

Cite as Det. No. 03-0294, 23 WTD 166 (2004)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In The Matter of the Petition For Correction	)	<u>D E T E R M I N A T I O N</u>
of Assessment of	)	
	)	No. 03-0294
...	)	
	)	Registration No. ...
	)	TAS ...
	)	Docket No. ...

RCW 82.08.0265 -- RETAIL SALES TAX -- EXEMPTION -- VESSEL --  
REPAIRS MADE IN WASHINGTON -- OUT OF STATE DELIVERY.  
Taxpayer failed to submit sufficient evidence to sustain its argument that its  
vessel had been delivered to an out-of-state port after its repair in Washington.

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.

STATEMENT OF THE CASE:

Bauer, A.L.J -- . . . (Taxpayer) objects to the assessment of use tax on repairs made to its vessel in  
Washington, claiming it was entitled to the retail sales tax exemption of RCW 82.08.0265 because  
the Washington repair facility delivered the vessel to Taxpayer's agent in [foreign country]. We  
uphold the assessment, finding that Taxpayer has not carried its burden of proof that delivery was  
affected outside Washington.<sup>1</sup>

ISSUE:

Was Taxpayer's vessel delivered to its agent in [foreign country] by a Washington repair facility,  
thus entitling Taxpayer to the RCW 82.08.0265 retail sales tax exemption for the repairs made in  
Washington?<sup>2</sup>

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

<sup>2</sup> ...

## FINDINGS OF FACT:

On September 9, 2001, the Compliance Division (Compliance) of the Department of Revenue (Department) issued the above-referenced use tax assessment to . . . (Taxpayer) for use tax on the repair of Taxpayer's . . . (vessel) in 1999 and 2000. The assessment totaled \$ . . . , which included interest to that date.

On October 11, 2001, Taxpayer petitioned the Appeals Division (Appeals) of the Department for correction of the assessment. Taxpayer contended that both [Repair Facility], the . . . , Washington repair facility, and Taxpayer had complied fully with both the letter and the spirit of the RCW 82.08.0265 retail sales tax exemption. Taxpayer argued that [Repair Facility] delivered the vessel to Taxpayer's representative in [foreign country], following the repairs

Taxpayer is not a Washington resident. It brought the vessel from [another foreign country] to . . . , Washington for repairs/refit by [Repair Facility] on . . . , 2000. [Captain], the vessel's regular Captain, was its Master.

Department employees observed and photographed the vessel . . . , [in Washington waters] in . . . 2000, the Department inquired as to whether Taxpayer had paid use tax on the vessel. Taxpayer explained, and Audit later agreed, that [Repair Facility's] employees had taken the vessel [out in Washington waters] without Taxpayer's knowledge or permission.

After repairs<sup>3</sup> were completed, the vessel traveled from [Washington] to [foreign country] on . . . , 2000. There is not agreement on who piloted the vessel for this trip. Taxpayer contends that Mr. [A] of [Repair Facility] piloted the vessel to [foreign country] and only then turned it over to [Captain], the vessel's regular captain and Taxpayer's agent.

## ANALYSIS:

RCW 82.08.0265 provides:

The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of tangible personal property which becomes a component part of any machinery or other article of personal property belonging to such nonresident, in the course of installing, repairing, cleaning, altering, or improving the same and also sales of or charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving, of personal property of or for a nonresident, but this section shall apply only when the seller agrees to, and does, deliver the property to the purchaser at a point outside this state, or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state.

WAC 458-20-173 provides:

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<sup>3</sup> . . . .

REPAIRS FOR OUT-OF-STATE PERSONS. Persons residing outside this state may ship into this state articles of tangible personal property for the purpose of having the same repaired, cleaned or otherwise altered, and thereafter returned to them. The retail sales tax is not applicable to the charge made for labor and/or materials, provided the seller, as a requirement of the agreement, delivers the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. Proof of exempt sales will be the same as that required for sales of tangible personal property in interstate commerce.

The required proof in WAC 458-20-193, Part A is as follows:

In either case for proof of entitlement to exemption the seller is required to retain in his records documentary proof (1) that there was such an agreement and (2) that delivery was in fact made outside the state. Acceptable proof will be:

(a) The contract or agreement AND

(b) If shipped by a for hire carrier, a waybill, bill of lading or other contract of carriage by which the carrier agrees to transport the goods sold, at the risk and expense of the seller, to the buyer at a point outside the state; or

(c) If sent by the seller's own transportation equipment, a tripsheet signed by the person making delivery for the seller and showing the (1) buyer's name and address, (2) time of delivery to the buyer, together with (3) signature of the buyer or his representative acknowledging receipt of the goods at the place designated outside the state of Washington.

