

Cite as 9 WTD 175 (1990)

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

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Refund of )  
 ) No. 90-87  
 )  
 )  
 . . . ) Registration No. . . .  
 )  
 )  
 )

[1] RULE 196, RULE 198 and RCW 82.08.037: SALES TAX --  
INSTALLMENT CONTRACT -- ASSIGNMENT -- DEFAULT --  
REFUND. The assignment of an installment contract  
from an auto dealer to a bank does not include a  
right of the bank to obtain a refund of sales tax  
from the Department in the event the auto buyer  
defaults and the car is repossessed.

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: . . .  
 . . .  
 . . .

DATE OF HEARING: December 7, 1988

NATURE OF ACTION:

Petition for refund of sales tax paid on repossessed  
automobiles.

FACTS AND ISSUES:

Dressel, A.L.J. -- [The taxpayer] is a bank. It buys  
installment contracts from car dealers. In the transactions  
at issue, a dealer will sell an automobile to a customer on  
such a contract. The dealer will report the full amount of  
the sale on its state excise tax return and pay sales tax on

that amount. The dealer then signs that same contract, assigning it to the taxpayer. In turn the taxpayer (bank) pays the dealer a discounted amount which approximates the full value of the car. Thereafter, the customer sends his or her car payments to the bank. The amount remitted includes a portion attributable to the dealer's original outlay to the state for sales tax. Sometimes the customer will cease making the car payments or will make them infrequently causing arrearages. The bank in some such cases will repossess the car. The bank will then resell the vehicle and apply the purchase price to the balance owed on the customer's contract. Many times the resale does not generate enough money to pay off the contract. The bank will then write off the resulting loss on its federal tax returns.

In this action the bank takes the position that for purposes of its state excise tax obligation, it is eligible for a sales tax refund. Its theory is that its assignor, the auto dealer, paid sales tax on the total price of the auto at the time it was sold. The contract which the dealer assigned to the bank required monthly payments of an amount which included the full selling price of the car *plus* full sales tax on that selling price. Inasmuch as the bank was unable to collect the total amount because of the repossession, it should be refunded the deficit in sales tax which the dealer effectively advanced to the state Department of Revenue (Department). This is because by statute and administrative rule a seller is eligible for such a refund and, under the assigned contract, the bank "steps into the shoes of" and obtains the same rights and remedies as the seller (dealer here) had in the first instance.

The issue is whether a financial institution to which an automobile purchase contract is assigned may obtain a sales tax refund upon contractual default by the buyer and subsequent repossession of the auto.

#### DISCUSSION:

RCW 82.08.037 reads:

#### CREDITS AND REFUNDS--DEBTS DEDUCTIBLE AS WORTHLESS.

A seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible as worthless for federal income tax purposes.

[1] The bank did not sell the cars at issue. The auto dealer did. Because it was not the "seller", the bank is not entitled to a refund under the quoted authority. Statutory excise tax exemptions and deductions must be strictly construed in favor of application of the tax. *Group Health Cooperative v. Tax Commission*, 72 Wash.2d 422, 429 (1967). *Yakima Fruit Growers Association v. Henneford*, 187 Wash. 252.

Furthermore, reasonably constructed, the statute is written to benefit the party (seller) who collects and pays to the Department, on behalf of the Department, sales tax. That party is done an injustice if it is required to pay full sales tax up front but is not able to collect the full amount from its customer. That is not the case here, because the bank pays the seller/dealer the full amount (less discount) of the purchase price in exchange for the contract. The seller, who is required to collect and/or account for the sales tax in RCW 82.08.050, is off the hook, so to speak, because of that payment. We believe the intent of RCW 82.08.037 is to aid those sellers who are not able to get "off the hook" as a result of the failure of a buyer to completely fulfill an installment or other contract.

RCW 62A.3-201 is cited by the taxpayer as giving the assignee of the contract the same rights as the assignor. That is essentially what that statute says, but we think such grant of equality is not unconditional. We believe the more reasonable interpretation is that the assignee acquires the rights the assignor had under the particular commercial paper which is assigned. The entitlement to a sales tax refund is not found within the contract at issue here, but rather in Title 82 RCW, the Revenue Act. That entitlement, therefore, is not assigned.

The taxpayer also argues that under the Revenue statutes a seller is a *person* who makes retail sales, that the word "person" is defined to include "assignee", so an assignee is also a seller. This taxpayer as an assignee may also be a person, but it is not a seller because it has not made a retail sale. The sale of the installment contract by the auto dealer to the taxpayer was the sale of an intangible right, not the sale of tangible personal property or a retail service. See RCW 82.04.050. Additionally, the definition of seller in RCW 82.08.010 (2) is not ambiguous as suggested by the taxpayer. It simply puts a limitation on which "persons" are "sellers". All persons are not sellers under either the Revenue Act or ordinary common usage of the terms.

Finally, we observe that the taxpayer/bank did not pay sales tax on these autos to the Department. Its payments, which included an amount attributable to sales tax, were to the auto dealers. If it is to get a refund from anybody, it ought to be from them. Recognizing the infeasibility of that, we suggest that if the bank feels it is sufficiently disadvantaged, its prospective solution may be to increase the amount of its discount on the contracts it acquires from automobile dealers. In terms of privity with the Department, however, it is one step too far removed to obtain the relief of a sales tax refund.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 23rd day of February 1990.