

Cite as 1 WTD 277

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Waiver of Use Tax of)
) No. 86-276
)
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Van . . .) Re: Use Tax on 1984 Ford
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Rule 178, RCW 82.12.045, RCW 82.12.020, RCW 82.04.040: USE TAX -- APPLICATION FOR WAIVER -- AUTOMOBILE ACQUIRED FROM THIEF WHO PURCHASED AUTO WITH STOLEN MONEY -- TRANSFER OF AUTO TO PERSON WHOSE MONEY WAS STOLEN -- PURCHASE AT RETAIL -- CASUAL OR ISOLATED SALE -- VALUABLE CONSIDERATION. Where thief used stolen money to buy an auto out of state and later transferred auto to crime victim, application for waiver of use tax by crime victim denied. Statutory definition of "sale" is satisfied because there was a transfer of possession and ownership for a valuable consideration. Forbearing from criminal prosecution and civil suit held to be a valuable consideration.

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 26, 1986

NATURE OF ACTION:

Petition for waiver of payment of use tax due on the registration of and transfer of title to a motor vehicle pursuant to RCW 82.12.045.

FACTS AND ISSUES:

Abraham J. Krebs, Administrative Law Judge-- . . . (taxpayer) is in possession of a 1984 Ford Van Model E-150, vehicle identification number . . . Pursuant to RCW 82.12.045, the taxpayer seeks a waiver of payment of use tax from the Department of Revenue relevant to the registration of and transfer of title to the motor vehicle in question. The use tax statute in pertinent part provides:

In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances: . . . (3) where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due, . . . (Emphasis supplied.)

The taxpayer furnished the following information and explanation relevant to his acquisition of the 1984 Ford Van. . . . 18 years of age, and four juvenile friends stole a safe from the taxpayer's mother's house at . . . Washington. The safe contained over \$20,000 worth of cash and jewelry belonging to the taxpayer. . . . and his friends took . . . mother's 1977 Chevrolet auto and traveled to . . . , Idaho where . . . purchased the 1984 Ford Van from a dealer for an estimated \$12,000. The taxpayer did not know what became of the 1977 Chevrolet. . . . and his friends continued eastward in the 1984 Ford Van to . . . , Illinois where they were arrested. . . . and his four juvenile friends returned to Seattle. The taxpayer received releases from them on or about May 14, 1986 which authorized the Chief of Police of . . . , Illinois to release their property to the taxpayer. . . . executed a "Release of Ownership Claims" dated May 14, 1986, copy attached, whereby he released all claim of ownership to the 1984 Ford Van and title to the vehicle, and asked that the property be released by the . . . Police Department to the taxpayer. The taxpayer flew to Illinois and picked up the

1984 Ford Van and the remains of the stolen property. The taxpayer drove the 1984 Ford Van to . . . , Washington. The vehicle bore a temporary paper license issued by Idaho and it was glued to the window. As of this date, the vehicle bears the same temporary license. The taxpayer keeps the vehicle in a garage but limitedly used it when he moved to a new residence.

The . . . Police Chief did not release the Idaho Certificate of Title to the taxpayer but sent it to the issuer, Idaho Transportation Department, which in turn forwarded it to the taxpayer on July 18, 1986 after the situation was explained to them. The taxpayer feels that, as a crime victim who has acquired an unwanted vehicle, he should be exempted from the use tax. The taxpayer asserts that the state legislature seeks to aid crime victims, not tax them. The taxpayer further asserts that both common sense and the law supports his position. The taxpayer points to RCW 82.12.020, the applicable statute imposing the use tax, which provides in pertinent part:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280, subsection (2) or (7).

The taxpayer, as stated in its petition, contends:

It seems clear that the tax is applicable only to property that is purchased at retail; or acquired by lease, gift, repossession, or bailment; or extracted, produced or manufactured by the user. It seems equally clear that the van came to . . . via none of these methods, and therefore payment of the use tax should be excused. Therefore, we are requesting, pursuant to RCW 82.12.045, a written statement from your office showing that no use tax is legally due.

DISCUSSION:

A brief summary of the pertinent facts is as follows:

1. . . . stole the taxpayer's money.
2. . . . used the stolen money to buy the 1984 Ford Van in Idaho.
3. . . . released all claim of ownership in the 1984 Ford Van to the taxpayer and thereby aided the taxpayer to secure possession of the vehicle from the Illinois police.
4. The taxpayer obtained the Certificate of Title which had been signed for transfer by the title holder of record because . . . had released any claim to the title.

With reference to the language in RCW 82.12.020, *supra*:

. . . there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property . . .

the taxpayer does not claim that he is outside its scope. Rather, the taxpayer claims that the Ford Van was not acquired by the methods stated in the statute, that is:

. . . purchased at retail, or acquired by lease, gift, repossession, or bailment . . .

We can rule out "lease" for obvious reasons. The taxpayer did not acquire the vehicle by "repossession" because he did not previously possess or own the vehicle. The taxpayer did not acquire the vehicle by "bailment" because he did not receive it to hold it in trust or for some purpose and then deliver it to another or return it when the purpose is accomplished.

