

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 88-322
)	
. . .)	Registration No. . . .
)	Notice of Use Tax Due
)	

[1] **RULE 247:** RETAIL SALES TAX -- TRADE-IN PROPERTY -- PROPERTY OF LIKE KIND -- WHAT QUALIFIES. In order to qualify as "property of like kind" so as to be deducted from the selling price on which retail sales tax is calculated, the property traded in must be of the same general class as that purchased. The trade-in of a tractor and trailer, vehicles intended for road use, on construction equipment is not a trade-in of property of like kind so as to qualify under the rule. Thus the value of the property traded in is not properly deducted from the selling price in order to calculate the retail sales tax due.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer protests the notice of use tax due, arguing that he should be allowed the sales tax deduction for trade in property of "like kind."

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer purchased a 1985 Komatsu Excavator and a 1982 International 6-Way Dozer in September of 1985. Taxpayer gave a 1982 Peterbilt tractor and a 1980 Alloy Trailer as trade-in on the purchase. An excavator and dozor are motorized pieces of construction equipment. A Peterbilt tractor and Alloy trailer are used together as a road vehicle to transport goods. The retailer deducted the value of the trade-in to compute the

sales tax due on the sale. In December of 1987, the Department of Revenue sent taxpayer a notice of use tax due for the amount of sales tax that should have been paid on the trade-in allowance.

Taxpayer states that "[t]he equipment purchased and traded-in was suitable for on and off road use as motor-propelled equipment employed in the taxpayer's transportation business. . . ." and argues that this property should qualify as "trade-in property of like kind" under rule and statute.

DISCUSSION:

In 1984, Initiative No. 464 amended the definition of "selling price" contained in RCW 82.08.010(1), by excluding the value of "trade-in property of like kind." Thus, the sales price of an item is calculated by deducting from the price the value of property traded in, so long as the property is of "like kind." WAC 458-20-247 (Rule 247), the administrative rule implementing the change, provides as follows:

The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, for example, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, audio/video equipment for audio/video equipment, and the like. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of this rule, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed land recreational vehicles. Conversely, a utility trailer may not be taken as trade in on a travel trailer, for purposes of this rule, because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Similarly, a car may not be taken as trade-in on a camper and vice versa.

Under these definitions it is not required that a car be traded-in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded-in as part payment for a truck, motorcycle,

motor home, or any other qualifying motor vehicle. . . . However, the exclusion of the value of property traded-in does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, or farm machinery (including tractors and self propelled combines) for a car.

The auditor who assessed the use tax considered taxpayer's trade to be "analogous to the car/farm machinery example." Taxpayer disputes this, arguing that under the rule, his trade qualifies as "trade-in property of like kind," and he cites the section stating that a car could be traded in on "any other qualifying motor vehicle." He argues that the "equipment purchased and traded-in was suitable for on and off road use as motor propelled equipment employed in the taxpayer's transportation business. . . ."

We find taxpayer's arguments unpersuasive. Taxpayer's purchases, an excavator and a dozer, are pieces of construction equipment, albeit motorized, and quite analogous to farm machinery. Neither of them make particularly good road vehicles. The items taxpayer traded in, however, were a trailer and tractor, items which are in fact specifically intended for road use. In order to qualify as trade-in property of like kind, both items must be of the same general class--road vehicles for road vehicles, farm machinery for farm machinery, furniture for furniture, etc. A piece of construction equipment is not within the same general class as a road vehicle, and is not "property of like kind," so as to qualify for the deduction from the sale price.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 10th day of August 1988.