

Cite as Det. No. 15-0179, 35 WTD 145 (2016)

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. 15-0179
	)	
...	)	Registration No. ...
	)	

[1] RCW 82.12.020; WAC 458-20-106: USE TAX – BUSINESS REORGANIZATIONS – Vehicles transferred between two corporate entities will not qualify for the business reorganization use tax exemption where the recipient corporate entity (taxpayer) has not shown that the transferor previously paid retail sales tax; that the two corporate entities were wholly owned subsidiaries of the same parent company; and beneficial interests in the corporate entities were adjusted to reflect the transfers.

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.

Anderson, A.L.J. – A construction company petitions for refund of use tax paid on its acquisition of six vehicles, asserting the transfer of such vehicles was a non-taxable transfer of capital assets between wholly-owned subsidiaries of the same corporation. Petition denied.<sup>1</sup>

ISSUE

Whether taxpayer established acquisition of vehicles was exempt from use tax as a transfer between wholly owned subsidiaries of the same corporation under WAC 458-20-106.

FINDINGS OF FACT

On July 1, 2013, [Seller] sold six vehicles to [Taxpayer] via six separate Bills of Sales, containing the following information:

<u>Year/Make/Model</u>	<u>Price</u>
1. 2000 Chevrolet Pick-up	\$ ...
2. 2013 Chevrolet Silverado	\$ ...
3. 1999 Toyota Pick-up	\$ ...
4. 2008 Ford F150	\$ ...
5. 2010 Toyota 4Runner	\$ ...
6. 2010 Ford E250	\$ ...

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

On September 4, 2013, Taxpayer filed six Vehicle Title Application/Registration Certificate Forms with the Washington State Department of Licensing and paid \$ . . . in use tax to register the six vehicles in Washington.<sup>2</sup>

On April 2, 2014, Taxpayer requested the Washington State Department of Revenue (the “Department”) refund the \$ . . . in use tax paid with respect to these six vehicles. Taxpayer asserted that the vehicle transfers should not have been subject to use tax because they were made through adjustments of beneficial interests in related businesses under Rule 106.

The Department’s Compliance Division (“Compliance”) reviewed the refund request and contacted Taxpayer’s CFO to discuss the vehicle transfers. In discussing the refund request with Compliance, Taxpayer’s CFO stated that Taxpayer was a newly formed entity and the sales were transfers where no money exchanged hands. Compliance requested Taxpayer provide, Articles of Formation for itself and Seller, to show the parent company ownership of each entity. Compliance also requested corporate minutes authorizing the vehicle transfers. To date, Compliance has not received the requested documents.

During the hearing, Taxpayer’s CFO again stated that the transfers were between two wholly-owned entities with the same parent, and no money was exchanged in the transfers. Taxpayer’s CFO explained that the Bills of Sale were necessary because the vehicles were transferred from a union entity to a non-union entity. Taxpayer’s CFO stated that retail sales tax was paid by Seller when it purchased the vehicles. We asked Taxpayer to provide documents showing that Taxpayer and Seller are wholly-owned by the same parent and that Seller paid retail sales tax when it purchased the vehicles, by April 16, 2015 (the agreed close of record date). To date, we have not received the requested documents nor the documents requested by the [Compliance].

#### ANALYSIS

Washington imposes a retail sales tax on every retail sale of tangible personal property in Washington. RCW 82.08.020(1). It also imposes a use tax for the privilege of using an item of tangible personal property in Washington. RCW 82.12.020(1). The use tax is complementary to the retail sales tax and is not imposed on an item of tangible personal property when retail sales tax has been paid [by the user] with respect to such item. RCW 82.12.020(3).

Here, Taxpayer asserts that the vehicle transfers are not subject to use tax because they were made through adjustments of beneficial interests in related businesses. WAC 458-20-106 recognizes that transfers of capital assets in exchange for adjustments to beneficial interests in related businesses may not be taxable and states:

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<sup>2</sup> Taxpayer paid the following amounts of use tax per vehicle: (1) 2000 Chevrolet Pick-up - \$ . . . ; (2) 2013 Chevrolet Silverado - \$ . . . ; (3) 1999 Toyota Pick-up - \$ . . . ; (4) 2008 Ford F150 - \$ . . . ; (5) 2010 Toyota 4Runner - \$ . . . ; and (6) 2010 Ford E250 - \$ . . . .

## Use Tax

...

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. (See exempt situations listed under the retail sales tax subdivision of this rule.)

Taxpayer's assertions are twofold: First, that the transferor previously paid retail sales tax on the vehicles; and second, that the transfers involve situations listed under the retail sales tax subdivision of WAC 458-20-106 as nontaxable. As relevant here, the retail sales tax subdivision of WAC 458-20-106 provides the following exemption:

## Retail Sales Tax

...

A transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply:

(1) Transfers of capital assets between a corporation and a wholly-owned subsidiary, or between wholly-owned subsidiaries of the same corporation.

...

The burden is upon the taxpayer to establish facts concerning the adjustment of the beneficial interest in the business when exemption is claimed.

Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-175 (1972). WAC 458-20-106 echoes this legal principle in stating that the burden is on the taxpayer to establish facts concerning the adjustment of beneficial interest in the transfer of capital assets.

RCW 82.32.070 explains that taxpayers must "keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable. . ." Taxpayers also bear the statutory responsibility to "[k]eep accurate and complete business records." RCW 82.32A.030(3). WAC 458-20-254 explains what kinds of records a taxpayer must maintain, including supporting records for any "deductions, exemptions, or credits claimed" and records showing "[t]he payment of retail sales tax." WAC 458-20-254(3)(b)(ii), (iii).

In reviewing Taxpayer's assertions, the Department asked Taxpayer to provide records showing that Seller had previously paid retail sales tax on the vehicles, that Taxpayer and Seller were wholly owned subsidiaries of the same parent company, and that business records show an adjustment in beneficial interest. Because Taxpayer has failed to provide the requested records,

we conclude that Taxpayer has failed to show that it is entitled to the claimed refund. Accordingly, we deny its petition for refund.

DECISION AND DISPOSITION

[The taxpayer's petition is denied.]

Dated this 10th day of July, 2015.