Did the taxpayer acquire the vehicle by "gift"? We think not. The requirements for a completed gift are a donative intent and as perfect a delivery of the property as its nature and the circumstances and surroundings will reasonably permit. Oman v. Yates, 70 Wn.2d 181 (1967). The term "gift" is not defined in the Revenue Act. 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 meaning for the word "gift:"

1. Something that is bestowed voluntarily and without compensation; a present.

We can rule out "gift" because there was no donative intent on the part of Anthony. He did not intend to make a voluntary present of the vehicle to the taxpayer. After all, Anthony had purchased the vehicle with the money stolen from the taxpayer.

The question remains then whether the taxpayer "purchased at retail" the vehicle.

The use tax statute, RCW 82.12.020, further provides:

. . . This tax shall apply to the use of every article of tangible personal property, including property acquired at a casual or isolated sale, . . . (Emphasis supplied.)

RCW 82.12.010(5) provides in pertinent part as follows:

(5) The meaning ascribed to words and phrases in chapter 82.04 and 82.08 RCW, insofar as applicable, shall have the full force and effect with respect to taxes imposed under the provisions of this chapter . . .

RCW 02.04.040 defines "sale" and "casual or isolated sale" as follows:

"Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration . . .

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

It is elementary that every sale involves a seller and a purchaser; the seller sells and the purchaser purchases. Anthony clearly transferred "ownership of, title to . . ." the Ford Van to the taxpayer. See "Release of Ownership Claims" dated May 14, 1986, The Release does not state the consideration. Was there a "valuable consideration" lacking?

Attached to this Determination is the taxpayer's attorney's letter dated July 2, 1986 which in pertinent part states:

In sum, . . . and his friends stole money from my client used the money to purchase the van in Anthony was returned to Mr. and the police agreed to refrain from prosecution if the remaining property was returned. signed a release, Mr. picked up the van,

Thus, Mr. is the legal owner of the van and has possession (Emphasis supplied.)

The taxpayer stated that the prosecutor was not interested in prosecuting if the property was returned. The police did not pursue the matter any further after the remaining property was returned to the taxpayer. The taxpayer had considered a civil suit against for recovery of what was stolen but dropped the idea as not cost effective. About six to seven thousand dollars remained unaccounted for out of the over \$20,000 worth of cash and jewelry stolen.

Blacks's Law Dictionary, Third Edition, recites the following concerning "valuable consideration:"

. . . . A thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby It may consist of some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other It is not essential that the person to whom the consideration moves should be benefited, provided the person from whom it moves, is, in a legal sense, injured. The injury may consist of a compromise of a disputed claim or forbearance to exercise a legal right; the alteration in position being regarded as a detriment that forms a consideration independent of the actual value of the right forborne A valuable consideration may be other than the actual payment of money. (Citations omitted.)

In this case, the taxpayer has forborne his right to seek criminal prosecution and bring civil suit against Anthony. In effect, the taxpayer has exchanged his right to recover the stolen money or a portion thereof as offset by the value of the Ford Van. Thus, the taxpayer has given a "valuable consideration." We conclude that all of the statutory

requirements for "sale" (RCW 82.04.040) by Anthony to the taxpayer are satisfied in that there was a "transfer of ownership of, title to, or possession of property for a valuable consideration." The taxpayer may not perceive a sale to have taken place, but the statutory definitions are broad in scope and do encompass what transpired: a transfer of ownership and possession of property for a valuable consideration. RCW 82.04.040.

Furthermore, the use tax statute, RCW 82.12.020, states that the "tax shall apply to the use of every article of tangible personal property." RCW 82.12.010(2) defines "use" to mean

. . . the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state, . . . (emphasis supplied.)

In this case, the taxpayer has used the Ford Van in this state. The use tax chapter 82.12 RCW has numerous exemptions but the taxpayer's situation does not fall within any of them. Unfortunately, there is no use tax exemption for a crime victim and the legislature has expressed no such intent in the use tax statutes.

We must emphasize that our Supreme Court has laid down the rule that tax exemptions must be strictly construed in favor of the application of the tax, Yakima Fruit Growers Association v. Henneford, 187 Wn.2d 52; no person should be declared exempt unless it clearly appears that such exemption is required by the law, North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563; any claim of exemption is to be studied with care before depriving the state of revenue, Alaska Steamship Company v. State, 31 Wn.2d 328; and in general tax exemption statutes must be strictly construed in favor of the tax, Miethke v. Pierce County, 173 Wn.381; Norwegian Lutheran Church v. Wooster, 176 Wn.581; Standard Oil Company v. King County, 181 Wn.631; Boeing Aircraft Company v. Reconstruction Finance Corporation, 25 Wn.2d 652.

WAC 458-20-178 (Rule 178), copy attached, implements the use tax statutes and in pertinent part provides:

WHEN TAX LIABILITY ARISES. Tax liability imposed under the use tax arises at the time the property

purchased . . . is first put to use in this state .
. .

Thus, independent of the registration and titling procedure, use tax liability has attached to the taxpayer.

The "common sense" approach on the question of use tax liability, as urged by the taxpayer, would bring to naught the statutory definitions. Not to be ignored are the legal principles applicable to the granting of exemptions, and the responsibility of the Department of Revenue to administer the Revenue Act in accordance with the law.

For the reasons expressed and the law set forth, the circumstances in this case preclude the exemption from use tax.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. This matter will be referred to the Department's Use Tax Section for assessment of use tax.

DATED this 31st day of October 1986.