

BEFORE THE APPEALS 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. 99-004
	)	
...	)	Registration No. ...
	)	FY. . ./Audit No. ...
	)	

[1] RULE 177; RCW 82.08.0264: RETAIL SALES TAX -- AUTOMOBILE SALES -- OUT-OF-STATE. Car dealers must document both that vehicles were sold to nonresidents and how the vehicles left the state to qualify for the sales tax exemption.

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.

NATURE OF ACTION:

An automobile dealer protests retail sales tax on cars sold to alleged nonresidents.<sup>1</sup>

FACTS:

M. Pree, A.L.J. - . . . (Taxpayer) is a car dealer located in Washington. The Department of Revenue (Department) reviewed the taxpayer's books and records for the period from January 1, 1992 through June 30, 1996. As a result, the Department's Audit Division issued the above referenced assessment in the amount of \$. . . . The taxpayer paid \$ . . . and disputed the \$. . . balance. The taxpayer states the disputed amount represents retail sales tax, which it was not required to collect on vehicles sold to nonresident purchasers.

Originally, the taxpayer disputed the sales of 30 vehicles. After the taxpayer filed its petition for correction of assessment, the Audit Division issued a Post Audit Adjustment (PAA) removing one of the disputed transactions from the assessment. At the hearing, the taxpayer conceded tax was due on some of the transactions and paid an additional \$. . . . Twenty-three (23) transactions remain in dispute. The dispute pertains to the sufficiency of documentation provided by the taxpayer.

---

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

We will describe below the records available for each of the transactions<sup>2</sup> after naming the purchaser:

1.

The affidavit<sup>3</sup> indicates the buyer was a nonresident. The spaces on the affidavit showing the trip permit number and license plate number are blank. A declaration from the buyer signed about four years after the purchase indicates the vehicle was either shipped or delivered to a common carrier outside of Washington. A bill of lading obtained about six years after the sale indicates the vehicle was delivered from the taxpayer to the buyer at an out-of-state location. A copy of an Alaska application and title registration indicates the buyer registered the vehicle in Alaska within a month of the purchase.

2.

The affidavit indicates the buyer was a nonresident. The spaces on the affidavit showing the trip permit number and license plate number are blank. A declaration from the buyer signed about one year after the purchase indicates the vehicle was either shipped or delivered to a common carrier outside of Washington, but does not explain how. A copy of an Alaska license application and title registration indicates the buyer registered the vehicle in Alaska within three days of the purchase.

3.

The affidavit indicates the buyer was a nonresident. The spaces on the affidavit showing the trip permit number and license plate number are blank. A declaration from the buyer signed over three years after the purchase indicates the vehicle was either shipped or delivered to a common carrier outside of Washington, but does not explain how. There is no evidence regarding where or when the vehicle was licensed.

4. <sup>4</sup>

The file does not contain an affidavit. The buyer is a Washington corporation with a place of business in Canada. The taxpayer provided a copy of a bill of lading, dated March 24, 1994, from the taxpayer's address to a Canadian location for two chassis, with a customs cargo control document dated March 26, 1994.

5.

An affidavit indicates the buyer was a Russian resident. The vehicle was purchased October 12, 1994. A 1998 statement by an employee of the taxpayer indicates that he delivered the vehicle to a

---

<sup>2</sup> Several purchasers were involved with more than one transaction.

<sup>3</sup> References to "affidavit" means the buyer's affidavit form in WAC 458-20-177 (Rule 177). The buyer's affidavit forms used by the taxpayer had the Rule 177 "CERTIFICATE OF DEALER" forms at the bottom. Unless specifically addressed, that portion of the form was blank.

<sup>4</sup> Originally, the taxpayer protested three vehicles sold to . . . . However, since filing the petition, the taxpayer has conceded the tax on any . . . transaction in the assessment except for the vehicles delivered to Canada.

for-hire carrier on or about October 19, 1994. The employee signed the bill of lading dated October 19, 1994 showing the vehicle was delivered from the taxpayer to Russia.

