

Cite as Det. No. 14-0191, 33 WTD 607 (2014)

BEFORE THE APPEALS 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. 14-0191
)	
...)	Registration No. . . .
)	

[1] RULE 177; RCW 82.08.0264: RETAIL SALES TAX – EXEMPTION – SALES OF MOTOR VEHICLES TO NONRESIDENTS FOR USE OUTSIDE THE STATE – PROOF REQUIRED. To qualify for the exemption for sales of motor vehicles to nonresidents for use outside the state, a motor vehicle dealer must obtain a signed affidavit from the nonresident purchaser and must certify that the vehicle left the dealer’s premises under the authority of a trip permit or under the authority of valid license plates issued to that vehicle by the state of the purchaser’s residence. Providing proof of motor vehicle registration in the nonresident buyer’s state of residence subsequent to the sale does not meet the requirements for the exemption.

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.

Eckholm, A.L.J. – A motor vehicle dealer protests an assessment of retail sales tax, asserting that it met the documentation requirements for tax-exempt sales of motor vehicles for use outside the state, set forth in RCW 82.08.0264 and WAC 458-20-177 (Rule 177), by providing proof of motor vehicle registration in the nonresident buyer’s state of residence subsequent to the sale. The taxpayer’s petition is denied.¹

ISSUE

Whether a motor vehicle dealer has met the documentation requirements for tax-exempt sales of motor vehicles for use outside the state, set forth in RCW 82.08.0264 and Rule 177, by providing proof of motor vehicle registration in the nonresident buyer’s state of residence subsequent to the sale.

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

FINDINGS OF FACT

[Taxpayer] operates a used car dealership in Washington. The Department of Revenue (Department) Audit Division reviewed the taxpayer's records for the period August 1, 2010, through June 30, 2013, and discovered a number of sales where the taxpayer had insufficient documentation to support its asserted deductions for interstate and foreign sales where the nonresident buyer took delivery of the motor vehicle at the taxpayer's dealership. For these sales, the taxpayer's records contained the Department's out-of-state delivery certificate forms, and did not contain the required forms for in-state delivery. In addition, the taxpayer's records lacked evidence of vehicle trip permits or, in the alternative, evidence of registration in the buyer's state of residence. Following the auditor's record review, the taxpayer provided vehicle history reports and motor vehicle registration records indicating that the nonresident buyer registered the motor vehicle subsequent to the sale. The time period between sale and registration ranged from a few days to a period of weeks. The auditor determined that the records of registration subsequent to the sale did not meet the requirements for the tax exemption; therefore, the auditor issued an assessment against the taxpayer for taxes due.²

The taxpayer appealed the assessment, asserting that it misunderstood the type of documentation required to substantiate the tax-exempt sales, and that waiver of the assessment is appropriate where the vehicle buyers were nonresidents and ultimately registered the vehicles in their states of residence. At the hearing, the taxpayer indicated that it used the out-of-state delivery forms because it was provided the forms at a dealer certification course, but asserted that this was simply a technical deficiency and does not affect the tax-exempt status of the sales. The taxpayer admitted that for some of the sales it did not obtain vehicle trip permits and left the Washington plates on the vehicle when delivering the vehicle to the buyer at its dealership, but emphasized that it fills out the title document and provides it to the nonresident buyer with instructions to go to the motor vehicle licensing office in the buyer's state of residence to register the vehicle.

The Department's "Buyer's Affidavit" form for in-state delivery is in sworn affidavit form, to be signed by the buyer, evidenced by signatures of two witnesses, indicating the buyer's state of residency, the buyer's address, and the vehicle information.³ The "Buyer's Affidavit" also contains the following statement by the buyer:

I will be purchasing the vehicle for use outside Washington State. The vehicle will be removed from Washington state by the following means: (Select and complete one)

- A. The vehicle will be driven from the seller's premises under the authority of a trip permit, numbered _____, which has been issued to me by the Washington State Department of Licensing or any agency of another state that has authority to issue similar permits; or

² Document No. 201409275, issued January 10, 2014, includes assessment of retail sales tax of \$. . . , retailing B&O tax of \$. . . , a credit of wholesaling B&O tax of \$. . . , motor vehicle tax of \$. . . , and interest of \$. . . , for a total amount of \$. . .

³ The "Buyer's Affidavit" form for in-state delivery is available on the Department's website at: <http://dor.wa.gov/docs/forms/misc/buyersaff.pdf>.

B. ___ The vehicle will not be used in Washington State for more than three months and has been licensed in the state of _____. That state has issued to me license plates numbered _____. Those license plates are valid until _____. The plates have been affixed to the vehicle before it has left the seller's premises.

