

Cite as 1 WTD 235 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of)	
)	No. 86-265
)	
. . .)	Registration No. . . .
)	Notice of Balance Due
)	
)	

RULE 106 AND RULE 247: RETAILING B & O TAX -- CASUAL OR ISOLATED SALE -- TYPE OF PROPERTY -- PROPERTY OF LIKE KIND -- MOTOR HOME SOLD BY USED CAR DEALER. Sale of a personal motor home independently from the taxpayer's business operation is not taxable. To be taxable, such property must be of the type of property (used cars and trucks) which the taxpayer holds himself out as selling. The sale of the motor home is a casual or isolated sale not subject to business and occupation (B & O) tax. The term "type of property" is distinguished from the term "property of like kind" used in Rule 247, which allows trade-in tax benefit where motor home is traded in for auto. Type of property is more restrictive and specific in scope.

These 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 HEARING: September 16, 1986

NATURE OF ACTION:

Petition for cancellation of assessment of Retailing (B & O) tax on the sale of a motor home.

FACTS AND ISSUES:

Abraham J. Krebs, Administrative Law Judge-- . . . (taxpayer) is engaged in the business of selling used cars. In September 1984,

the taxpayer sold a motor home for \$15,000 and collected retail sales tax from the buyer.

The taxpayer filed a Combined Excise Tax Return for September 1984 which included the state sales tax of \$975 ($15,000 \times .065$ state sales tax rate) on the sale of the motor home for \$15,000. The tax return did not include the Retailing B & O tax of \$70.65 ($15,000 \times .00471$ B & O tax rate) nor the local sales tax of \$75.65 ($15,000 \times .005$ local sales tax rate, Code 2300) on the sale of the motor home.

On May 31, 1985, the Department of Revenue issued a Notice of Balance Due in the amount of \$145.67 (Retailing B & O tax of \$70.65, local sales tax of \$75, and 2 cents arising from improper rounding off of half-cent numbers), which remains unpaid.

The taxpayer protests only the assessment of the Retailing B & O tax of \$70.65. The taxpayer contends that the sale of the motor home was a "casual or isolated sale" which is exempt from the B & O tax.

The taxpayer supplied the following information and explanation. The taxpayer bought the motor home in June 1983 for \$17,000 from a private party. He registered the motor home in his individual name in Washington and paid use tax at that time. He never rented out the motor home but used it personally and kept it at his residence. The taxpayer, as a used car dealer, maintained a used car lot about 25 miles from his residence. The taxpayer is licensed only as an auto dealer by the Department of Licensing. Such license authorizes him to sell automobiles and trucks but not motor homes. The Department of Licensing issues a separate license for motor home dealers. The taxpayer has never had a motor home for sale on his used car lot and has never sold any except the one in question.

In August 1984, the taxpayer advertised in "Shoppers Weekly" that he wanted to sell his motor home. The ad carried his residence telephone number and the buyer responded to the ad. The taxpayer gave a personal bill of sale, not his business invoice. Thus, the taxpayer contends that the sale of the motor home was completely independent from and separate from his used auto dealer business.

The issue in this case is whether the sale of the motor home was subject to Retailing B & O tax or exempt as a "casual or isolated sale."

DISCUSSION:

RCW 82.04.040 In pertinent part defines "casual or isolated sale" to mean

...a sale made by a person who is not engaged in the business of selling the type of property involved.
(Emphasis supplied.)

WAC 458-20-106 (Rule 106), copy attached, implements RCW 82.04.040 and in pertinent part states

A casual or isolated sale is defined by RCW 82.04.040 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

In addition the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him is not a casual or isolated sale, even though he may make but one such retail sale.

BUSINESS AND OCCUPATION TAX

The business and occupation tax does not apply to casual or isolated sales.

RETAIL SALES TAX

The retail sales tax applies to all casual or isolated retail sales made by a person who is engaged in the business activity; that is, a person required to be registered under WAC 458-20-101. Persons not engaged in any business activity, that is, persons not required to be registered under WAC 458-20-101, are not required to collect the retail sales tax upon casual or isolated sales. (Emphasis supplied.)

The taxpayer in his operation of a used car lot holds himself out to the public as making sales at retail. Therefore, he must be deemed to be engaged in the business of selling. Rule 106.

The crucial question is whether the motor home is the type of property which he holds himself out as selling, that is, whether a motor home is the same type of property as automobiles and trucks which the taxpayer is engaged in selling.

The term "type of property" is not defined in RCW 82.04.040 nor in Rule 106. Statutory terms not defined in the statute are given their ordinary meanings as set forth in a dictionary. City of Seattle v. Teresa M. Hill, 40 Wn. App. 159 (1985). The American Heritage Dictionary, New College Edition, has the following first and second meaning for the word "type":

1. A group of persons or things sharing common traits or characteristics that distinguish them as an identifiable group or class; a kind; category.
2. A person or thing having the features of a group or class. (Emphasis supplied.)

Relevant to the usage of the word "type," the same dictionary explains:

Type is generally most appropriate when it refers to a specific, clearly definable category or group, whereas kind and sort are the better choices when the reference is more general. (Emphasis supplied.)

For instance, in WAC 458-20-247 (Rule 247), copy attached, the term "property of like kind" is used in connection with trade-ins, and under that terminology a car can be traded-in as part payment for a motor home because they are treated as "property of like kind." Here the reference is "more general."

We conclude, then, that "type of property" as used in Rule 106 is more restrictive and specific in scope than "property of like kind." In other words, while a motor home can be and is property of like kind as a car, the motor home should not be held to be a type of property which includes a car within the type classification.

Furthermore, not only has the Department of Licensing recognized the separateness between a motor home and an automobile by issuing separate licenses to auto dealers and motor home dealers, but the Department of Revenue has uniformly held in the past that motor homes constitute a separate and distinct classification from passenger cars and automobiles.

We conclude that the taxpayer in the sale of his motor home did not make a sale of the "type of property" which he held himself

out as selling. Accordingly, the sale was a "casual or isolated sale" which is not subject to the B & O tax. Rule 106.

Nevertheless, as Rule 106 explains, the retail sales tax applies to all casual or isolated sales made by a person required to be registered. The taxpayer was required to be, and in fact was, registered. Thus, collection and remittance of the sales tax is required. RCW 82.08.050. The unremitted local sales tax of \$75 is properly due.

DECISION AND DISPOSITION:

The taxpayer's petition with respect to the assessment of Retailing B & O tax in the amount of \$70.65 is sustained. The balance of \$75.02 (\$145.67 less \$70.65) is due for payment by October 31, 1986.

DATED this 10th day of October 1986.