6.

The buyer purchased the vehicle over the phone on August 19, 1992. The affidavit was faxed on that date and indicates the buyer was an Alaska resident. According to a letter he sent on April 13, 1998, the buyer was working as a fishing guide in Alaska from May 1, 1992 through Sept 22, 1992. However, he signed an original odometer disclosure statement dated August 19, 1992. He applied for Alaska license plates on Sept 21, 1992. The purchaser states he picked up the vehicle the end of September 1992 and drove it to Alaska.

7.

The undated affidavit indicates the buyers were Montana residents. Apparently, the taxpayer's salesman only saw a property deed with a water well log, as far as out-of-state identification is concerned. In 1996 the purchasers sent a letter stating they were building a home in Montana at the time of purchase, February 17, 1993. They also owned a home in Washington they were selling. They also stored their furniture in Washington. Due to financing problems the house sale did not close until seven months after the vehicle purchase, in late October 1993. A declaration dated October 20, 1996 indicates they drove the vehicle from Washington under a trip permit, but no number or copy of the permit was provided.

8.

The buyer purchased the vehicle on September 27, 1994. The affidavit states the buyer was a nonresident, and gives a trip permit number. The file has two copies of Alaska driver's licenses. The buyers applied for an Alaska vehicle license on October 8, 1994.

9.

This purchaser signed a blank affidavit. He purchased the vehicle and took it to a storage space in Idaho. The purchaser sent the taxpayer a note stating he had not finished the purchase of his home. On October 28, 1994, the purchaser registered the vehicle in Idaho, and paid Idaho sales tax.

10.

The purchaser signed an affidavit on July 24, 1992 and provided a driver's license as poof that he was a Nevada resident. The affidavit did not address how the vehicle was transported outside the state. Later, the buyer provided an undated statement that the vehicle was driven to Nevada on a four-day trip permit issued by the taxpayer. The vehicle was registered in Nevada on August 31, 1992.

11.

This purchaser signed an affidavit dated April 4, 1994 stating he was an Alaska resident. The affidavit did not indicate how the vehicle was transported from the state. The file also has poor copies of an Alaska driver's license, Alaska Department of Labor certificate of fitness as an

electrician journeyman, and a card certifying the purchaser was an employee of the Alaska Department of Transportation. None of the copies had a legible date. The file also had a copy of the purchaser's blank check with an Alaska address.

12.

This purchaser signed a 9/21/95 affidavit stating he was a nonresident. The affidavit did not indicate the purchaser's state of residence or how the vehicle was removed from Washington. The file contained a poor copy of an Idaho driver's license, a blank Idaho check, and a statement faxed from a Washington number on November 6, 1996 that the purchaser resided in Idaho from October of 1992 through February of 1996.

13.

This corporate purchaser operated in several states including Washington. The November 30, 1995 affidavit did not indicate how the vehicle was transported from Washington. A note in the file contained a copy of an Idaho business card with a statement that the purchaser's representative would be working in the Idaho office on the card. The file also contained a copy of an Idaho application for title dated December 14, 1995.

14.

This file contained an affidavit signed October 1, 1995 by an Arkansas purchaser with no indication of how the vehicle left Washington. A copy of correspondence with the Arkansas Department of Motor Vehicles indicated title had not been transferred as of January 10, 1996. The file also contained a copy of an Arkansas driver's license and hunting license.

15.

On December 4, 1992, the purchaser signed an affidavit indicating he was an Alaska resident without any indication of how the vehicle left Washington. The file also contained copies of Alaska driver's, business, and fishing licenses. The buyer applied for an Alaska vehicle license on January 3, 1993.

16.

This file contained copies of an April 16, 1993 purchase agreement with an April 21, 1993 Oregon title and registration application, the back of which had a statement, "customer is leaving the country. Need title as so[on] as poss[ible]." Both listed an Oregon address for the purchaser.

17.

