

Cite as Det. No. 99-295, 19 WTD 588 (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. 99-295
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .

- [1] RULE 177, RCW 82.08.0264, RCW 82.08.0273: AUTO DEALERS – NON-RESIDENT PURCHASERS – SUBSTANTIAL COMPLIANCE – IDENTIFICATION. An auto dealer acts in good faith and substantially complies with the requirements in RCW 82.08.0264 and Rule 177 when the auto dealer examines the customer’s driver’s license to determine a customer’s state of residence.
- [2] RULE 177, RCW 82.08.0264, RCW 82.08.0273: AUTO DEALERS – NON-RESIDENT PURCHASERS – GOOD FAITH – IDENTIFICATION – MEMBERS OF THE MILITARY. An auto dealer does not substantially comply with the requirements in RCW 82.08.0264 and Rule 177 when the auto dealer examines the customer’s driver’s license to determine a customer’s state of residence and the driver’s license, although issued by a state other than Washington, bears a Washington address and the auto dealer does not examine any other identification of the customer.

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:

A seller appeals the assessment of retail sales tax by the Department of Revenue’s (Department’s) Audit Division, of two sales of motor vehicles to persons claiming to be non-residents of Washington.¹

FACTS:

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

Gray, A.L.J. – The taxpayer sells new and used recreational vehicles (RVs), trucks, and motorhomes. The taxpayer makes both retail and wholesale sales.

The Department of Revenue's (Department's) Audit Division audited the taxpayer for the period January 1, 1994 through September 30, 1997. The Audit Division issued Tax Assessment No. FY. . . on July 31, 1998 and, after a post assessment adjustment (PAA), issued Tax Assessment No. FY. . . on March 12, 1999. The taxpayer appeals only the retail sales tax assessed on two sales to nonresidents.

The Audit Division disallowed an exemption of the first sale because the taxpayer did not record the number of the trip permit at the time of the transaction. The Audit Division also said that it used the Internet to discover the customer owned a Washington business.

The Audit Division disallowed the second sale because the taxpayer did not satisfy the requirements in WAC 458-20-177 (Rule 177) for sales to military personnel. The Auditor's Detail of Differences and Instructions to Taxpayer (Detail) said:

As we discussed with the [first sale, above], the requirements stated in WAC 458-20-177 were not met for this sale to a military personnel. Any tax that has been paid to the State of Florida does not come into consideration when figuring the tax that is due to the State of Washington. The customer may be entitled to a refund of the tax paid to Florida, but the tax liability in Washington still exists.

The facts involving the two sales are as follows:

The First Sale:

On or about January 18, 1994, the taxpayer sold a camper² to a man who gave the taxpayer an Idaho driver's license as proof that he was not a Washington resident and should be exempt from Washington's retail sales tax. The Idaho driver's license showed an address in . . . , Idaho. The taxpayer also gave the taxpayer a local (Washington) telephone number where he could be contacted. The taxpayer said it is common for out-of-state buyers to have a local telephone number where they can be contacted. The taxpayer's affidavit is incomplete because it does not show the use of either a trip permit or non-resident license plates on the camper before it left the taxpayer's lot. The "certificate of dealer" shows the taxpayer examined the customer's driver's license, but not any other form of identification.

When questioned by the Audit Division, the taxpayer wrote to the taxpayer at his . . . , Idaho address, asking him to sign a trip permit after the fact and to ascertain his current address. The customer wrote back to the taxpayer with a signed trip permit and advising that his current address is in . . . , Idaho.

²Campers are required to be licensed in Washington and further are subject to the Travel Trailer and Camper Excise Tax. See, ch. 82.50 RCW.

The Second Sale:

On or about February 24, 1994, the taxpayer sold a trailer to a man who gave the taxpayer a Florida driver's license that bore an . . . , Washington address. The taxpayer has no other documentation to support its claim that the second sale was exempt from sales tax. The taxpayer said the customer was in the military and was stationed here in Washington. The taxpayer said its customer licensed the trailer in Florida and paid sales tax there on the trailer. The taxpayer believes that if sales tax is due here, then the sales tax the customer paid to Florida should be refunded to the taxpayer and applied to the sales tax assessment here. The taxpayer supplied copies of letters between it and the Florida Department of Revenue attempting to collect the Florida sales tax. The taxpayer sought a refund of the sales tax paid to Florida.

ISSUE:

Whether the taxpayer exercised reasonable prudence in relying on the information supplied to it by its customers regarding their non-resident status.

DISCUSSION:

Sales of motor vehicles, trailers, and campers (motor vehicles) to nonresidents are exempt from the retail sales tax

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. (Emphasis added.)

RCW 82.08.0264.

The Department adopted WAC 458-20-177 (Rule 177) to specify how a dealer of motor vehicles can comply with RCW 82.08.0264. If a dealer sells a motor vehicle to a nonresident of Washington, Rule 177 requires the dealer to obtain an affidavit from the purchaser. The affidavit, if properly completed, identifies the purchaser, and which exemption method under RCW 82.08.0264 applies to the sale. The affidavit also contains a certification for the dealer to complete, which shows that the dealer had a reasonable basis to believe the purchaser was a nonresident. Rule 177 also requires the dealer to take the affidavit and to complete the dealer's certification, in full, at the time of delivery of the vehicle. It warns that failure to do so "will negate any exemption from the buyer's duty to pay and the dealer's duty to collect the retail sales tax under RCW 82.08.0264."

