

Cite as 6 WTD 47 (1988)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
<u>N</u>	
For Refund of)	
)	No. 88-226
)	
. . .)	Unregistered
)	Use Tax Notice
)	

[1] **RULE 178 AND RCW 82.12.035:** USE TAX -- AUTOMOBILE -
- CREDIT FOR SALES TAX PAID OUT OF STATE. In a gift
situation for the donee to receive credit for sales
tax paid in another jurisdiction, such tax must have
been paid by either the present user or its donor.
Here the tax on an automobile was paid by the
donor's donor so the sales tax credit is disallowed
because of a lack of privity.

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:

Petition for refund of use tax paid on automobile transferred
from Florida.

FACTS AND ISSUES:

Dressel, A.L.J. - . . . (taxpayer) recently moved to
Washington from Florida. She brought with her a 1986 Jeep
Wagoneer which had been given to her by her father. Her
father won the vehicle in Florida in a supermarket raffle. He
applied for a Florida registration on December 12, 1986 which
day presumably is close to the date that he actually took

delivery of the Jeep. The supermarket paid sales tax on the vehicle in the amount of \$909.55. On May 21, 1987 the taxpayer's father, . . . , gave the Jeep to the taxpayer and her husband as a wedding and going away gift. Apparently, the couple immediately drove the motor vehicle to Washington as the file reflects a vehicle inspection by the Washington State Patrol on May 26, 1987. A Notice of Use Tax Due was issued by the Department of Revenue (Department) to the taxpayer at her new Washington address on June 5, 1987. The taxpayer in this action is appealing that notice contending that she should receive credit for the amount of sales tax paid in Florida. Whether that is so is the sole issue to be decided herein.

DISCUSSION:

WAC 458-20-178 (Rule 178) reads in part as follows:

(1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon.

. . .

(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor *and the bailee or donee if the tax is not paid by the bailor or donor*, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax). . . . (Italics ours.)

The same rule provides for certain exemptions from use tax. One of those is contained in paragraph (7) (d) which states:

The use of any article of tangible personal property purchased at retail or acquired by lease, by bailment or by gift if the sale thereof to or the use thereof by the present user or its bailor or donor has already been subjected to retail sales tax or use tax and *such tax has been paid by the present user or by its bailor or donor; . . .* (Italics ours.)

There is also a portion of the rule pertaining to credits. Paragraph (12) reads:

Credit. When property purchased elsewhere is brought into this state for use or consumption the use tax will apply upon the use thereof, but a credit is allowed for the amount of sales or use tax *paid by the user or its bailor or donor* on such property to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the property in this state.
(Italics ours.)

The credit section of the administrative rule is derived from statutory law, namely RCW 82.12.035, which contains very similar language. The statute reads:

Credit for retail sales or use taxes paid to other states or political subdivisions with respect to property used. A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property in this state in the amount that *the present user thereof or his bailor or donor has paid a retail sales or use tax* with respect to such property to any other state, political subdivision thereof, or the District of Columbia, prior to the use of such property in this state. (Italics ours.)

[1] The present user of the subject vehicle is the taxpayer. She has not paid sales or use tax to another jurisdiction. The donor in this case is her father. He also did not pay sales or use tax on the Jeep to another jurisdiction. His donor, the supermarket, did pay such a tax. By their language, the statute and the rule require privity between the

tax-paying donor and the present user in order for the latter to receive credit for sales or use tax paid by the former. Such a relationship does not exist between the supermarket and the taxpayer so, therefore, the credit is not available to her.

DECISION AND DISPOSITION:

The taxpayer's petition is hereby denied.

DATED this 31st day of May 1988.