

Cite as 1 WTD 37(1986)

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

In the Matter of the Petition of        ) D E T E R M I N A T I O N  
For Tax Ruling of                        )  
  )                       No. 86-220  
  )  
  )       Registration No. . . .  
  )  
  )

RULE 193A - RCW 82.08.0269 - SALES TAX - EXEMPTION - DELIVERY IN WASHINGTON OF PROPERTY FOR USE IN ALASKA. The taxpayer purchased a tractor in Mt. Vernon. He loaded it on his own flat bed trailer and hauled it to Alaska. Held - sales tax applies to the transaction. Delivery took place in Washington and the exemption requirements for Alaska sales were not met.

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: July 2, 1986

NATURE OF ACTION:

In 1981 the taxpayer purchased a tractor from . . . Sales tax was not paid. . . . was audited by the Department of Revenue. Sales tax was assessed on the sale of the tractor. . . . has been attempting to collect the tax from the taxpayer. The taxpayer seeks a ruling that the transaction was not subject to tax.

FACTS AND ISSUES:

Gregory I. Potegal, Administrative Law Judge -- The taxpayer conducts business operations in Alaska and Hawaii. He has a purchasing office in Washington but otherwise does not engage in business in this state. He bought the tractor from a dealer in Mount Vernon. The taxpayer loaded the tractor on his own flat bed trailer in Mount Vernon and hauled it to Alaska via highway. The tractor was not intended to be used in Washington and, according to the taxpayer, was not used here.

The taxpayer believes that this transaction was in interstate commerce. He asserts that under the provisions of WAC 458-20-193A his purchase of the tractor was exempt of sales tax.

#### DISCUSSION:

WAC 458-20-193A is the Department's duly adopted rule concerning sales of goods originating in Washington to persons in other states. By virtue of RCW 82.32.300 it has the same force and effect as the law. It states in part:

#### RETAIL SALES TAX

The retail sales tax is imposed upon all retail sales made within this state. The legal incidence of the tax is upon the buyer and the seller is obligated to collect and remit the tax to the state upon civil and criminal penalties. The retail sales tax applies to all sales to consumers of goods located in the state when delivery is made in Washington, irrespective of the fact that the purchaser may use the property elsewhere.

. . . .

The retail sales tax does not apply when, as a necessary incident to the contract of sales, the seller agrees to, and does, deliver the property to the buyer at a point outside the state, or delivers the same to a for hire carrier consigned to the purchaser outside the state. The facts must disclose that the carrier is the agent of the seller and the seller must retain proof of exemption as outlined above under retailing and wholesaling.

A statutory exemption (RCW 82.08.0269) is allowed in respect to sales for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or his designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstance that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions.

. . . .

Where the buyer is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the buyer when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

The general rule is that sales tax applies to all retail sales made in this state. Under some circumstances, however, sales tax does not apply. For instance, if a seller delivers goods in this state to a carrier acting as its agent and those goods are consigned to an out-of-state purchaser, delivery takes place outside of Washington and sales tax does not apply.

In the taxpayer's case the only circumstance under which sales tax would not apply would be if he qualified for the exemption provided by RCW 82.08.0269.

Under that statute sales tax doesn't apply even if delivery takes place in Washington if certain conditions are met. These are:

1. The property is sold for use in a noncontiguous state or possession such as Alaska.
2. The property is delivered to the usual receiving terminal of the carrier transporting the goods.
3. It is reasonably certain that the goods will be transported directly to the noncontiguous state.
4. If the buyer is also the carrier delivery may be to a warehouse receiving terminal or other facility maintained by the buyer if it is reasonably certain that the goods will be transported directly to their place of ultimate use.

These conditions are not present in this case. While the tractor was sold for use in Alaska it was not delivered to a receiving terminal or other facility of the taxpayer under circumstances where it was reasonably certain that it would be transported directly to Alaska. The taxpayer's flat bed trailer is not a receiving terminal or other facility of that nature. Furthermore, there was no reasonable certainty that the tractor would be taken directly to Alaska. The taxpayer could have easily kept the tractor in Washington for a period of time prior to taking it to Alaska.

The taxpayer's petition must be denied.

The taxpayer expressed some frustration with the fact that over the years he has purchased a large volume of goods which travel from or through Washington to Alaska and has never had to pay tax before. There are several possible explanations for why tax was not paid in the past (and need not be paid in the future) on most of the goods purchased:

1. The taxpayer purchased the property for resale in the regular course of business.

2. The property was merely in transit through Washington.

3. The property was shipped by the seller with delivery taking place in Alaska.

4. The property was delivered under circumstances meeting the requirements of RCW 82.08.0269.

DECISION:

The taxpayer's petition is denied. Sales tax is due on the purchase of the tractor from . . .

DATED this 23rd day of July 1986.