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Cite as Det. No. 20-0246, Annual WTD Page (Year)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 20-0246
)	
...)	Registration No. . . .
)	

RULE 177; RCW 82.08.0264: RETAIL SALES TAX – EXEMPTION – SALES OF VEHICLES TO NONRESIDENTS. The “substantial compliance” standard the Department applied in Det. No. 99-295, 19 WTD 588 (2000) and Det. No. 00-062, 19 WTD 1003 (2000) was removed from Rule 177 in 2005, and then the statute it interprets, RCW 82.08.0264, was substantially overhauled in 2007. These changes have rendered the “substantial compliance” standard no longer applicable in determining whether the sale of a vehicle to a nonresident qualifies for the retail sales tax exemption found in RCW 82.08.0264 and Rule 177.

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.

Sattelberg, T.R.O. – A pre-owned vehicle dealer protests the Department’s assessment of retailing business and occupation (“B&O”) tax and retail sales tax. The dealer argues that certain exemptions for vehicle sales to nonresidents were improperly disallowed. We deny the petition.¹

ISSUE

Whether a vehicle dealer has provided documentation sufficient to show that it made tax-exempt sales of motor vehicles to nonresidents for use outside of the state under RCW 82.08.0264 and WAC 458-20-177.

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

FINDINGS OF FACT

. . . (“Taxpayer”) sells pre-owned vehicles under the name . . . from its location in . . . Washington. Taxpayer generally collects retail sales tax on the vehicles it sells to end users, although there are instances when Taxpayer will not do so, such as sales to out-of-state residents.

In 2019, the Department’s Audit Division (“Audit”) began auditing Taxpayer for the period January 1, 2016, through March 31, 2019. After reviewing Taxpayer’s records, Audit made several adjustments, which fall into these categories:

1. Additional retail sales tax and retailing B&O tax from underreporting.
2. Disallowed exemptions from retail sales tax and retailing B&O tax for vehicle sales to nonresidents because of insufficient documentation.
3. Additional Motor Vehicle Tax from underreporting and disallowed vehicle sales to nonresidents.
4. Additional wholesaling B&O tax from underreporting.
5. Minor adjustment to the Small Business Tax Credit.

Audit disallowed three exemptions for vehicle sales to nonresidents because Taxpayer did not provide all of the documentation required to show that the sales were exempt. Taxpayer did not provide Audit copies of secondary identification for any of the sales, or copies of trip permit numbers issued. Further, the Buyer’s Affidavit for In-State Delivery of Motor Vehicles (“Buyer’s Affidavit”) and Seller’s Certificate In-State Delivery (“Seller’s Certificate”) that Taxpayer provided Audit were both issued well after the sales had been made. On April 20, 2020, Audit issued Taxpayer an assessment totaling \$²

Taxpayer did not pay the assessment and timely sought its administrative review. Taxpayer argues that Audit incorrectly disallowed the exemptions for the three sales: . . . (“Sale 1”); . . . (“Sale 2”); and . . . (“Sale 3”).³ Taxpayer claims that each purchaser was an out-of-state resident, and therefore Audit improperly disallowed the exemptions. Taxpayer provided documentation for each sale, which we discuss in separate sections.

Sale 1

In support of its petition for Sale 1, Taxpayer provided a copy of a “Registration Acknowledgement” showing the purchaser’s address in [State 1], although the copy is undated. Taxpayer provided a copy of mail from . . . Credit Union showing the same [State 1] address of the purchaser. Taxpayer provided a copy of the purchaser’s [State 1] Driver’s License showing the same [State 1] address.

Taxpayer provided a copy of a Vehicle Record Print from the [State 1] Department of Transportation for the vehicle in Sale 1. The print shows the purchaser in Sale 1 with a [State 1] address that matches the other records provided for that purchaser.

² The assessment consisted of \$. . . in retail sales tax, \$. . . in retailing B&O tax, \$. . . in motor vehicle tax, \$. . . in wholesaling B&O tax, a \$. . . reduction in small business tax credits claimed, and \$. . . in interest.

³ The contested sales total to \$. . . in retail sales tax, \$. . . in retailing B&O tax, and \$. . . in motor vehicle tax.

Taxpayer provided a copy of the Buyer's Affidavit stating that the purchaser is a resident of [State 1], that the vehicle had been licensed in [State 1], and had a [State 1] License Plate. The copy is dated in January 8, 2020, approximately two and half years after the purchase date of July 26, 2017.

Taxpayer provided a copy of the Seller's Certificate, which states that the seller, Taxpayer, retained documentary evidence showing the buyer's residence was in [State 1]. The Seller's Certificate is dated January 9, 2020, approximately two and a half years after the purchase date.

Sale 2

In support of its petition for Sale 2, Taxpayer provided the purchaser's Driver's License, which is from [State 2]. Taxpayer provided a copy of the purchaser's vehicle registration, which was also in [State 2].

Taxpayer provided a copy of the [State 2] Department of Transportation's Title and Registration Application, dated in March of 2018. The application shows the purchaser with an [State 2] address, the same license plate number as on the Buyer's Affidavit, and the same Driver's License number as on the [State 2] Driver's License.

