

Cite as Det. No. 00-062, 19 WTD 1003 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 00-062
...)	Registration No. . . .
)	FY. . . /Audit No. . . .

RULE 177; RCW 82.08.0264: RETAIL SALES TAX – AUTOMOTIVE
SALES – OUT-OF-STATE. Car dealers must document both that vehicles were
sold to nonresidents and how the vehicles left the state to qualify for the sales tax
exemption.

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.

NATURE OF ACTION:

Taxpayer requests a cancellation of the retail sales tax assessed on disallowed retail sales tax
exemptions taken on vehicles allegedly sold to nonresidents.¹

FACTS:

Lewis, A.L.J. – Taxpayer operated a new and used vehicle dealership. The Department of
Revenue (“Department”) audited Taxpayer’s books and records for the period April 1, 1994
through December 31, 1997. On December 24, 1998 the Department issued a \$. . . tax
assessment. Most of the assessment resulted from the Department’s Audit Division (“Audit
Division”) denial of retail sales tax exemptions taken on sales of vehicles to alleged non-
residents.² The Department disallowed the exemptions on the following six transactions, having
found either insufficient documentation or conflicting evidence in Taxpayer’s “transaction files.”

[Purchaser 1]: The Audit Division denied the retail sales tax exemption because of an
incomplete “nonresident buyer’s affidavit/certificate of dealer” and facts that could support a

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

² The Audit Division examined all of the nonresident sales deductions taken on sales made in 1997. Of the thirty-
five (35) sales transactions examined six (6) were disallowed. The audit adjustment was based on a projection of the
exceptions found in the 1997 test period (\$. . . exceptions at the . . . location and \$. . . exceptions at the . . . location).

finding that the buyer was a Washington resident. In support of the exemption, the Department's Audit Division found in the buyer's "transaction file" copies of the buyer's Alaska driver's license, Alaska voter's card, and Alaska fishing license, as well as, a trip permit number recorded on the "nonresident buyer's affidavit/certificate of dealer." However, the Audit Division noted that the buyer's credit application listed a [Washington] County home address and telephone number, as well as an employer with an office in [Washington]. Based on the local address, telephone number, and a local employer the Audit Division concluded that the buyer was not a nonresident and denied the exemption. Thus, the exemption was disallowed because of a concern over the buyer's nonresidency status and not because of a concern how the vehicle left Washington.

At the in-person hearing, Taxpayer explained that its research revealed that the [Washington] County home address and telephone number belonged to the buyer's daughter. During the hearing, Taxpayer telephoned the buyer's employer to verify the buyer's employment. The employer verified it had an ongoing presence in Alaska, but had no record of the buyer's employment in 1997, the year of the sale.³ Taxpayer argued that the exemption should be allowed because the requirements of the exemption had been fulfilled and the buyer's local contacts with Washington had been explained as transient.

[Purchaser 2]: The Audit Division denied the retail sales tax exemption because of an incomplete "nonresident buyer's affidavit/certificate of dealer" and insufficient supporting documentation. The Audit Division found that the only identification provided by the buyer was a Utah identification card and a social security card. The transaction file included evidence of two trip permits. Thus, the exemption was disallowed because of a concern over the buyer's nonresidency status and not because of a concern how the vehicle left Washington.

Taxpayer explained that although the vehicle was **sold** to 18 year old [Purchaser 2], the vehicle was actually **paid for** by [Purchaser 2]'s grandfather. Apparently, [Purchaser 2] signed the nonresident affidavit and supplied his Utah identification card and social security card, since he was the buyer and owner of the vehicle. All other information in the file, such as the sales invoice, supports a finding that [Purchaser 2] lived in Utah. The "transaction file" did not indicate that [Purchaser 2] had any ties with Washington, other than his grandfather who paid for the vehicle. Taxpayer maintained that the retail sales tax exemption should not be disallowed because of the lack of one piece of qualifying identification. Rather, Taxpayer asserted that the exemption should be allowed because of substantial compliance with the exemption's requirements.

[Purchaser 3]: The Audit Division denied the retail sales tax exemption because of an incomplete "nonresident buyer's affidavit/certificate of dealer," and there was no evidence in the "transaction file" to show that the vehicle traveled from Washington on either a trip permit or

³ It is unclear whether the employment records that the employer searched were only those of the [Washington] location or included Alaska.

out-of-state license plate. Thus, the exemption was disallowed because of a concern how the vehicle left Washington and not a concern over the buyer's nonresidency status.

