying the boat up.

Once the boat cures it then goes to the sand shop to have the windows, hatches, etc., cut out.

The boat then goes into the finishing shop where the windows, hatches, accessories, motor are installed. This is where the boat is hoisted up in the air and set on the trailer. The motor installation is done by one of two people: This process has not

changed for years. These two people also do all the motor testing after the motor is installed on the boat.

The customer is then contacted and comes in to pay and take their boat, motor and trailer package away.

The taxpayer stated at the conference that separate invoices are written up by each corporation the same day that the customer picks up the finished boat, trailer and motor package. . . . bills the customer for the actual watercraft, while the taxpayer (. . .) bills the customer for the trailer and boat motor.

In Schedule III of the audit report, the auditor assessed retail sales tax on taxpayer's sales of . . . outboard motors reported as wholesale but made to nonresident customers. All of these customers were nonresidents of Washington who were in the process of purchasing boats from the taxpayer's affiliated boat manufacturing company, In addition, all boats were sold exempt from retail sales tax by . . . because the exemption requirements of WAC 458-20-238 (Rule 238) had been met. The auditor disallowed the Rule 238 nonresident exemption to the sales of outboard motors by the taxpayer, because the taxpayer was not selling the watercraft, but only an unattached component part.

The taxpayer states in its petition that these sales are exempt for the following reasons:

1. These sales of outboard motors are exempt as sales to nonresidents under RCW 82.08.0264 and WAC 458-20-177 (Rule 177) or;

2. The outboard motor was installed on a . . . boat prior to the time the boat was picked up and paid for by the purchaser. Therefore since the motor was attached to the boat prior to the time of sale, the taxpayer argues that it was no longer an unattached component part, and should be exempt under Rule 238.

3. Finally, the taxpayer argues that it should not be taxed on the sale of outboard motors to nonresidents, because the customer is not buying three separate items, but a combined boat, outboard motor, and trailer package. The taxpayer argues that the fact that the items are acquired from two separate companies should not be determinative. It further argues that because . . . and . . . have the same office, keep their records in the same files, and have the same

ownership, the entities should be treated as one for purposes of Rule 238.

DISCUSSION:

[1] The retail sales tax exemption available to nonresidents under RCW 82.08.0264 is implemented by WAC 458-20-177 (Rule 177). Rule 177 specifically states:

The scope of this rule is limited to sales by dealers in this state of motor vehicles, campers, and trailers to nonresidents on the state for use outside the state. (Emphasis ours.)

Because an outboard motor is not a motor vehicle, trailer, or camper, the exemption under RCW 82.08.0264 and Rule 177 is not applicable.

[2] RCW 82.08.0266 allows an exemption from retail sales tax in respect to sales to nonresidents for use outside this state of watercraft requiring Coast Guard registration, even though delivery is made within this state, but only when (a) the watercraft will not be used within this state for more than forty five days and (b) the seller receives from the buyer a valid exemption certificate. This exemption, however, is limited to the sale of the watercraft only. Rule 238 states in part:

The foregoing exemption is limited to sales of watercraft requiring Coast Guard registration or, where the state in which the boat will be principally used has assumed the registration and numbering function under the Federal Boating Act of 1958, to sales of watercraft which have been registered and numbered by such state of principal use. ... This exemption is applicable only to the sale of watercraft in condition to be waterborne and not to unattached component parts, repair parts, repair labor, etc. (Emphasis ours.)

We believe that RCW 82.08.0266 and Rule 238 specifically limits the exemption to the seller of the watercraft only, and does not extend to a separate seller of unattached component parts even though these parts are installed in the watercraft prior to its being accepted and paid for by the customer.

Although the customer may desire a boat, motor and trailer package, the manner in which the taxpayer has consummated the transaction results in two separate sales. The first sale is

from the taxpayer to the customer of the outboard motor and boat trailer and is evidenced by the separate invoice. The second sale is from the affiliate (. . .) to the customer of the boat itself and is also evidenced by a separate invoice. Although we recognize that if these transactions had been handled only slightly differently there would be no sales tax liability, the Department must deal with what actually transpired, not what might have or should have happened.

[3] Nor do we believe that the Department is allowed to consider the taxpayer and its affiliate as one entity for purposes of the exemption. WAC 458-20-203, (rule 203) states:

Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Because the taxpayer and its affiliate are separately organized corporations, with separate Federal Identification Numbers, and separate books and records, each must be treated as an independent entity. Therefore in order to be entitled to an exemption, each corporation must satisfy the criteria on its own merits.

Finally, in regards to the sale of a . . . 70 hp motor made to . . . on March 12, 1985, the taxpayer has presented documentation that identifies the purchaser as being a bona fide Alaska resident in possession of a valid nonresident permit. Accordingly, this sale shall be deleted.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied in part and granted in part. The taxpayer's file will be referred to the audit section so that adjustments in accordance with this determination can be made.

DATED this 30th day of November 1989.