

Cite as 9 WTD 292-1

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D E T E R M I N A T I O</u>
<u>N</u>	
For Refund of )	
)	No. 90-210
)	
. . . )	Registration No. . . .
)	. . ./Audit No. . . .
)	

**[1] RULE 102:** RETAIL SALES TAX -- EXEMPTION -- BLANKET RESALE CERTIFICATE -- WHOLESALER, JOBBER OR RETAILER --GOOD FAITH. A blanket resale certificate, valid for up to four years, may be given in advance by known wholesalers, jobbers or retailers to qualify for sales tax exemption but seller must exercise good faith in determining whether buyer is purchasing for resale in the regular course of business. It is incumbent upon the taxpayer-seller to get sufficient information about the buyer so that it meets the condition that it accepted the resale certificate in good faith.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition protesting sales tax liability where taxpayer-seller submits a resale certificate allegedly from the buyer.

FACTS AND ISSUES:

Krebs, A.L.J. -- [Taxpayer] is engaged in the business of buying and selling scrap metals.

The Department of Revenue (Department) examined the taxpayer's business records for the period from . . . through . . . As a result of this audit, the Department issued the above captioned amended tax assessment on . . . superseding the original assessment issued on . . . . The amended tax assessment asserts excise tax liability in the amount of \$ . . . and interest due in the amount of \$ . . . for a total sum of \$ . . . which has been paid in full. Accordingly, the taxpayer's petition is being deemed as a petition for refund.

The taxpayer's protest involves Schedule II of the audit report pertaining to the original tax assessment where sales tax liability was asserted on the taxpayer's "casual sale" of assets which included shredder belts, a forklift and a baler. The amended tax assessment, by supervisory decision, deleted the sales tax liability with respect to the shredder belts on the acceptance for this transaction only of a resale certificate given by the buyer to the taxpayer. Thus, the sale of the shredder belts is no longer in issue.

#### Sale of forklift.

The taxpayer's "casual sale" of a forklift in . . . for \$ . . . was held by the auditor to have been made to a consumer. The taxpayer was unable to present an invoice on the sale. Therefore, the blanket resale certificate of . . . , the alleged buyer, submitted by the taxpayer was rejected in the preparation and issuance of the amended assessment.

The taxpayer's protest also involves Schedule V of the audit report pertaining to the original tax assessment where use tax/deferred sales tax was assessed on the taxpayer's purchases of sales taxable consumables/services. The item protested was the purchase of sales taxable services in the amount of \$ . . . from . . . Corp. ( . . . ) which was asserted by the auditor to be without payment of sales tax. The amended tax assessment reflects the deletion of the assessed use tax/deferred sales tax on this item after the taxpayer submitted an invoice from . . . showing that sales tax had been charged. Thus, the sale by . . . is no longer in issue.

The only item in contention is the nonacceptance of the blanket resale certificate of . . . pertaining to the taxpayer's sale of a forklift to relieve the taxpayer from sales tax liability.

## DISCUSSION:

Sale of forklift.

The taxpayer made a "casual sale" of a forklift in . . . for \$ . . . allegedly to . . . . The business and occupation (B&O) tax does not apply to the sale. However, retail sales tax applies if the seller is required to be registered with the Department. WAC 458-20-106 (Rule 106). The taxpayer/seller did not collect sales tax on this casual sale.

The taxpayer submitted a blanket resale certificate effective . . . for four years from . . . , the alleged buyer. . . . is apparently a machine shop.

WAC 458-20-102 (Rule 102) in pertinent part provides:

...all sales are deemed to be retail sales unless the seller takes from the buyer a resale certificate signed by and bearing the registration number and address of the buyer, to the effect that the property purchased is:

(1) For resale in the regular course of business without intervening use, or...

...

When a vendor receives and accepts in good faith from a purchaser a resale certificate as described in this rule, the vendor is relieved of liability for retail sales tax with respect to the transaction.

...

Blanket resale certificates may be given in advance by known wholesalers, jobbers or retailers.  
(Emphasis supplied.)

In this case, the auditor was not able to tie the sale of the forklift to . . . because of the absence of an invoice or other record to establish that. Furthermore, there is no evidence to establish that . . . was a "known wholesaler, jobber or retailer" of forklifts or like industrial trucks. Generally, wholesalers, jobbers and retailers of forklifts patronize their usual sources to purchase forklifts. The presumption is that . . . bought the forklift for its own use as a consumer in its machine shop. Thus, it is incumbent upon

the taxpayer to get sufficient information about the buyer so that it meets the condition that it accepted the resale certificate "in good faith." Accordingly, we conclude that the circumstances in this transaction do not support acceptance of the resale certificate to qualify the transaction as exempt from sales tax.

Any further information on this transaction should be presented to the auditor within the time period for refunds as stated in RCW 82.32.060.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 25th day of May 1990.