

Cite as Det. No. 01-176, 21 WTD 209 (2002)

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. 01-176
)	
...)	RETAIL SALES TAX
)	...
)	Docket No. ...

RULE 192: RETAIL SALES TAX – TAX EXEMPTIONS -- INDIANS –
AUTOMOBILE PURCHASES – DELIVERY – OUTSIDE INDIAN COUNTRY.
When an enrolled member of an Indian tribe takes delivery/possession of an
automobile outside of the enrolled member’s Indian tribal lands, the sale is not
exempt from retail sales tax.

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 Washington resident and an enrolled member of an out-of-state Indian tribe petitions for a
refund of retail sales taxes paid on the purchase of a vehicle in Washington.¹

FACTS:

Okimoto, A.L.J. -- ... , (Taxpayer) is a long-time Washington resident and a federally enrolled
member of the [out of state] Tribe of Indians. ...

Taxpayer states that when he first went to ... (Dealership), the salesman told him that, because
he was a federally enrolled member of an Indian Tribe, he was entitled to a retail sales tax break
of \$... to \$ Taxpayer claims that he received similar advice from the Thurston County
Auditor’s office on February 1, 2001.

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

When Taxpayer later returned to the Dealership, it refused to honor its previous advice on his tax-exempt status. The salesman then said that they would have to deliver the vehicle to the [out of state] Tribal lands . . . where he was an enrolled member, in order for the exemption to be valid. Taxpayer found this to be impractical and rejected the [out of state] delivery. Taxpayer then proceeded to purchase the new vehicle and pay \$. . . in retail sales taxes. Taxpayer took delivery of the vehicle at the Dealership in [Washington]. Taxpayer now petitions to the Department of Revenue (Department) for a refund of retail sales taxes that he claims was paid in error.

Taxpayer explained during the teleconference that he is a federally enrolled member of the [out of state] Indian Tribe . . . Taxpayer acknowledges that WAC 458-20-192 (Rule 192) requires the enrolled member to receive the automobile on Indian country to perfect the exemption, but Taxpayer argues that the spirit of the tax exemption is to give enrolled members of Indian Tribes a tax break. Taxpayer contends that he satisfies the spirit of the law and should be given the tax exemption.

In support of his petition, Taxpayer has submitted a copy of his automobile title application, the purchase invoice, a letter from the [out of state] Tribe of Indians confirming that he is an enrolled member of the [out of state] Tribe of Indians, and a card issued by the United States Department of the Interior Bureau of Indian Affairs certifying that Taxpayer is 1/128 degree Indian blood of the . . . Tribe.

ISSUE:

Is an enrolled member of an out-of-state Indian Tribe entitled to a retail sales tax exemption on an automobile purchased and delivered in Washington?

DISCUSSION:

WAC 458-20-192 (Rule 192) is the lawfully promulgated rule covering sales of automobiles to Indians. It provides:

(8) Motor vehicles, trailers, snowmobiles, etc., sold to Indians or Indian tribes. Sales tax is not imposed when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered to an Indian or the tribe in Indian country or if the sale is made in Indian country. Similarly, use tax is not imposed when such an item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

Rule 192(5) clarifies that not all Indians are exempt. It states:

(5) **Enrolled Indians in Indian country. Generally.** The state may not tax Indians or Indian tribes in Indian country. For the purposes of this rule, the term "*Indian*" includes only those persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. An enrolled member's spouse is considered an "Indian" for purposes of this rule if this treatment does not conflict with tribal law. (Italics added.)

Rule 192 clearly limits the "sale to Indians" sales tax exemption to enrolled members of the Tribe that owns the tribal lands where the sale or taxable activity is taking place. In Taxpayer's case the sale, delivery and first use of the automobile by Taxpayer took place in . . . , Washington. This activity triggers the tax. Since the [out of state] Indian Tribal lands of which Taxpayer is an enrolled member are located solely [outside of Washington], Taxpayer did not meet the delivery requirement of the tax exemption. Taxpayer's delivery took place in [Washington] and not on Indian tribal lands owned by the tribe of which he is an enrolled member. Consequently, Taxpayer is not entitled to the tax exemption. Det. No. 97-165, 17 WTD 15 (1997).

DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

Dated this 26th day of November, 2001.