

Cite as Det. No. 03-0353, 24 WTD 85 (2005)

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. 03-0353
)	
...)	Registration No. . . .
)	Appeal of Retail Sales Tax on Vehicle
)	Docket No. . . .
)	

RULE 192: RETAIL SALES TAX -- INDIANS -- ENROLLED MEMBERS -- TRIBAL LAND -- DELIVERY. The “sale to Indians” retail sales tax exemption applies only to enrolled members of the tribe that owns the tribal lands where the sale or taxable activity is taking place. Vehicles delivered to nonmembers of that tribe are subject to 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.

M. Pree, A.L.J. – A . . . member [of Indian tribe A] residing in Washington requests a refund of retail sales tax paid on a vehicle purchased from a Washington dealership and delivered on the [Indian tribe B] reservation. Because delivery did not take place on [Indian tribe A] territory, the taxpayer does not meet the definition of “Indian” for purposes of WAC 458-20-192 (Rule 192). Rule 192 limits the “sale to Indians” retail sales tax exemption to enrolled members of the tribe that owns the tribal lands where the sale or taxable activity is taking place.¹

ISSUE

Is the purchase of a motor vehicle by a Native American, listed as a tribal member of an Indian tribe that has no territory in Washington, exempt from retail sales tax under the provisions of WAC 458-20-192?

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

FINDINGS OF FACT

On . . . , 2003, . . . (taxpayer) purchased a new [vehicle] for \$. . . from a dealership in . . . , Washington. In addition to the sales price, vehicle excise tax and other fees, the taxpayer paid \$. . . retail sales tax. The taxpayer, a Washington resident, arranged delivery on the [Indian tribe B] reservation in Washington. The taxpayer is a tribal member of the [Indian tribe A], which has no territory in Washington.²

ANALYSIS

Retail sales tax is due on retail sales occurring in Washington. RCW 82.08.020. The tax does not apply to sales the State of Washington is prohibited from taxing under the Constitution or laws of the United States. RCW 82.08.0254. The Department's Rule 192 (WAC 458-20-192) recognizes that, under federal law, the state may not tax Indians or Indian tribes in Indian country. Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. Rule 192(1)(b)(ii).

Rule 192 provides definitions of key terms, and explains how we apply the definitions, and specifically addresses the sale of automobiles to Indians in subsection (8):

(8) Motor vehicles, trailers, snowmobiles, etc., sold to Indians or Indian tribes. Sales tax is not imposed when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered to an Indian or the tribe in Indian country or if the sale is made in Indian country. Similarly, use tax is not imposed when such an item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country.

The taxpayer contends he is eligible as an "Indian" regardless of where the delivery occurs. However, for the purpose of the exemption, the definition of "Indian" is intertwined with the exempt activity. "Indian" means a person on the tribal rolls of an Indian tribe. Rule 192(2)(a). For the purposes of Rule 192, the term "Indian" includes only those persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. Rule 192(5). Because delivery did not take place on [Indian tribe A] territory, the taxpayer does not meet the definition of "Indian" for purposes of Rule 192.

Rule 192 clearly limits the "sale to Indians" retail sales tax exemption to enrolled members of the tribe that owns the tribal lands where the sale or taxable activity is taking place. Det. No. 01-176, 21 WTD 209 (2002) (copy attached). Likewise, sellers are required to collect and remit

² The taxpayer provided a certificate that he is 3/256 degree Indian blood of the [Indian tribe A]. Following the hearing, the taxpayer provided a copy of the declaration of delivery form (REV 32 2502 (8-03-01)) signed by the dealer. In addition to stating the vehicle was delivered on land of the [Indian tribe B], "of which the buyer documented tribal membership." We understand the taxpayer is a member of [Indian tribe A], and not a member of [Indian tribe B].

retail sales tax on each retail sale made by them to nonmembers in Indian Country. Rule 192(5)(c). There is no ambiguity in this requirement.

According to the taxpayer the vehicle was delivered on the [Indian tribe B] reservation. A nonmember means a person not on the tribal rolls of the Indian tribe. Rule 192(2)(e). The taxpayer was a member of the [Indian tribe A], and was not on the [Indian tribe B] tribal roll. The dual membership and delivery declaration in the Rule 192(8)(b) motor vehicle declaration reinforces the requirement that the “Indian” eligible for the exemption take delivery in the territory of her/his tribe, rather than a territory of a tribe of which she/he is not member.

This interpretation is consistent with prior Department rulings. In Det. No 01-176, the Department held retail sales tax was due from a taxpayer similarly situated to the taxpayer before us:

In Taxpayer’s case the sale, delivery and first use of the automobile by Taxpayer took place in . . . , Washington. This activity triggers the tax. Since the [out of state] Indian Tribal lands of which Taxpayer is an enrolled member are located solely [outside of Washington], Taxpayer did not meet the delivery requirement of the tax exemption. Taxpayer’s delivery took place in [Washington] and not on Indian tribal lands owned by the tribe of which he is an enrolled member. Consequently, Taxpayer is not entitled to the tax exemption. Det. No. 97-165, 17 WTD 15 (1997).

We conclude that for the purpose of the tax exemption, the taxpayer is not an “Indian.” The dealer properly charged and collected retail sales tax, which may not be refunded.

DECISION AND DISPOSITION

We deny your petition for refund.

Dated this 26th day of December 2003