

Cite as Det. No. 01-147, 21 WTD 231 (2002)

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. 01-147
)	
...)	Petition for Refund
)	Docket No. ...
)	

Rule 211; RCW 82.12.020: USE TAX -- MULTIPLE TRANSACTIONS -- RELATIVES -- BAILMENT. Neither use tax paid by parents when they acquired a vehicle, nor use tax paid by their son when he purchased the vehicle could be refunded. The transactions could not be retroactively restructured.

NATURE OF ACTION:

A family seeks a refund of use tax paid on sales among family members.¹

FACTS:

M. Pree, A.L.J. -- ... (parents) purchased a new automobile from a dealer in Oregon on December 30, 2000. The purchase contract indicates the dealer charged them \$... sales tax on the transaction. They registered the car with the State of Washington Department of Licensing (DOL) using their Washington address. The DOL records listed the parents as the registered owners, and [car manufacturer's credit company], which financed the original purchase, was listed as the legal owner.

According to the parents, their son [Son] made the monthly payments, even though he lived in California and would never use the vehicle. He wanted his parents to have the car as a gift. Within months of the purchase, the son realized he could substantially reduce the payments using his bank [bank], which would charge [lower] interest on the loan rather than the [higher interest] charged on the [original] loan. ... (bank) prepared the documents dated April 11, 2001, to pay off the [original] loan and refinance the car at the lower rate.

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

The parents signed a bill of sale transferring ownership to their son for the amount due on the [original] loan. The bank charged the son \$. . . retail sales tax, which the bank remitted to DOL. DOL records now show the son as the registered owner at the parents' address, and the bank as the legal owner.

[Father], wrote the Department of Revenue (Department) and requested a refund of one of the two sales² tax charges paid. The Department's Compliance Division denied the refund. The Compliance Division stated use tax was correctly collected on both transactions. [Father] appeals the refund denial.

According to [Father], his son does not use the car. His son lives in California. The parents are listed as the insured on the policy identification card. They keep the car in Washington. He stated the bill of sale was inappropriate and misleading.

[Father] contends payment of sales tax twice was unwarranted. He requests the Department refund one of his payments. He offers to include all three names on the certificate of ownership or cancel the loan altogether if necessary.

ISSUE:

May the Department refund use tax collected twice on transactions among family members to facilitate financing?

DISCUSSION:

The law, RCW 82.12.020, provides use tax be collected from every person purchasing tangible personal property, such as a car, at retail for the privilege of using the property as a consumer. Tax was collected on each transaction.

The parents purchased the car as consumers. We are not aware of any authority to exempt their December 30, 2000 purchase of the car and, therefore, cannot refund the tax they paid on that transaction.

We understand the bill of sale shows the son purchased the car from his parents for the amount of the [original] loan. Because he became the registered owner of the car, the transaction was not gratuitous. With title, he was able to finance the car through his bank. He was the registered owner responsible for paying the bank. The definition of consumer means any person who purchases, acquires, or owns tangible personal property. RCW 82.04.190.

² We note that while some of the documents and [Father]'s petition refer to "sales" tax, the transactions occurred outside of Washington (at the dealership in Oregon, and then at the bank in Oregon), and should have been use tax. After the completion of each transaction, the car was then taken to Washington.

The transaction between the son and his parents was not a financing lease because the parents did not pay the charges with the right of obtaining ownership. *See* WAC 458-20-211(2)(g) (Rule 211). The son was the owner, and he had no legal obligation to transfer title upon payment of the loan.

While the son may now live in California, we note he used his parents' Washington address as his address regarding this transaction. Because the car was kept in Washington, it was properly licensed here. *See* RCW 46.85.060 and WAC 308-99-040. Because it was properly licensed here, the son was not entitled to a nonresident's exemption from use tax. *See* RCW 82.12.0251 and WAC 458-20-178.

Subsection (2)(b) of Rule 211 defines the term "bailment" as follows:

The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

If the son did not drive the car, his parents used it as his bailees. He was the bailor. Subsection (7)(a) of Rule 211 states:

(a) Bailment. The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental may be computed by prorating the retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

The first sentence of subsection (a) clearly imposes use tax upon the son as bailor. The tax paid by the parents when they first acquired the car was not as bailees, but owners. The last sentence of subsection (a) relieves them of liability as bailees (when they acquired the car by bailment through him) had the son not paid the tax on the car. While an exemption existed for use tax on property if the present user or bailee had previously paid the sales or use tax, that exemption was only applicable if the property was originally acquired prior to June 9, 1961. *See* RCW 82.12.0252 and WAC 458-20-178(7)(d).

The father offers to cancel or rescind the sale, or alter its terms to reduce the tax. We cannot undo what has occurred. The son's bank paid off the parent's loan. He became the owner of the

car. A taxable sale occurred, upon which tax was due. We cannot allow the family to restructure the transaction after the fact to minimize its existing tax liability.

DECISION AND DISPOSITION:

The petition for refund is denied.

Dated this 28th day of September 2001.