Rule 177 also imposes a requirement to exercise reasonable prudence on dealers. It says:

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 nonresidence 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. A nonresident permit issued by the department of revenue may be accepted as prima facie evidence of the out of state residence of the buyer, but does not relieve the seller from obtaining the affidavit and completing the certificate required by this rule.

The First Sale:

The taxpayer substantially performed the duty imposed on it by the statute. The taxpayer examined the customer's driver's license³ and found the customer to be an Idaho resident. Neither the statute nor the rule requires the dealer to test identification that is, on its face, legitimate. The issue in this appeal is not whether the two customers were or were not Washington residents. The issue is whether the taxpayer acted in good faith in accepting its customers' identification as non-residents of Washington. The taxpayer stated, and we accept, that out-of-state customers often have a local Washington telephone number at which they may be contacted. The fact that a Department auditor used the internet to find that the customer apparently had a Washington business does not mean the taxpayer did not exercise reasonable prudence. Rule 177 requires dealers to exercise "a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers." With regard to the first sale, we conclude the taxpayer exercised that reasonable degree of prudence and acted in good faith when presented with the Idaho driver's license. The Audit Division has not challenged the validity of the trip permit. The taxpayer substantially complied with the statute and the rule, and therefore, the sale should not have been disallowed.

³ Rule 177 requires dealers to examine two pieces of the customer's identification. However, there is no such requirement in RCW 82.08.0264. The "two pieces of identification" language in Rule 177 probably borrows from RCW 82.08.0273, which provides a more general exemption from the sales tax on sales of tangible personal property to non-residents of Washington. Prior to 1993, RCW 82.08.0273 required retailers to examine two pieces of identification to establish a purchaser's non-resident status. In 1993, however, the legislature amended RCW 82.08.0273 to require examination of only one piece of identification. Because the latter is the present state of the law, it is reasonable to deem the taxpayer as complying with Rule 177 when it examined only the customer's driver's license. Vehicle dealers should note, however, that they will be on safer ground if they examine more than one piece of identification before deciding they need not collect sales tax from a customer. The reason is that it is easier to establish good faith if there are two or more pieces of identification showing a customer to be a resident of another state.

The Second Sale:

We note first that the taxpayer had no proof of the customer's out-of-state residency at the time of the sale other than a Florida driver's license. The Florida driver's license bears an . . . , Washington address. On the face of the information presented, the taxpayer could not have reasonably concluded that this customer was a non-resident of Washington. The taxpayer presented no other documents to support its argument. Consequently, there has been virtually no compliance, let alone substantial compliance, with the statutory and administrative rule requirements imposed on dealers which do not collect retail sales tax from their customers. Although the Detail suggests the taxpayer claimed this sale as exempt because it sold the trailer to a member of the military, the taxpayer lacks the proof that it needs under Rule 177:

Members of the armed services who are temporarily stationed in 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. This presumption is not applicable in respect to civilian employees of the armed services.

The driver's license alone is insufficient to show the customer was a member of the armed forces temporarily stationed in Washington pursuant to military orders. It also does not exclude the possibility the customer was a civilian employee of the armed services. We conclude the taxpayer did not exercise reasonable prudence on the second purchase, and that the Audit Division properly disallowed this claimed exempt sale. Further, the customer's payment of sales tax to Florida does not excuse his, and the taxpayer's, liability for sales tax here, because the sale of tangible personal property was made in Washington and delivery of the trailer was taken in Washington. In the absence of proof that the sale was exempt, the sales tax is owed here. The taxpayer may note that the same information is contained in the Auto Dealers Guide to Excise Taxes (Manual) (August 1993) on page 22-1, where the Manual says:

The affidavits for trip permits or nonresident license plates can be used. In addition, the dealer must obtain and retain:

1. A copy of military orders showing that the customer is temporarily stationed in Washington;
or
2. A copy of military orders showing that the customer is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

Neither the taxpayer nor its customer is entitled to a credit against their Washington sales tax liabilities for retail sales tax paid by the customer to Florida. The reason is that the sale of, and delivery of, tangible personal property by the taxpayer to the customer occurred here in Washington. This is the state where the retail sales tax liability first arose and where the tax was owed. If the taxpayer had paid his sales tax here, he would have had a credit against his Florida sales tax, when he registered the trailer in Florida, for retail sales tax paid in Washington. See,

Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175; 115 S. Ct. 1331; 131 L. Ed. 2d 261 (1995). Also, since the retail sales tax is paid by the consumer in Washington, and the consumer here was the taxpayer's customer, any credit or refund of Florida sales tax would be owed to the customer, not to the taxpayer.

DECISION AND DISPOSITION:

The petition is granted in part and denied in part.

Dated this 29th day of October, 1999.