

Cite as Det. No. 17-0248, 38 WTD 082 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 17-0248
))	
. . .)	Registration No. . . .
))	

[1] RCW 82.04.050; RCW 82.04.190: DEFERRED SALES TAX – CONSUMER – CAR WASH SERVICES. A seller and lessor of vehicles that purchases car wash services from a staffing business is the consumer of the services and liable for deferred sales tax when it did not pay retail sales tax.

[2] RCW 82.08.020; RCW 82.08.011; RCW 46.04.465: RETAIL RENTAL CAR TAX. A seller and lessor of vehicles that entitles employees with the right to use a vehicle for more than thirty consecutive days, where the employees may change vehicles on a daily basis, is effectively making an indeterminate series of rentals subject to rental car 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.

Margolis, T.R.O. – A seller and lessor of vehicles petitions for review of . . . , retail sales tax assessed on purchases of car wash services . . . and rental car tax on rentals of unassigned cars to employees. Taxpayer’s petition is denied.¹

ISSUES

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1. Whether, under RCW 82.04.050, Taxpayer’s purchases of car wash services are subject to sales tax or [excluded from sales tax as] purchased for resale in the regular course of business.

. . .

2. Whether Taxpayer made “retail car rentals”, under RCW 82.08.011 and RCW 46.04.465, [to its manager-level employees], thereby subjecting Taxpayer to rental car tax under RCW 82.08.020(2).

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

FINDINGS OF FACT

During the audit period, Taxpayer was engaged in the business of car rentals, car sales, and fleet leasing management. The Department of Revenue's Audit Division (Audit) examined Taxpayer's account for the period of August 1, 2009, through December 31, 2010, and, on November 18, 2015, issued three adjusted partial assessments for that period as follows: (1) Audit assessed Taxpayer \$. . . in Partial Audit . . . , [which included] \$. . . in retail sales tax, \$. . . in use/deferred sales tax, \$. . . in rental car tax, \$. . . in motor vehicle tax, \$. . . in audit interest, and \$. . . in additional interest from June 24, 2014, to December 18, 2015; (2) Audit assessed Taxpayer \$. . . in Partial Audit No. . . . , [which included] \$. . . in use/deferred sales tax, \$. . . in audit interest, and \$. . . in additional interest from August 12, 2014, to December 18, 2015; and (3) Audit assessed Taxpayer \$. . . in Partial Audit No. . . . , [which included] \$. . . in retail sales tax, \$. . . in retailing business and occupation (B&O) tax, a credit of \$. . . in wholesaling B&O tax, \$. . . in service and other activities B&O tax, a credit of \$. . . in use/deferred sales tax, \$. . . in retailing of interstate transportation equipment, \$. . . in rental car tax, a credit of \$. . . in motor vehicle tax, \$. . . in audit interest, and \$. . . in additional interest for October 15, 2014, to December 18, 2015.

Taxpayer makes four arguments regarding the partial assessments.

...

Second, Taxpayer also disputes the assessment of retail sales tax on car washing services it received from employees of staffing agencies. Taxpayer routinely purchases car washing services for its rental fleet and vehicle sales inventory by paying staffing agencies to provide hourly employees, who are paid an hourly wage to wash the cars. Audit assessed deferred sales tax on these purchases. Taxpayer asserts that, because the cars are being held for sale or lease, it is purchasing these services for resale and is not subject to retail sales tax because it is not the consumer of the services.

...

Finally, Taxpayer argues that it is not subject to rental car tax on certain rentals to employees. Taxpayer rents unassigned vehicles from inventory to its manager level employees. [Under this program, designated employees may rent vehicles not currently assigned to regular rental customers for personal use and may change vehicles as frequently as daily.] This arrangement is documented by Taxpayer as the "Personal Use Option," which "is currently \$. . . /month with a minimum commitment of six months." Supplemental Material regarding Audit No. . . . , Exhibit A4-1. This amount is to cover the personal use, insurance, and maintenance of [these vehicles]. Taxpayer did not report these receipts on its excise tax returns. Audit assessed Taxpayer rental car tax on estimated reasonable rental values. Taxpayer asserts that it is not subject to rental car tax on these amounts because these are not short term rentals.

ANALYSIS

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Purchases of Car Wash Services

Retail sales tax remains due even when retail sales tax is not collected by the seller on a retail sale. RCW 82.08.050(10). The Department may proceed directly against the buyer for payment of sales tax when the buyer fails to pay retail sales tax to the seller and the seller does not otherwise pay the tax to the Department. *Id.* RCW 82.04.050(2)(a) provides that “sale at retail” or “retail sale” includes sales of or charges made for labor and services rendered in respect to the cleaning of tangible personal property for consumers. This would include car washing services.

