

Cite as Det. No. 14-0229, 34 WTD 216 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 14-0229
. . .)	
)	Registration No. . . .
)	

[1] RCW 82.08.0265: RETAIL SALES TAX – EXEMPTION – SALES TO NONRESIDENTS – VESSEL – REPAIRS MADE IN WASHINGTON – OUT OF STATE DELIVERY. Taxpayer failed to submit sufficient evidence to sustain its argument that the motor vessel it modified and repaired was delivered to its nonresident customer at a point outside the state after completion of services in Washington.

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.

Chartoff, A.L.J. – A ship building company claimed improvements and repairs it made to a customer’s vessel were exempt from retail sales tax on the basis that the taxpayer delivered the completed vessel to a nonresident purchaser at a point outside of Washington State. Because the taxpayer failed to meet its burden of proof to show it qualified for the exemption under RCW 82.08.0265, we uphold the assessment and deny taxpayer’s petition.¹

ISSUE

Has Taxpayer shown that repairs and improvements it made to a motor vessel are exempt from retail sales tax under RCW 82.08.0265?

FINDINGS OF FACT

[Taxpayer] is a Washington State business that specializes in the design and building of custom motor yachts. Taxpayer also repairs and upgrades vessels. This appeal concerns the taxation of repairs and upgrades made to a [Motor Vessel].

Taxpayer provided a copy of a fixed bid for “buyer upgrades” on [Motor Vessel] billed to . . . Cayman Islands, Attn: The fixed bid was unsigned and had no place for signatures. Along with that document, Taxpayer sent a cover letter, dated January 13, 2014, conceding that it did

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

not know the purchaser's address. The terms of the fixed bid were a total cost of \$. . . with 50 percent to be paid as a deposit and the remaining 50 percent to be paid upon completion. The fixed bid listed the costs of the improvements to be made, but did not show a charge for retail sales tax.

Taxpayer performed repairs and improvements to [Motor Vessel] at Taxpayer's facilities in . . . Washington which Taxpayer completed in 2011, totaling \$. . . Taxpayer sent one invoice to [Yacht Broker] and sent a second invoice showing that same name and "new owner-. . . Guy" with an address of . . . Russia. The Department of Revenue's Audit Division (Audit) believed that the email address belonged to . . . a yacht broker [in] Washington. The vessel sale was brokered by the [Yacht Broker] and listed by the brokerage as being located in . . . Washington. . . Taxpayer provided copies of two wire transfers; the first was received on September 13, 2011 showing payment of \$. . . from a bank account in . . . Switzerland and the second was received on December 12, 2011 showing payment of \$. . . from the same Swiss bank account. Neither copy of the wire transfers showed the name of the transferor. Taxpayer contends that the foreign bank wire transfers show that the purchaser was a nonresident.

Taxpayer provided a copy of the vessel registration application form for the [Motor Vessel] that Taxpayer contends also shows the purchaser was a nonresident. The form listed [Motor Vessel]'s owner . . . and an address for the company in Grand Cayman; the contact person listed was [Vessel Registrant]. [Vessel Registrant] stated on the form that he owned 64 shares of the vessel . . . and that he was the sole director of [Motor Vessel] Limited. He signed the application's Company/Body Corporate Declaration on behalf of [Motor Vessel] Limited on September 9, 2011. Taxpayer did not provide a copy of the actual Grand Cayman vessel registration for the [Motor Vessel].