In regards to the buyer's nonresidency status, Taxpayer obtained copies of the buyer's Alaska Driver's license, Alaska voter's card, and Alaska phone bill. Based on the facts presented, Taxpayer satisfactory supported the claim of the buyer's Alaska residency.⁴

The nonresidency exemption was denied based on incomplete documentation of the vehicle's travel from Washington. The Taxpayer explained that the vehicle was driven to Seattle and shipped by barge to Alaska. Taxpayer provided a copy of the Barge Company's Bill of Lading showing the vehicle was received in Seattle for shipment by barge to . . . , Alaska. The concern is not that the vehicle was shipped to Alaska, but rather how the vehicle moved to Seattle for shipment. The "transaction file" did not contain copies of either a trip permit or out-of-state plate. However, there was a notation on a piece of paper detailing the cost of three (3) trip permits. Although, there is no indication that the trip permits were ever purchased it does raise the question as to why three trip permits would be needed to move the vehicle from [Washington] county to Seattle. In addition, the buyer's father-in-law signed the bill of lading almost three weeks after the sale.⁵ The possibility exists that the used vehicle was driven to Seattle not on a trip permit, but rather on plates that were left on the vehicle.

[Purchaser 4]: The Audit Division denied the retail sales tax exemption because of an incomplete "nonresident buyer's affidavit/certificate of dealer" and insufficient supporting documentation to support either a nonresident exemption or military personnel exemption. The "transaction file" contained a copy of the buyer's Oregon driver's license and military identification card. The "transaction file" also contained a copy of the trip permit. Thus, the exemption was disallowed because of concerns over the buyer's nonresidency status and of how the vehicle left Washington.

The Audit Division's review of the buyer's "transaction file" revealed that the buyer was employed by the US Navy, listed a local address, and that the insurance application noted that the vehicle would be garaged at a local address.⁶

Taxpayer countered by explaining that immediately after the vehicle's purchase the husband went to sea on the USS . . . and his wife drove the vehicle to the couple's home of record, Oregon, where she remained. Dates on documents in the "transaction file" support Taxpayer's contention.⁷ Taxpayer maintained that the buyer need not qualify as a military personnel

⁴ In addition, there was no evidence to show anything but a transitory contact with Washington.

⁵ The vehicle was sold on September 13, 1997. The vehicle was consigned to the barge company on October 2, 1997.

⁶ On the Military Purchaser's statement the buyer listed his temporary address as the USS . . . , which was based in Washington at the time of the sale.

⁷ The sales invoice is dated August 31, 1997. The trip permit was completed with travel dates of August 31 to September 2, 1997.

exemption because the buyer's home of record was Oregon and the vehicle was immediately removed to Oregon and both husband and wife had left Washington.

[Purchaser 5]: The Audit Division denied the retail sales tax exemption because of an incomplete "nonresident buyer's affidavit/certificate of dealer" and facts that could support a finding that the buyer was a Washington resident. The buyer's "transaction file" contained a copy of the buyer's Montana driver's license, a copy of a Montana Application for Certificate of Title for a motor vehicle (dated July 22, 1997 three days after the date of the sales invoice), and two trip permits.⁸ However, the Audit Division also found that the buyer's "Transaction file" also contained a credit application, which listed a local telephone number and local address.⁹ Thus, the exemption was disallowed because of a concern over the buyer's nonresidency status and not because of a concern how the vehicle left Washington.¹⁰

Taxpayer maintained that the exemption should be allowed because the buyer satisfied the requirements of the exemption: 1) he drove the vehicle from Washington on a trip permit and 2) he provided documentation to support his claim of Montana residency.¹¹

[Purchaser 6]: The Audit Division denied the retail sales tax exemption because of an incomplete "nonresident buyer's affidavit/certificate of dealer" and facts that could support a finding that the buyer was a Washington resident. The buyer's "transaction file" contained a copy of the buyer's Alaska Drivers License and Alaska voter's card. The Audit Division also discovered in the "transaction file" a Washington Motor Vehicle Liability Insurance Identification Card that listed a Washington address for the buyer.¹² Following the audit, the buyer was contacted and provided information that in April 1998 the Bank which financed the vehicle loan, required the buyer to pay use tax on the vehicle.¹³ Taxpayer has provided copies of checks showing the bank's payment of tax to the state. Taxpayer maintained that if the tax is sustained on the vehicle's sale that credit should be allowed for the use tax paid to the state in April 1998.

ISSUE:

Does Taxpayer's documentation of vehicle sales to alleged nonresidents support the retail sales tax exemption it seeks?

⁸ The application showed the buyer's same address listed in the telephone book.

⁹ Further investigation revealed that the buyer's same name and telephone number was listed in the local telephone directory through July 1999.

¹⁰ The Audit Division did not dispute that the buyer may be a resident of Montana.

¹¹ Having provided Insurance documents and a Montana driver's license listing a Montana address.

¹² The local telephone directory showed a listing for the buyer good through July 1999.

¹³ The vehicle was sold March 1997.