In this case, a temporary staffing business sold car washing services to Taxpayer. If retail sales tax has not been paid to the temporary staffing business providing retail services, the consumer of the services remains liable to pay any tax due directly to the Department. *See also* Special Notice titled, “Temporary Staffing Businesses Must Collect Retail Sales Tax on Retail Services,” issued August 11, 2009, available at <https://dor.wa.gov> (last accessed October 3, 2017).

... Taxpayer claims that it acquired the car washing services for resale. The Department publishes a guide for auto dealers, available at <https://dor.wa.gov> (last accessed October 3, 2017). This guide explains the Department’s position regarding car washes as follows (in pertinent part):

Generally, the dealership must pay retail sales tax on purchases of car washes. When the dealer purchases a car wash for their inventory prior to sale, they are considered the consumer of these purchases and may not use their reseller permit.

In contrast to a mere car wash, the cost of reconditioning or detailing is primarily intended to improve the resale value of the vehicle and is a wholesale sale not subject to sales tax. Examples of these services can include but are not limited to minor paint repair, paint polishing, headlight buffing, carpet and upholstery cleaning, repair or replacement.

RCW 82.04.190(2)(c) provides that the term “consumer” means “any person who purchases . . . any service defined in RCW 82.04.050(2)(a), or (g), other than for resale in the regular course of business” Taxpayer is purchasing car wash services, which are services defined in RCW 82.04.050(2)(a), but is not reselling the car wash services in the regular course of business when it happens to [rent or] sell one of the cars that had recently been washed. Because the car wash services primarily function to help Taxpayer maintain the appearance of its inventory by temporarily removing surface dirt, rather than improving the cars’ inherent resale value, Taxpayer, like a dealership, is the consumer of the services [that] are subject to retail sales tax and is liable for deferred sales tax when it did not pay retail sales tax to the staffing businesses. Taxpayer asserts that it is not subject to tax on its purchase of car wash services because it is “excluded from the definition of a consumer of the tangible personal property it has acquired for resale. As [Taxpayer] is not a consumer . . . any services for cleaning . . . its tangible personal [sic] held for resale are not subject to the use tax.” Supplemental Material regarding Audit No. . .

. , Page 5. Taxpayer incorrectly conflates the issue of whether Taxpayer is a consumer of the vehicles with the issue of whether Taxpayer is a consumer of the car wash services.

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Rental Car Tax on Unassigned Vehicles Provided to Employees

RCW 82.08.020(2) imposes an additional 5.9% tax on each “retail car rental” (rental car tax). RCW 82.08.011 defines the term “retail car rental” as “renting a rental car, as defined in RCW 46.04.465, to a consumer.” RCW 46.04.465 reads as follows:

- (1) "Rental car" means a passenger car, as defined in RCW 46.04.382, that is used solely by a rental car business for rental to others, without a driver provided by the rental car business, for periods of not more than thirty consecutive days.
- (2) "Rental car" does not include:
 - (a) Vehicles rented or loaned to customers by automotive repair businesses while the customer's vehicle is under repair;
 - (b) Vehicles licensed and operated as taxicabs.

Alternatively, RCW 82.08.020(3) imposes an additional 0.3% tax on rentals of motor vehicles (motor vehicle tax) when RCW 82.08.020(2) does not apply.² Thus, the rental car tax only applies when the rental car (1) is a passenger car, (2) used solely by a rental car business for rental to others, (3) without a driver provided by the rental car business, and (4) for periods of not more than thirty consecutive days. RCW 46.04.465(1). Taxpayer argues only that condition (4) is not present, so it is not subject to the rental car tax.

Even though the Personal Use Option entitles participating employees with the right to use a vehicle for more than thirty consecutive days, employees may change vehicles on a daily basis. Thus, the fact that the term of the Personal Use Option is more than thirty consecutive days is not determinative. Because the rentals at issue are effectively an indeterminate series of rentals, and Taxpayer has provided no evidence that employees rented specific cars for more than thirty consecutive days, we conclude that Taxpayer rented “rental cars” under RCW 46.04.465. We, therefore, sustain the assessment of rental car tax.³

DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 19th day of October 2017.

² RCW 82.08.020(3) imposes tax on “retail sales,” which are defined to include rentals under RCW 82.08.010(11).

³ Taxpayer also argues that the tax does not apply because the rental is analogous to the personal use of used vehicles by dealer staff subject to use tax on one vehicle per year per staff person under WAC 458-20-132(11) (Rule 132). Because Rule 132(11) addresses use tax on vehicles provided to dealer staff without charge, rather than retail car rental tax on vehicles rented to employees, we find no grounds to apply the rule in this matter.