

Cite as Det. No. 13-0074, 32 WTD 282 (2013)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 13-0074
...	)	
	)	Registration No. . . .
	)	Re: TAA Opinion Letter
	)	dated October 9, 2012
	)	Docket No. . . .

RULE 279(5); RCW 82.08.809(1): RETAIL SALES TAX – EXEMPTION –  
SALES OF USED ELECTRIC MOTOR VEHICLES. Sale of used electric motor  
vehicles are not exempt from the retail sales tax.

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.

Munger, A.L.J. – Auto dealer appeals an opinion letter stating that there is no retail sales tax exemption for used electric motor vehicles. Because the statutory retail sales tax exemption for electric motor vehicles applies only to new vehicles, we confirm that used electric motor vehicles are not exempt from the retail sales tax.<sup>1</sup>

ISSUE

Whether under RCW 82.08.809 and WAC 458-20-279 used electric motor vehicles are exempt from the retail sales tax.

FINDINGS OF FACT

[Taxpayer] is an automobile retailer in [Washington]. On September 28, 2012, it contacted the Department for advice regarding the application of the retail sales tax on used electric vehicles. The specific vehicle it was inquiring about was a used [Vehicle A], an electric motor vehicle. . . .

I have been looking at your website and can't find a specific answer to the question of whether or not the used electric vehicles are tax exempt.

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

The October 9, 2012, TAA response, citing RCW 82.08.809, stated that purchases of used electric vehicles are subject to the retail sales tax. The specific context is the sales tax due on the re-sale of a used vehicle taken as a trade-in by the Taxpayer.

On appeal, the Taxpayer notes that new [Vehicle As], and newly converted used vehicles, are sales tax exempt. It questions why these sales would be sales tax exempt, but not the sale of a used originally all-electric vehicle such as the [Vehicle A].

### ANALYSIS

RCW 82.08.809 provides a limited (expires July 1, 2015) sales tax exemption on the purchase of qualifying passenger cars, light duty trucks, medium duty passenger vehicles, and certain used modified vehicles.

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which are exclusively powered by a clean alternative fuel.

(b) The tax levied by RCW 82.08.020 does not apply to sales of qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles, which were modified after their initial purchase, with an EPA certified conversion to be exclusively powered by a clean alternative fuel. "Qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles" means vehicles that:

- (i) Are part of a fleet of at least five vehicles, all owned by the same person;
- (ii) Have an odometer reading of less than thirty thousand miles;
- (iii) Are less than two years past their original date of manufacture; and
- (iv) Are being sold for the first time after modification.

\* \* \*

(3) As used in this section, "clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle . . . .

WAC 458-20-279, the Department's administrative rule describing this exemption states that:

**(5) Purchases of previously owned clean alternative fuel or high gas mileage vehicles.** The exemptions do not apply to purchases of used vehicles unless they are qualifying used passenger cars, light duty vehicles, or medium passenger vehicles, which were modified after their initial purchase, with an EPA certified conversion to be exclusively powered by clean alternative fuel.

The above describes the extent of this retail sales tax exemption. There are no provisions in this statute for the Department to expand the tax exemptions beyond their statutory scope.

As an all-electric vehicle, the [Vehicle A], which is “exclusively powered by a clean alternative fuel” when sold as a new vehicle, would be exempt from the retail sales tax per RCW 82.08.809(1)(a) above. This statutory exemption does not, however, extend to used electric vehicles. The exemption for used vehicles only applies to newly converted vehicles under RCW 82.08.809(1)(b) being sold for the first time after modification. This would not apply to [Vehicle A] which is built as an all-electric vehicle from the beginning, and does not require conversion to become “exclusively powered by a clean alternative fuel.”

The Washington Supreme Court has long stated the requirement that tax exemption statutes must be strictly construed in favor of the application of the tax, *Yakima Fruit Growers Association v. Henneford*, 187 Wn. 252, 60 P. (2d) 62 (1936). Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. *Budget Rent-A-Car of Washington-Oregon, Inc. v. Dep’t. of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). See also Det. No. 99-003, 18 WTD 348 (1999). While the Taxpayer might consider this sales tax exemption to be narrower than it would like, it is nevertheless clearly a limited exemption that does not extend to used all-electric vehicles such as used [Vehicle As].

Consequently, we affirm the Department’s ruling that sales of used electric vehicles are not exempt under RCW 82.08.809, and are subject to the retail sales tax.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied and the TAA opinion letter of October 9, 2012 is upheld

Dated this 14th day of March 2013.