

Cite as 10 WTD 107

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. 90-305
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

[1] RULE 132: USE TAX -- DISPLAY MODELS -- ETB 332.12.178.
Motorcycle dealers are not subject to use tax on the value of models which are used for display and test drives in the same manner as those used by automobile dealers. The nature of the activity, the sale to consumers of passenger vehicles, is the same and must be accorded the same treatment as that granted to automobile dealers.

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 assessment of use tax on two motorcycles used for display and test drives in its retail dealership.

FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer is engaged in business as a seller of motorcycles. Its records were examined for the period from . . ., through The sole issue in this case is whether use tax was properly assessed on the value of two motorcycles used as display models.

Taxpayer contends the motorcycles are never put to personal use by its staff, are kept at all times on the display floor, are used only for test drives by potential purchasers, and have less than 600 miles on them. It states that all of its inventory is

available for test drives, because it maintains a small number of units of each model type.

The auditor found that the two motorcycles so assessed were purchased from the manufacturer under a special program. It permits use of the vehicles for six months, for a limited number of miles, and grants "free" flooring during that period with a rebate to the dealer at the time the demonstrators are sold.

Taxpayer contends the units are "carried in inventory as new and in all respects sold as new: to the customer (with mileage disclosure); to the manufacturer; and to the Department of Motor Vehicles."

DISCUSSION:

[1] WAC 458-20-132 (Rule 132) applies to the use of display vehicles. It states, in pertinent part:

(1) This section accounts for the unique practices of the retail automobile dealer's industry and reflects administrative notice of the customs of this trade. The tax reporting formula explained in this rule represents a compromise of tax liabilities and offsetting deductions.

The rule gives a formula for calculation of use tax on vehicles put to personal or business use by the dealers or their employees for any purpose other than display to potential purchasers. Vehicles used for display only are not subject to use tax. The rule defines "display" as

the showing for sale of vehicles to prospective purchasers, at or near the dealer's premises, including the short term test driving, operating, and examining by prospective purchasers.

(Emphasis supplied.)

The auditor considered the rule prior to assessing use tax on the display models, but concluded that although the definition in the rule

sounds like what the taxpayer is doing with its demo motorcycles, this rule applies to cars and pickup trucks. The taxpayer feels that, since the requirements of all other rules regarding the sales of vehicles apply to them, this rule should also apply to them.

Instead, the auditor concluded that Excise Tax Bulletin (ETB) 332.12.178 applied, in part because the motorcycles were sold at a reduced price. ETB 332 held that use tax

is not applicable to the brief and superficial use...for short periods. . .in floor or window displays [of articles, including automobiles, boats or appliances regularly used as demonstrators if they are] thereafter sold as new merchandise.

As a general guide, such articles will be deemed to have been substantially used, and subject to the Use Tax, when carried in the taxpayer's books of account as demonstrator or display merchandise, or when so extensively used for demonstration or display purposes that they can no longer be sold as new merchandise.

Here, taxpayer permits use of inventory items in exactly the manner described in the rule and ETB. It asserts that the items are always maintained as inventory items. While the price is generally reduced due to their prior display use, they are treated as "new" by the purchaser, manufacturer and Department of Motor Vehicles.

We agree with taxpayer that Rule 132 and ETB 332 are consistent in their treatment of articles used for display purposes as defined in the rule. The rule uses the term "automobile dealers" in the title; however, it also uses the term interchangeably with "vehicle" throughout the text, including where it exempts use of display "vehicles" from use tax. ETB 332 exempts "articles," including automobiles, boats, and appliances from use tax when they can still be sold as "new" after the display use is discontinued. It is immaterial that they are sold at a reduced price if a new-motorcycle warranty is included in the sale and the vehicle is otherwise treated as "new."

We find that exclusion of motorcycle dealers from the rule's application misses the stated purpose of the rule: to recognize and accommodate the unique practices of the trade. There is no appreciable difference between the operation of a motorcycle seller and an automobile seller. Both sell motor vehicles. New-motorcycle sellers are doing exactly what new-automobile sellers do: selling passenger vehicles for personal use to persons who, generally, test-drive the vehicle or a comparable model prior to the purchase. This situation is exactly the same as that of the automobile dealer who uses cars for display purposes; as such, they are entitled to the same consideration as has been given automobile dealers. Consequently, we conclude that use tax does not apply to models put to the limited use of display and test drives which are subsequently sold as "new."

DECISION AND DISPOSITION:

Taxpayer's petition is granted. The tax will be deleted.

DATED this 6th day of August, 1990.