This Alaska purchaser signed an affidavit indicating the vehicle would be transported outside of Washington with Alaska plates, but without indicating the license number. The file contained copies of Alaska driver's, pilot, and fish & game licenses. However, there was not any indication of the Alaska license number or when the plates were obtained.

18.

This Alaska purchaser signed an affidavit on January 31, 1995. There is not any indication of how the vehicle left Washington. The file contains a copy of an Alaska registration issued April 24, 1995.

19.

The purchaser did not sign this November 2, 1995 affidavit. An October 22, 1996 declaration from someone in Hawaii indicates the vehicle was shipped by common carrier to the undersigned. A statement from an officer of the purchaser indicated the vehicle was first licensed and registered in Oregon, then shipped to Hawaii. The files contains a copy of a December 22, 1995 Oregon title.

20.

This February 6, 1996 purchaser signed an affidavit indicating he was an Alaska resident, but not showing how the vehicle left Washington. The file contained copies of an Alaska driver's license and pilot's license with an Alaska address. Apparently, they intended to have it shipped to Alaska. There is a note that it "took so long that they paid for an airline ticket - and they drove it to AK."

The taxpayer states it delivered the vehicles to nonresidents at points outside of Washington, or under conditions where the retail sales tax did not apply. The taxpayer cites RCW 82.08.0254, RCW 82.08.0264, WAC 458-20-177 (Rule 177), and WAC 458-20-193 as authority for the exempt status of the transactions.

#### ISSUE:

Did the taxpayer adequately document exempt sales of vehicles to out-of-state purchasers?

#### DISCUSSION:

[1] Sales of tangible personal property, such as vehicles, in Washington are normally retail sales subject to retail sales tax. *See* RCW 82.04.050 and RCW 82.08.020. The tax is imposed upon the buyer, and collected by the seller who remits it to the state. RCW 82.08.050. If the seller fails to collect the tax, the seller becomes personally liable to the state. *Id.* The Audit Division assessed retail sales tax on nonexempt vehicle sales for which the taxpayer failed to collect retail sales tax. If a sale qualified for an exemption, the taxpayer was not obligated to collect the retail sales tax.

RCW 82.08.0264 provides an exemption for sales of motor vehicles to nonresidents even though delivery be made within this state, but only when:

- (1) the 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 one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160, or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser'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.

Therefore, to qualify for this exemption, the purchasers must be nonresidents; and either (1) drive the vehicle out of Washington using a trip permit, or (2) immediately license the vehicle in the purchaser's resident state, not use it in Washington over three months, and not be required to license it under Washington law. RCW 46.16.010 prohibits the operation of vehicles without displaying proper vehicle license plates.<sup>5</sup>

Rule 177 (WAC 458-20-177) equates "immediately" to the time of delivery. Rule 177 provides specific documentation requirements for this exemption:

(1) Sales to nonresidents. Under RCW 82.08.0264 the retail sales tax does not apply to sales of vehicles to nonresidents of Washington for use outside this state, even though delivery be made within this state, but only when either one of the following conditions is met:

(a) Said vehicle will be taken from the point of delivery in this state directly to a point outside this state under the authority of a trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160; or

(b) Said vehicle will be registered and licensed immediately (at the time of delivery) under the laws of the state of the purchaser'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.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use outside this state and, second, that the vehicle is to be driven from his premises under the authority of either (a) a trip permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence, with such plates actually affixed to the vehicle at the time of final delivery.

As evidence of the exempt nature of the sales transaction the seller, at the time of sale, is required to take an affidavit from the buyer giving his name, the state of his residence, his address in that state, the name, year and motor or serial number of the vehicle purchased, the date of sale, his declaration that the described vehicle is being purchased for use outside this state and, finally, that the vehicle will be driven from the premises of the dealer under the authority of a trip permit (giving the number) or that the vehicle has been registered and licensed by the state of his residence and will be driven from the premises of

---

<sup>5</sup> RCW 46.16.160 offers the trip permit alternative.

the dealer with valid license plates (giving the number) issued by that state affixed thereto. If the vehicle being sold is already licensed with valid Washington plates and the nonresident purchaser wishes to qualify for exemption by transporting the vehicle out of state under authority of a trip permit, the dealer is required to remove the Washington plates prior to delivery of the vehicle and retain evidence of such removal to avoid liability for collection and payment of the retail sales tax. The seller must himself certify by appending a certification to the affidavit, to the fact that the vehicle left his premises under the authority of a trip permit or with valid license plates issued by the state of the buyer's residence affixed thereto. . . .