Taxpayer provided a copy of the Buyer's Affidavit, which states that the purchaser is a resident of [State 2], and that the vehicle had been licensed in [State 2], and had a [State 2] License Plate. The copy is dated in January of 2020, approximately two years after the purchase date of February 27, 2018.

Taxpayer provided a copy of the Seller's Certificate, which states that the seller, Taxpayer, affixed [State 2] license plates to the vehicle. The copy is dated in January of 2020, approximately two years after the purchase date.

Sale 3

In support of its petition for Sale 3, Taxpayer states that the purchaser in Sale 3 had a Washington Driver's License, but points out that the co-purchaser of the vehicle in that sale had an [State 1] Driver's License, which Taxpayer provided a copy of. Taxpayer provided a copy of mail the co-purchaser received, undated, which shows a [State 1] address. Taxpayer provided a copy of a [State 1] "Passenger Registration," which shows the purchaser and co-purchaser with a [State 1] address. Taxpayer provided multiple undated pieces of mail to the purchaser showing a [State 1] address.

Taxpayer provided a copy of a Vehicle Record Print from the [State 1] Department of Transportation for the vehicle in Sale 3. The print shows the purchaser and co-purchaser in Sale 3 with a [State 1] address that matches the other records provided for those purchasers.

Taxpayer provided a copy of the check from the purchaser drawn from . . . Credit Union. Taxpayer provided a copy of . . . Credit Union's website showing that only residents from . . . [State 1] counties are eligible to join the credit union.

Taxpayer provided a copy of the Department's Buyer's Affidavit. The Buyer's Affidavit states that the purchaser is a resident of [State 1], that the vehicle had been licensed in [State 1], and had a [State 1] License Plate. The copy is dated in January of 2020, approximately 16 months after the purchase date of October 1, 2018.

Taxpayer provided a copy of the Department's Seller's Certificate, which states that the seller, Taxpayer, retained documentary evidence showing the buyer's residence was in [State 1]. The Seller's Certificate is dated January 30, 2020, approximately 16 months after the purchase date.

Taxpayer finally provided a declaration from an employee of authorized vehicle and vessel subagency stating this employee has access to the Washington State Department of Licensing ("Licensing") vehicle database.⁴ The declarant lists 16 vehicles that it declares were titled in Washington to Taxpayer, three of which are the three sales at issue here. The declarant states that none of the vehicles listed were registered in Washington after having been sold by Taxpayer. The declarant also states that had the vehicles been driven out of Washington, they would have had to have done so under the authority of a trip permit. The declarant then states that Licensing does not keep records of who is issued trip permits, so that information cannot be verified by Licensing.

Taxpayer admits that it does not have record of trip permits being issued, but it presumes there must have been trip permits issued or else the vehicles illegally travelled on Washington roads heading out of state. Taxpayer argues that the documentation it submitted for each sale shows that it substantially complied with the exemption requirements for each sale.

ANALYSIS

All sales of tangible personal property, such as vehicles, are subject to retail sales tax unless a specific exemption applies. RCW 82.08.020. One such retail sales tax exemption is found in RCW 82.08.0264, which applies to sales of motor vehicles for use outside of Washington. RCW 82.08.0264 includes these specific documentation requirements:

- (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
 - (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.

⁴ The copy of the document provided shows the name of the employee and the name of the employer in extremely light, essentially illegible form.

(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.

(Emphasis added.)⁵

⁵ WAC 458-20-177, the Department's regulation regarding the exemption in RCW 82.08.0264, adds the following items as examples of what "other document determined by the department to be acceptable" from RCW 82.08.0264(2)(b)(7) includes:

(I) A bank statement issued within the previous two months;

(II) A government check issued within the previous two months;

(III) A pay check issued within the previous two months;

(IV) Mortgage documents of current personal residence;

(V) Current vehicle insurance card;

(VI) Letter or other documentation issued by the postmaster within the previous two months;

The Department's administrative rule implementing RCW 82.08.0264, WAC 458-20-177 ("Rule 177"), reiterates the statutory requirements and also states that the seller must retain the Buyer's Affidavit and the Seller's Certification, which correspond to RCW 82.08.0264(2)(c) and (d), respectively. Rule 177 also identifies other documentation required to be collected, which must be made available upon request by the Department.

At the top of the Buyer's Affidavit form, the form states: "To Be Completed By The Buyer When The Vehicle Is Delivered To The Buyer Within Washington State." The Seller's Certificate contains a similar requirement to be completed at the time of the sale, where it states:

I certify that before final delivery of the vehicle described in the Buyer's Affidavit, . . . :

- A. I examined trip permit No. _____, which authorizes the vehicle's transit, or
- B. License plates numbered _____, issued for the vehicle by the state of _____, and expiring on _____, were affixed to the vehicle.