I, the undersigned buyer, understand that by completing and signing this affidavit I am swearing that I qualify for the tax-exempt purchase of the vehicle described above. In addition, I understand that false or erroneous use of this affidavit will result in liability for unpaid tax with interest and may result in additional penalties.⁴

* * *

The Department's "Seller's Certificate In-State Delivery" form requires the seller to select the types of buyer identification verified for out-of-state residency, and to provide the vehicle trip permit number or, in the alternative, the plate numbers issued by the state of buyer's residence.⁵ The Department's "Buyer's Out-of-State Delivery" and "Seller's Out-of-State Delivery" certificate forms do not contain the same information as the in-state delivery forms.⁶

ANALYSIS

All sales of tangible personal property are subject to retail sales tax unless a specific exemption applies. RCW 82.08.020. A seller who fails to collect the tax from the buyer is personally liable for payment of the tax. RCW 82.04.050(3). The Washington Legislature has enacted a number of exemptions to the retail sales tax. However, tax exemptions are not presumed and the taxpayer claiming the exemption must clearly establish that it is entitled to the exemption. *Group Health Co-op v. Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201, 205 (1967). RCW 82.08.0264 provides a sales tax exemption for sales of motor vehicles for use outside the state, and includes specific documentation requirements, as follows:

- (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even when delivery is made within this state, but only if:
 - (a) The motor vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a vehicle trip permit issued by the department of licensing pursuant to RCW 46.16A.320, or any agency of another state that has authority to issue similar permits; or

⁴ *Id.*

⁵ The "Seller's Certificate In-State Delivery" form is available on the Department's website at: <http://dor.wa.gov/docs/forms/misc/selcertinstdel.pdf>.

⁶ The "Seller's Certificate Out-of-State Delivery" form is available on the Department's website at: <http://dor.wa.gov/docs/forms/misc/selcertoutofstdel.pdf>. The "Buyer's Certificate Out-of State Delivery" is available on the Department's website at: <http://dor.wa.gov/docs/forms/misc/buyerscertoutofstdel.pdf>.

- (b) The motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the buyer's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.
- (2) For the purposes of this section, the seller of a motor vehicle, trailer, or camper is not required to collect and shall not be found liable for the tax levied by RCW 82.08.020 on the sale if the tax is not collected and the seller retains the following documents, which must be made available upon request of the department:
- (a) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;
- (b) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:
- (i) A current residential rental agreement;
 - (ii) A property tax statement from the current or previous year;
 - (iii) A utility bill, dated within the previous two months;
 - (iv) A state income tax return from the previous year;
 - (v) A voter registration card;
 - (vi) A current credit report; or
 - (vii) Any other document determined by the department to be acceptable;
- (c) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section; and
- (d) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required under subsection (1) of this section.

* * *

(5)(a) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under subsection (2) of this section, and any seller who fails to retain the documents required under subsection (2) of this section for the period prescribed by RCW 82.32.070, is personally liable for the amount of tax due.

* * *

The Department's administrative rule implementing RCW 82.08.0264, Rule 177, reiterates the statutory requirements, and also includes the following: "If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and

retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.” Rule 177(3). The rule also provides additional description of the statutorily required buyer’s declaration and seller’s certification:

. . . [T]he seller must retain the following documents, which must be made available upon request by the department of revenue (department):

* * *

- (iii) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and
- (iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.
To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery). If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit.

Rule 177(3)(c).

The statute and rule are clear that the exemption will apply only when: (1) the vehicle is transported out of state under authority of a vehicle trip permit; or (2) the vehicle is licensed and registered in the purchaser’s state of residence immediately upon delivery, and is transported out of state under authority of a valid license plate issued by that foreign state. *See* RCW 82.08.0264(1); Rule 177(3)(a); Det. No. 06-0037, 26 WTD 59, 64 (2007); Det. No. 87-23, 2 WTD 163, 169 (1986). The taxpayer admitted that the sales in question did not meet these requirements. In addition, the taxpayer did not have the required affidavits and certifications. The taxpayer’s provision of evidence of the nonresident buyer’s registration of the motor vehicles in the state of the buyer’s residence subsequent to the sale does not meet the requirements for the exemption.

The taxpayer has not met its burden in establishing that the sales in question qualify for tax exemption pursuant to RCW 82.08.0264 and Rule 177; therefore, retail sales tax applies to the taxpayer’s sales to the nonresident buyers and the taxpayer is personally liable for the uncollected tax. *See* RCW 82.08.0264(5)(a). The taxpayer’s petition is denied.

DECISION AND DISPOSITION

The taxpayer’s petition is denied.

Dated this 12th day of June 2014.