

Cite as Det. No. 03-0045, 23 WTD 238 (2004)

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. 03-0045
)	
...)	Registration No. . . .
)	Petition for Refund
)	Docket Number . . .
)	

- [1] RCW 82.08.020, RCW 82.04.050(1): RETAIL SALES TAX – WHOLESALE SALE – SALE FOR RESALE IN THE REGULAR COURSE OF BUSINESS. A wholesale sale is a sale to a person who presents a resale certificate under RCW 82.04.470 and who purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person. A taxpayer is not entitled to a refund of sales tax where it purchases a boat at retail but then decides to resell the boat. Accord: ETA 482.12.178.
- [2] RULE 108: RETAIL SALES TAX – RETURNED GOODS. In order to qualify as a returned good for which sales tax could be refunded, the seller has to accept the return of the property sold and refund to the taxpayer (buyer) the entire purchase price. Sales tax may not be refunded where the seller does not accept the return of the property but instead brokers the sale of the property to a third party.
- [3] RULE 247; RCW 82.08.010(1): RETAIL SALES TAX – LIKE KIND TRADE-IN EXCLUSION. In order for the like kind trade-in exclusion to apply, the seller must accept ownership of the trade-in property, and must actually reduce the price of the property it is selling to the person trading in the property. The like kind trade in exclusion does not apply where a taxpayer sells property to one person and then buys like kind property from a different person.

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.

Chartoff, A.L.J. – Taxpayer seeks a refund of sales taxes paid on the purchase of a boat, which he later resold. Alternatively, Taxpayer seeks a partial refund of sales taxes paid on the purchase of a boat where he sold a different boat within thirty days of the purchase. Taxpayer argues the sold boat should be treated as a trade-in for purposes of calculating the sales tax. We have no authority for issuing a sales tax refund under these facts. Taxpayer’s petition for refund is denied.¹

ISSUES

- [1] Where a taxpayer buys a boat and immediately resells it, does the taxpayer qualify for a refund of sales tax paid on the purchase of the boat?
- [2] Where a taxpayer buys a boat from a broker and returns the boat to the broker for resale, is the taxpayer entitled to a refund of retail sales tax under a rescission theory?
- [3] Where a taxpayer sells a boat and within one month buys a new boat, may taxpayer treat the sold boat as a trade-in for purposes of calculating the sales tax on the new boat?

FINDINGS OF FACT

Taxpayer is a Washington state resident and is currently retired.

In late July or early August of 2001, Taxpayer sold a boat and trailer (Sold Boat) to . . . [Yacht Sales] for \$

On August . . . , 2001, Taxpayer contracted through . . . [Boat Broker], . . . , to buy a [second boat] for \$ Prior to closing, Taxpayer paid \$. . . for survey and haulout fees, and for minor repairs to determine if the boat was seaworthy. On September . . . , 2001, the sale closed and Taxpayer took delivery of the [second boat]. Taxpayer paid \$. . . of sales tax on the [second boat].

Almost immediately after closing, Taxpayer had regrets about buying the [second boat]. . . . Within two days of closing, Taxpayer returned the [second boat] to [Boat Broker]. [Boat Broker] refused to rescind the sale but agreed to broker the sale of the [second boat] to another buyer.

[Boat Broker] negotiated the sale of the [second boat] for \$. . . to a third party buyer. This sale closed on October . . . , 2001.

ANALYSIS

- [1] The first issue before us is whether Taxpayer was entitled to a refund of the sales tax he paid when he purchased the [second boat], because he resold the boat within a month of first purchasing it.

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

RCW 82.08.020(1) imposes a sales tax on each “retail sale” in this state. The sales tax is intended to apply to successive retail sales of the same property. RCW 82.08.020(3).