DISCUSSION:

Taxpayer protested the disallowance of the nonresident retail sales tax exemption taken on six (6) sales transactions. RCW 82.08.0264 provides a retail sales tax exemption on sales of locally delivered motor vehicles to nonresidents under very explicit terms. RCW 82.08.0264 provides:

The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160, or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, the retail sales tax exemption provided by RCW 82.08.0264 requires that: (1) the purchaser be a nonresident of Washington and the vehicle acquired be for use outside Washington; and (2) the vehicle is driven from the dealership under the authority of either a trip permit or a valid license plate issued by the state of the purchaser's residence.

The provisions of RCW 82.08.0264 are implemented by WAC 458-20-177 (Rule 177). Rule 177 not only specifies the circumstances under which the seller may deliver the vehicle in this state to the nonresident purchaser without collecting and reporting sales tax, but also dictates the kinds of records that must be retained by the seller in order to perfect its entitlement to the exemption from the sales tax obligation.

The purpose of Rule 177 is to implement the exemption provided by RCW 82.08.0264 and ensure that persons don't purchase vehicles for use in Washington without paying the appropriate consumer tax. Because the statute and rule provide for and administer a tax exemption, under the rules of statutory construction, they must be strictly construed against the exemption and in favor of taxability. The burden of proving its entitlement to exemption falls upon the person claiming exemption. See Yakima Fruit Growers Assoc. v. Henneford, 187 Wash 252, 60 P.2d 62 (1936).

Rule 177 provides:

(1) Sales to nonresidents. Under RCW 82.08.0264 the retail sales tax does not apply to sales of vehicles to nonresidents of Washington for use outside this state, even though delivery be made within this state, but only when either one of the following conditions is met:

(a) Said vehicle will be taken from the point of delivery in this state directly to a point outside this state under the authority of a trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160; or

(b) Said vehicle will be registered and licensed immediately (at the time of delivery) under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use outside this state and, second, that the vehicle is to be driven from his premises under the authority of either (a) a trip permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence, with such plates actually affixed to the vehicle at the time of final delivery.

As the foregoing provisions illustrate, the requirements of the exemption require not merely that the sale was to a nonresident for use outside the state, but also that certain technical requirements of delivery were satisfied.

To assist taxpayers in complying with these requirements, the Department has included within Rule 177 suggested forms of affidavits and certificates, which may be used to document the sales tax exemption. The forms when properly and completely filled out, constitute presumptive compliance with RCW 82.08.0264. In the absence of such proof, however, claims that transactions are exempt from tax will be disallowed unless the seller can, by other clear and convincing evidence, establish the exempt nature of the transaction.

As evidence of the exempt nature of the sales transaction the seller, at the time of sale, is required to take an affidavit from the buyer giving his name, the state of his residence, his address in that state, the name, year and motor or serial number of the vehicle purchased, the date of sale, his declaration that the described vehicle is being purchased for use outside this state and, finally, that the vehicle will be driven from the premises of the dealer under the authority of a trip permit (giving the number) or that the vehicle has been registered and licensed by the state of his residence and will be driven from the premises of the dealer with valid license plates (giving the number) issued by that state affixed thereto. If the vehicle being sold is already licensed with valid Washington plates and the nonresident purchaser wishes to qualify for exemption by transporting the vehicle out of state under authority of a trip permit, the dealer is required to remove the Washington plates prior to delivery of the vehicle and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax. The seller must himself certify by appending a certification to the affidavit, to the fact that the vehicle left his premises under the authority of a trip permit or with valid license plates issued by the state of the buyer's residence affixed thereto. The buyer's affidavit and the dealer's certificate must be in the following form:

. . .

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresident of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims.

Looking at the facts in light of the applicable law, we make the following rulings:

[Purchaser 1]: The Audit Division's denied the retail sales tax exemption based on information contained in a credit application indicating that the buyer may have been a Washington resident. Taxpayer explained that the Washington address and telephone number belonged to the buyer's daughter. In addition, Taxpayer has explained that the buyer worked in Alaska for a [Washington] based company. Taxpayer has provided evidence of the buyer's Alaska residency and movement of the vehicle from Washington on a trip permit. In addition, Taxpayer has satisfactorily explained the buyer's Washington connection. Accordingly, we grant Taxpayer's petition for correction of the assessment as it relates to this transaction.

[Purchaser 2]: The Audit Division denied the retail sales tax exemption because Taxpayer had failed to acquire two pieces of identification from the buyer. There was however, nothing contained in the "transaction file" to indicate that the buyer was a resident of Washington or that the vehicle did not leave Washington. Based on the evidence presented and the uniqueness of the transaction we find that [Purchaser 2] was a nonresident of Washington and that the vehicle was taken to Utah. Accordingly, we grant Taxpayer's petition for correction of the assessment as it relates to this transaction.