We note that since Taxpayer is claiming an exemption applies, Taxpayer has the burden of establishing its entitlement to any exemption from tax liability. *See Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972) ("Exemptions to the tax law must be narrowly construed. Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it."); *see also Lacey Nursing v. Dep't of Revenue*, 128 Wn.2d 40, 905 P.2d 338 (1995); *Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000); Det. No. 13-0279, 33 WTD 75 (2014).

In Det. No. 14-0191, 33 WTD 607 (2014), we addressed a similar case where the taxpayer did not retain copies of the statutorily required documentation to prove the exemption. 33 WTD 607. The seller in that case had not kept records of trip permits or evidence that the buyer immediately registered the vehicle in another state. *Id.* at 608. Instead, the seller provided vehicle history reports and motor vehicle registration records showing the nonresident buyer registered the vehicle in another state during the audit. *Id.* In addressing whether this met the requirements of the exemption, we held:

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

(VII) Other government document issued within the previous two months;

motor vehicles in the state of the buyer's residence subsequent to the sale does not meet the requirements for the exemption.

Id. at 611.

Similarly, here, Taxpayer has not met the requirements of the statute and rule. Taxpayer's copies of the Buyer's Affidavit and Seller's Certificate were all dated at least over one year after the sale date. As we noted in 33 WTD 607, post-sale documentation of this type does not meet the requirements of the exemption. Taxpayer, however, does not claim that it has fully complied with the letter of the law at hand, but instead argues that it has substantially complied, and that this should be considered sufficient. Taxpayer grounds its substantial compliance argument in Det. No. 99-295, 19 WTD 588 (2000) and Det. No. 00-062, 19 WTD 1003 (2000).

In 19 WTD 588, a recreational vehicle seller claimed the vehicle sales to nonresident exemption for certain sales. 19 WTD at 589. Audit disallowed two of these exemptions, disallowing one because the seller did not record the trip permit number, and disallowing another because the seller did not maintain the proper documentation for military personnel. *Id.* The seller provided documentation for both sales that was statutorily incomplete, but the Department found that the seller had substantially complied with its statutory requirements for the trip permit sale because the seller had exercised "a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers." *Id.* at 591.

In 19 WTD 1003, a pre-owned vehicle seller claimed the vehicle sales to nonresident exemption for certain of its sales. 19 WTD at 1003. Audit disallowed six of these exemptions, which the seller appealed. *Id.* The seller provided various documentation for each sale, which the Department examined, and granted four of the six exemptions, remanding another. *Id.* at 1009 – 1011. The analysis for each of the granted sales does not examine the evidence for full compliance, but instead is similar to 19 WTD 588 in that it looks for substantial compliance.

Both 19 WTD 588 and 19 WTD 1003 cited to and relied on this portion of Rule 177, which was the rule at the time:

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the [nonresidence] of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims.

Former Rule 177(1)(b) (1983) (emphasis added).

This entire portion of the rule was removed when Rule 177 was amended in 2005. WSR 05-14-086. The purpose of the 2005 amendment was to “update the documentation forms,” add information about other sales tax exemptions, and provide some examples. *Id.* The underlying statute, RCW 82.08.0264, was not amended between 1980 and 2007, so the 2005 amendment to Rule 177 was not the result of a change in the language of that statute. The 2007 amendment to RCW 82.08.0264, however, substantially changed the statute to extensively list the documentation required to meet the exemption, listed above. This listing was not in the statute at the time 19 WTD 588 and 19 WTD 1003 were issued.

We note that that administrative rules are presumed valid if they are reasonably consistent with the controlling statute. *Wash. Pub. Ports Ass’n v. Dep’t of Revenue*, 148 Wn.2d 637, 646 (2003). The Department of Revenue has the authority to make interpretative rules, such as the Rule 177. *See Ass’n of Washington Bus. v. Dep’t of Revenue*, 155 Wn. 2d 430, 120 P.3d 46 (2005).

Given how RCW 82.08.0264 and Rule 177 have changed since 19 WTD 588 and 19 WTD 1003 were issued, we find Taxpayer’s reliance on those two WTDs misplaced. Instead, 33 WTD 607, a WTD issued applying the current language of the statute and rule, is more relevant to this case.⁶ The current version of Rule 177 does not have the “good faith” or “reasonable degree of prudence” standards from the version cited in 19 WTD 588 and 19 WTD 1003, so we do not examine if a taxpayer has “substantially” complied under former Rule 177. Instead, we examine whether a taxpayer has fully complied with RCW 82.08.0264 and Rule 177. Since Taxpayer here did not maintain copies of the Buyer’s Affidavit or the Seller’s Certificate contemporaneous with the three sales at issue, nor did it maintain secondary information or trip permit information, we hold that it has not carried its burden to show that it has complied with RCW 82.08.0264. Accordingly, we deny Taxpayer’s petition.

DECISION AND DISPOSITION

We deny Taxpayer’s petition.

Dated this 8th day of September 2020.

⁶ Rule 177 has been amended twice since 33 WTD 607 was issued, but there has been no change to the applicable language, only renumbering. *See* WSR 15-01-106; WSR 19-24-084.