(Emphasis added.)

Despite the evidence presented, we find that [Repair Facility] did not deliver the vessel to the taxpayer in [foreign country].

First, we note the statutory requirements for exemption were not met in that the two pieces of documentary proof required were not produced: an agreement requiring delivery in [foreign country] by [Repair Facility], and a trip sheet. No written agreement was produced requiring delivery in [foreign country] by [Repair Facility], nor a trip sheet with the required information. Also submitted with Taxpayer's appeal was the copy of Mr. [A's] airline boarding pass for his trip back to [Washington], and an undated, unwitnessed copy of a "Delivery Receipt" attesting that the vessel had been delivered to [Captain], for Taxpayer, at [foreign country] on . . . 2000. Taxpayer only produced a "Delivery Receipt," which was undated and unwitnessed, even though there was provision on the [Repair Facility] form for these entries. This leads to the strong possibility that it was produced after-the-fact.

Second is the question of credibility. [Captain] submitted a sworn affidavit that he had been released from his normal duties as captain, was merely present on the vessel during the trip from [Washington] to [foreign country], and did not take delivery of the vessel until after it reached

[foreign country].<sup>4</sup> [Mr. A] also submitted a sworn affidavit that he piloted the vessel from the [Repair Facility] facilities in [Washington] to [foreign country],<sup>5</sup> and then flew home to [Washington]. Both gentlemen assert that Mr. [A] had requested that [Captain] call [foreign country] Customs because he was more familiar with this procedure. [Foreign country] Customs documents identify [Captain] as the captain of the vessel on its entry into [foreign country] waters.

Although requested to do so, Taxpayer has provided no insurance documents for 2000 indicating that Mr. [A] of [Repair Facility] was authorized to master the vessel. Taxpayer's own 1999 insurance policy provided that use of the vessel would be limited to seven operators only. [Captain], the regular Captain of the vessel, was listed as one of these people. Mr. [A] was not on the list.

We find the affidavits, and possibly the "Delivery Receipt," by themselves, to be after-the-fact and self-serving. [Foreign country] Customs documented the entry of the vessel, and identified [Captain] as the captain. If the only point of Mr. [A's] presence on the vessel during the trip to [foreign country] was in fact to master the vessel, it would seem likely that [Captain] would have made certain that [foreign country] customs documented that Mr. [A] was the master when making the [foreign country] Customs contact.

We are not persuaded by Taxpayer's evidence. It is simply not credible that Taxpayer would have entrusted the operation of its vessel to anyone other than someone fully credentialed and authorized under the vessel's insurance policy to operate it.

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<sup>4</sup> [Captain's] affidavit of November 19, 2001 provides in pertinent part:

At no time during the trip from [Washington] to [foreign country] on . . . , 2000 did I pilot or have control of the [vessel]. The purpose of my presence on this voyage was so that I would be present to take delivery of the [vessel] from Mr. [A] after arrival in [foreign country]. . . . I did in fact accept delivery of the [vessel] from Mr. [A] on behalf of [Taxpayer], which was the owner of the vessel at that time, on . . . in [foreign country]. . . . I did contact [foreign country] Customs on entering [foreign country] during the above trip. I was asked by Mr. [A] to do so as I was the usual operator of the vessel and was more familiar than he with this procedure. I obtained the requisite Customs approval to enter [foreign country] on this trip.

<sup>5</sup> Mr. [A's] affidavit dated November 19, 2001 provides the following pertinent testimony:

I was an employee of [Repair Facility] . . . and . . . was authorized to represent [Repair Facility] in matters including the delivery of watercraft to customers following repairs. . . . I am trained in the operation of watercraft and am fully competent to operate and pilot a ship such as the [vessel] . . . [Captain], whom I understand was the captain . . . at the time, was present on board . . . during the voyage from [Washington] to [foreign country] on . . . , 2000. However, [Captain] did not pilot or have control of the [vessel] at any time prior to delivery of the vessel to him in [foreign country]. . . . [Captain] took possession of the [vessel] from me on behalf of [Taxpayer] . . . on . . . , 2000. Subsequent to this delivery, I left the vessel and returned to [Washington]. . . . I did not contact [foreign country] Customs on entering [foreign country] during the above trip. Rather, I asked [Captain] to do so as he is the usual operator of the vessel and was more familiar than myself with this procedure. It is my understanding that [Captain] obtained the requisite Customs approval during the voyage.

**DECISION AND DISPOSITION:**

Taxpayer's petition is denied.

DATED this 3rd day of October 2003.