[Purchaser 3]: The Audit Division denied the retail sales tax exemption because the "transaction file" failed to contain evidence of either a trip permit or out-of-state plate. Taxpayer has provided a copy of a bill of lading showing that the vehicle was shipped from Seattle to Alaska. In addition, the purchase order shows a \$37.50 charge for three (3) trip permits. From the facts, this appears to be a case where the buyer or a family member of the buyer took possession of the vehicle and arranged for its delivery to the shipping point. The vehicle would have needed trip permits to travel from [Washington] County to the barge line in Seattle and from the barge to Taxpayer's home. Based on the facts presented, we find that the buyer was a nonresident and that the vehicle was taken from

Washington by a combination of trip permit and barge transportation. Accordingly, we grant Taxpayer's petition for correction of the assessment as it relates to this transaction.

[Purchaser 4]. The Audit Division denied the retail sales tax exemption finding that the information contained in the buyer's "transaction file" neither supported an exemption based on status as a non resident or as a member of the military. The nonresident exemption was denied because the buyer did not provide two pieces of identification to document residency in another state. In addition, there was information in the buyer's "transaction file" that indicated that the buyer was a member of the military stationed in Washington.

In regards to military personnel, Rule 177 provides:

For the purposes of this rule, members of the armed services (but not including civilian military employees) who are temporarily stationed in the State of Washington pursuant to military orders will be presumed to be nonresidents unless such persons were residents of this state at the time of their induction; the term "vehicle" as used herein refers to motor vehicles, campers, and trailers.

In addition, under Rule 177 the buyer's affidavit and dealer's certificate form provide for the service number of the military buyer.

In this case, we have an undisputed member of the military purchasing a vehicle immediately before he departs for sea duty. It is not unreasonable to anticipate that the vehicle was purchased in anticipation of the wife's return to the Oregon home of record. The trip permit was filled out with the same beginning date as that of the sale. Based on the evidence presented, we find that vehicle was purchased by qualified nonresident military personnel and taken from Washington on a trip permit. Accordingly, we grant Taxpayer's petition for correction of the assessment as it relates to this transaction.

[Purchaser 5]: The Audit Division's denied the retail sales tax exemption based on information contained in a credit application indicating that the buyer may have been a Washington resident. The credit application contained a local telephone number and street address for the buyer and was confirmed by checking the local telephone directory.

It is possible for one individual to have more than one residence. Here, that may be the case. It is possible for the buyer to maintain residences in both Montana and Washington, and possibly even other locations. Granting of the nonresident exemption requires just what the name implies, i.e., that the buyer be a nonresident.

Rule 177 provides that:

The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresident of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the

seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims.

In this case, there was information contained in the buyer's credit application that should have alerted Taxpayer that the buyer may not have been a nonresident. We find that the information contained in the buyer's "transaction file" and confirmed by the local telephone directory indicates that the buyer was not a nonresident. Accordingly, we deny Taxpayer's petition for correction of the assessment as it relates to this transaction.

[Purchaser 6]: The Audit Division's denied the retail sales tax exemption based on information contained in on a Washington Motor Vehicle Liability Insurance Identification Card ("Insurance card") indicating that the buyer may have been a Washington resident. The Insurance Card contained a local telephone number and street address for the buyer and was confirmed by checking the local telephone directory.

In this case, the information contained on the buyer's Insurance Card should have alerted Taxpayer that the buyer may not have been a nonresident. We find that the information contained in the buyer's "transaction file" and confirmed by the local telephone directory indicates that the buyer was not a nonresident. Accordingly, we deny Taxpayer's petition for correction of the assessment as it relates to this transaction.

However, Taxpayer relates that in April 1998 the financing bank required the buyer to pay use tax on the vehicle to Washington. It appears that for whatever reason, the bank may have required the buyer to pay tax that was avoided at the time of purchase. If this fact is confirmed, a tax credit will be allowed for the use tax that Taxpayer paid in April 1998. Accordingly, Taxpayer will be allowed 30 days from the date of this decision to provide documentation to confirm that the buyer paid use tax on the vehicle in 1998.

DECISION AND DISPOSITION:

Taxpayer's petition is granted as it relates to the retail sales tax exemption taken on vehicle sales made to [Purchaser 1], [Purchaser 2], [Purchaser 3], and [Purchaser 4]. Taxpayer's appeal is denied as it relates to the retail sales tax exemption taken on vehicles sales made to [Purchaser 5] and [Purchaser 6]. Taxpayer will be allowed 30 days from the date of this decision to provide documentation to confirm that [Purchaser 6] paid use tax on the vehicle in 1998. The assessment is remanded to the Audit Division for adjustment consistent with this decision.

Dated this 31st day of March, 2000.