Taxpayer provided two letters from [a Yacht Service]. The first letter, dated March 9, 2013, was signed by [Delivery Captain]. It stated that he "served as delivery captain aboard the [Motor Vessel], Cayman Island registry # . . . and did depart around 0700 from . . . , Washington to . . . California." The letter further stated that the first port of call was . . . Oregon and that "[o]n Dec 21st my crew of one and myself disembarked [Motor Vessel] with the owners remaining onboard and returned to Washington." The second letter, dated December 12, 2013 and also signed by [Delivery Captain], sought to "clarify the details of [the] delivery of the vessel '[Motor Vessel]'." [Delivery Captain] stated that he was an independent contractor and that Taxpayer hired him to deliver the [Motor Vessel] to its owner, [Vessel Registrant], and that "[d]elivery of foreign owned vessels outside Washington waters is industry practice." The letter also stated "My instructions were to transfer control of (deliver the vessel) outside of Washington waters, which I did." Taxpayer did not provide a copy of a contract of carriage or other written agreement between itself and [the Yacht Service] pertaining to the delivery of [Motor Vessel].

Taxpayer was audited for the period August 1, 2009 through June 30, 2012. Audit requested from Taxpayer the contract for repair and improvement services, the vessel delivery contract, and proof of who paid [Delivery Captain]; Audit did not receive the documents it requested. Audit concluded that the repairs and improvements were not exempt from retail sales tax and on

January 3, 2013 issued an assessment totaling \$. . . .² Taxpayer paid the balance of the assessment in full as of May 6, 2013 and filed an appeal on July 31, 2013.

Taxpayer argues that the repairs and improvements are exempt from retail sales tax because Taxpayer, through an independent contractor, delivered the vessel to a nonresident at a point outside of the state.

ANALYSIS

Washington law imposes retail sales tax on every retail sale in this state. RCW 82.08.020. A “retail sale” is defined under RCW 82.04.050(2) to include:

. . . the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

- (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers . . .

RCW 82.04.050(2)(a).

However, RCW 82.08.0265 provides the following exemption to the retail sales tax:

Exemptions — Sales to nonresidents of tangible personal property which becomes a component of property of the nonresident by installing, repairing, etc. — Labor and services for installing, repairing, etc.

The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of tangible personal property which becomes a component part of any machinery or other article of personal property belonging to such nonresident, in the course of installing, repairing, cleaning, altering, or improving the same and also sales of or charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving, of personal property of or for a nonresident, but this section shall apply only when the seller agrees to, and does, deliver the property to the purchaser at a point outside this state, or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state.

RCW 82.08.0265 (emphasis added).

Exemption statutes are construed in favor of taxation strictly against the taxpayer and the taxpayer has the burden of establishing its right to a tax exemption. *See Sacred Heart Medical Center v. Dep’t of Revenue*, 88 Wn.App. 632, 637, 946 P.2d 409 (1997). Here, Taxpayer must prove the essential elements of an exempt outbound sale under RCW 82.08.0265 which are:

Taxpayer agreed to deliver the vessel upon which it performed services

1. to an out-of-state purchaser,
2. at a point outside this state, OR

² The January 3, 2013 assessment was comprised of \$. . . retail sales tax, \$. . . Retailing B&O tax, and \$. . . interest for a total of \$. . . .

3. delivered the vessel to a common or bona fide private carrier consigned to the purchaser at a point outside this state.

RCW 82.08.0265.

Assuming for the purposes of this discussion that the purchaser was a nonresident, Taxpayer needs to prove that it agreed to deliver the vessel upon which it performed services to a point outside of this state. Taxpayer provided a copy of an unsigned fixed bid of \$. . . , but it provided no contract or agreement of sale that set out any of the terms of delivery, including any agreement to deliver [Motor Vessel] to the purchaser at a point outside of the state. Taxpayer did provide two letters from [Yacht Service]. However, the letters are dated March 9, 2013 and December 12, 2013; the latter dated some two years after the purported delivery of the [Motor Vessel] in December 2011 and they do not constitute the kind of substantive and reliable documentation Taxpayer needs to prove that it agreed to deliver and in fact delivered the [Motor Vessel] to a purchaser at a point outside of Washington state or that Taxpayer consigned the vessel to a carrier for that purpose. *See* RCW 82.08.0265. We conclude that Taxpayer has not met its burden of proof to establish its right to an exemption from retail sales tax. Accordingly, we uphold the assessment and deny the petition.

DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 18th day of July, 2014.