

Cite as Det. No. 16-0341, 39 WTD 122 (2020)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 16-0341
)	
...)	Registration No. ...
)	

[1] RCW 82.12.010(6)(a); WAC 458-20-178: USE TAX – FIRST ACT OF DOMINION OR CONTROL – FINANCED PURCHASE. A business is not liable for use tax on the purchase of a tractor when a private party lender paid retail sales tax at the time of purchase, and the lender never assumed possession of the tractor. The lender included the amount of retail sales tax in the amount that the lender loaned to the business to purchase the tractor, and the business paid the loan in full.

[2] RCW 31.04.015(13); *In re Estate of Miller*, 134 Wn. App. 885, 895 (2006): LOAN – DEFINITION. A loan is an advancement of money or other personal property to a person, under a contract or stipulation, express or implied, whereby the person to whom the advancement is made binds himself to repay it at some future time, together with interest, or for a fee, or such other charge as may be agreed upon for the use of the money or thing advanced.

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.

Poley, T.R.O. – A warehousing goods provider protests use tax assessed by the Department of Revenue on a . . . tractor, claiming retail sales tax was paid when a private party provided the funds to purchase the tractor several years prior. The petition is granted.¹

ISSUE

Under RCW 82.12.020 and WAC 458-20-178, does a company owe use tax on a capital asset when a private party lender paid the purchase price and retail sales tax at the time of sale?

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

FINDINGS OF FACT

. . . Taxpayer is a limited liability company that formed in 2009. Taxpayer sells and installs industrial storage materials such as shelving, pallet racking, conveyor systems, mezzanine platforms and other warehouse accessories.

The Department of Revenue's (Department) Audit division (Audit) examined Taxpayer's books and records for the period January 2012 through September 2015. On March 9, 2016, the Department issued a tax assessment against Taxpayer for \$. . . , which included \$. . . in use tax . . .

Taxpayer timely requested administrative review of the assessment. Specifically, Taxpayer protests \$. . . of use tax assessed on a . . . Tractor on which Taxpayer claims it had previously paid retail sales tax. Taxpayer states that in 2009, it was unable to obtain traditional bank financing as the business had just started operating. Instead, Taxpayer claims it obtained a loan from [Lender] the parents of Taxpayer's sole member.

Taxpayer provided a copy of a written agreement (Agreement), signed by both parties on July 8, 2009, wherein [Lender] agreed to pay for the cost of the Tractor, and Taxpayer agreed to repay [Lender] in small monthly installment payments for five years, after which the full remaining balance would be due. The Agreement also states, "This transaction is considered a loan to [Taxpayer] . . . ," and "The final loan amount on this tractor is negotiated at \$..."

Taxpayer also provided copies of a product quote detailing the Tractor's features, a sales order, credit card receipts, and a payment schedule. These documents show that [in] . . . 2009, [Lender] used their credit cards to pay a local machinery dealer \$. . . for the Tractor, which included retail sales tax. Taxpayer claims it took possession of the Tractor from the dealer and began using the Tractor in business operations. From . . . 2009 through . . . 2014, Taxpayer asserts it made \$100 monthly payments to [Lender]. In . . . 2014, Taxpayer made its final balloon payment of \$15,000 to [Lender]. Taxpayer paid [Lender] a total of \$ Taxpayer states that [Lender] never had possession of the Tractor.

ANALYSIS

Under RCW 82.08.020(1), retail sales tax is levied and collected on each retail sale of tangible personal property in Washington. Retail sales tax must be paid by the buyer to the seller. RCW 82.08.050(1). Under RCW 82.04.050(1)(a), "retail sale" includes "every sale of tangible personal property . . . to all persons irrespective of the nature of their business . . ." A "sale" is "any transfer of the ownership of, title to, or possession of property for a valuable consideration . . ." RCW 82.04.040(1). The term "sale" also includes "any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price." *Id.*

Washington also imposes a use tax "for the privilege of using within this state, as a consumer, any article of tangible personal property acquired by the user in any manner" on which Washington's retail sales tax has not been paid. RCW 82.12.020(1). "Use" or "using" means "the first act within

this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property. . . .” RCW 82.12.010(6)(a). The use tax complements the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property unless an exemption is available. WAC 458-20-178 (Rule 178).

Taxpayer claims that it first took possession and assumed dominion or control over the Tractor on July 8, 2009, at the time [Lender] paid for the Tractor. Taxpayer also claims that [Lender] never had possession of the Tractor.

The term “loan” is not defined in Title 82 RCW, however the Department has defined the term in an administrative rule governing financial institutions. According to WAC 458-20-14601(3)(m), “loan” means “any extension of credit resulting from direct negotiations between the taxpayer and its customer.” Additionally, the Consumer Loan Act defines “loan” as “a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.” RCW 31.04.015(13). The Court of Appeals has also found that a “loan” is “an advancement of money or other personal property to a person, under a contract or stipulation, express or implied, whereby the person to whom the advancement is made binds himself to repay it at some future time, together with such other sum as may be agreed upon for the use of the money or thing advanced.” *In re Estate of Miller*, 134 Wn. App. 885, 895 (2006) (quoting *Hafer v. Spaeth*, 22 Wn.2d 378, 384, 156 P.2d 408, (1945)).

The Agreement, signed by Taxpayer and [Lender], states that [Lender] will use their credit card to buy the Tractor, and Taxpayer will repay [Lender] in monthly installments. We find that the Agreement is credible and rely on it in [making our determination].

The Agreement indicates that [Lender] extended credit in the amount of \$. . . to Taxpayer and Taxpayer agreed to pay \$. . . to [Lender]. This Agreement meets the definition of “loan” under WAC 458-20-14601(3)(m). The Agreement also meets the definition of “loan” under RCW 31.04.015(13) because, after Taxpayer made all negotiated payments, [Lender] received \$. . . more than they lent to Taxpayer, representing “a fee or other charge.” Finally, the Agreement is an express contract where Taxpayer bound itself to repay [Lender] for the advancement of funds used to buy the Tractor. *See Miller*, 134 Wn. App. at 895.

Accordingly, we find that [Lender] loaned Taxpayer \$. . . by paying for the Tractor on Taxpayer’s behalf at the dealership. We also find that Taxpayer’s \$. . . of payments to [Lender] constituted repayment of the loan, not separate or additional purchases.

Taxpayer is liable for use tax on the Tractor at the time it first assumed dominion or control over the Tractor unless it has already paid retail sales tax on the Tractor. RCW 82.12.010(6)(a); RCW 82.12.020(1). Here, Taxpayer claims it took possession of the Tractor from the On the same day, [Lender] paid retail sales tax on the Tractor at the same time [Lender] paid for the Tractor with their credit cards. As retail sales tax was included in the amount that [Lender] loaned Taxpayer to purchase the Tractor, Taxpayer has paid retail sales tax on the Tractor. Therefore, Taxpayer does not owe use tax on the Tractor under RCW 82.12.020(1).

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 24th day of October 2016.