RCW 82.04.050(1) defines “retail sale” and provides in pertinent part:

“Retail sale” means every sale of tangible personal property . . . to all persons . . . other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who: Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person

The phrase “in the regular course of business” was defined in an Excise Tax Bulletin issued by the Department of Revenue (Department) on July 31, 1974, and reissued as an Excise Tax Advisory (ETA 482.12.178) on July 1, 1998. In referring to 82.04.050 and the term “in the regular course of business,” ETA 482.12.178 states:

The Department has held that to determine that a sale is for resale, it must be determined that the purchaser is actually and regularly engaged in selling the type of property purchased, is registered with the Department of Revenue and reporting the appropriate taxes, and that at the time of the transaction the purchaser intended the sale to be for resale without intervening use by the purchaser.

The above means, for example, that the sale to a doctor of office furniture is not a sale for resale, even if the doctor subsequently resells the furniture, because the doctor is not regularly engaged in selling office furniture. Therefore, the doctor must pay either sales tax on the purchase of the furniture or use tax on its use, as the above described sale would be a “retail sale.”

In reviewing the facts and applicable laws, it is clear that the purchase of the [second boat] was a retail sale. First, Taxpayer did not present a resale certificate to the seller. Second, the facts do not establish that Taxpayer’s purchase of the [second boat] was for resale in the regular course of business. Taxpayer was not actually and regularly engaged in selling boats. He did not hold himself out as a boat dealer and was not registered with the Department as a boat dealer. Because Taxpayer cannot establish that he bought the boat for resale in the regular course of business, the sale is classified as a retail sale and is subject to retail sales tax.

[2] A buyer may be entitled to a refund of retail sales tax when a buyer returns goods to the seller. WAC 458-20-108(2) defined “returned goods” and provides in part:

When sales are made either upon approval or upon a sale and return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guarantee period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the

purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or repurchase by the vendor.

In order to qualify as a returned good for which sales tax could be refunded, the seller has to accept the return of the property sold and refund to Taxpayer (the buyer) the entire purchase price.^[2] In this case, Taxpayer attempted to return the [second boat], but [Boat Broker] would not accept it as a return. Instead [Boat Broker] agreed to assist Taxpayer in reselling the [second boat] to a third party. Thus, the boat was not returned, so sales tax may not be refunded on this basis.

[3] The final issue before us is whether a boat Taxpayer sold less than thirty days before Taxpayer's purchase of the [second boat] qualifies as a trade-in for purposes of calculating the sales tax on the [second boat].

Retail sales tax is calculated as a percentage of the "selling price" of the retail property sold. RCW 82.08.020(1).

The value of "trade-in property" is excluded from the "selling price." RCW 82.08.010. "Trade-in property" is explained in WAC 458-20-247 which provides, in part:

RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of article used," in pertinent part, to mean the consideration, whether money, credits, rights, or other property **except trade-in property of like kind**, expressed in terms of money paid or delivered by a buyer to a seller. **As a result, the buyer of tangible personal property is entitled to reduce the measure of retail sales or use tax if (a) the buyer delivers the trade-in property to the seller, (b) the trade-in property is delivered as consideration for the purchase, and (c) the property traded in is "property of like kind."**

(Emphasis ours.) Trade-in property will reduce the measure of sales tax if the property is actually delivered from the buyer to the seller as consideration for the purchase. In this case, Taxpayer admits that the Sold Boat was not delivered to the seller as consideration for the [second boat]. Taxpayer sold the Sold Boat to [Yacht Sales], and within 30 days bought the [second boat] from [Boat Broker]. There is no authority for making an exception where trade-in property is not actually delivered to the seller, even where the sale and subsequent purchase are within a short period of time. The Sold Boat does not meet the requirements of a "trade-in" for purposes of reducing the sales tax. Therefore, we cannot grant a partial refund of sales tax on this basis.

Although we sympathize with Taxpayer's situation, we simply do not have the authority to grant a refund of sales tax under these facts.

^[2] This assumes that the other criteria of Rule 108(2) are met.]

DECISION AND DISPOSITION

Taxpayer's petition for refund is denied.

Dated this 28th day of February, 2003