We note that this subsection applies to deliveries made in Washington and driven out-of-state by the nonresident purchasers. It does not address businesses located in several states in addition to Washington. Subsection (2) of Rule 177 addresses out-of-state deliveries. It requires the purchaser and dealers to sign certificates specifying the place of delivery as well as the buyer's nonresidency. The seller must retain a signed copy of the bill of lading issued by the carrier.

In instances involving businesses located in several states that arrange for out-of-state delivery through a for-hire carrier, sellers of motor vehicles may be entitled to the exemption provided they substantially complied with the requirements of the statute and rule. *Evered Lincoln Mercury, Inc. v. Department of Rev.* BTA Docket No. 85-205, 7 WTD 205, 215 (1989).

We note the circumstances considered in *Evered* involved a corporate purchaser with offices both inside and outside of Washington. The BTA noted, "Rule 177 does not provide for the unique circumstances of this case where the taxpayer took delivery in this state for the purpose of modifying the vehicles before shipment out of state." *Supra* at 216. The BTA stated the purpose of its unique application, "We do not believe it was the legislature's intent to penalize National for choosing a Washington firm for vehicle modification. The intended breadth for exemption from the sales tax under RCW 82.08.0264 is not provided by Rule 177 for the circumstances of this case." *Supra* at 217.

After modifications, the vehicles in question were shipped from Washington by common carrier. Unlike the requirements for individual purchasers who drive vehicles out of Washington, subsection 1 of the Rule 177 affidavit was not entirely applicable in *Evered*. The purchaser, with offices in Washington, could not claim to be a nonresident, and a common carrier carried the vehicles, rather than drove them, outside of Washington. Unless the vehicles were operated on public highways, neither licenses nor trip permits were required. *See* RCW 46.16.010. The licensing requirement was not an issue in *Evered*: "National shipped the vehicles out of state. They were not driven, or otherwise used, in this state. There is no assertion that National was required to register and license the vehicles under the laws of this state." *Supra* at 210.

Regarding sales to nonresident individuals on vehicles they receive in Washington, substantial compliance with the RCW 82.08.0264 and Rule 177 requires documentation of how the automobile traveled out of Washington. Det. No. 97-165, 17 WTD 15, 19 (1997). Unlike the

facts in *Evered*, the affidavit addresses the situation where individual nonresident purchasers drive the vehicles out of Washington. At a minimum, to substantially comply with RCW 82.08.0264, sellers of vehicles to nonresidents must document both that the purchasers were nonresidents and how the vehicle left Washington.

We must interpret RCW 82.08.0264, *Evered*, and Rule 177 consistently with RCW 46.16.010. If the nonresident purchaser drives the vehicle on public highways in Washington, the vehicle must have out-of-state license plates or a trip permit. RCW 82.32.070 and subsection (3) of Rule 177 place the burden on taxpayers to maintain proper records. The form provided in Rule 177 simplifies the taxpayer's record keeping requirement for sales to nonresident individual purchasers under RCW 82.08.0264 who drive their vehicles off the taxpayer's Washington lot. The taxpayer must note the trip permit number or the out-of-state license number.<sup>6</sup> RCW 82.08.0269 provides a special exemption from the retail sales tax for personal property sold for use in the United States outside the continental United States. Specifically, this statute states:

The tax levied by RCW 82.08.020 shall not apply to sales for use in states, territories and possessions of the United States which are not contiguous to any other state, but only when, as a necessary incident to the contract of sale, the seller delivers the subject matter of the sale to the purchaser or his designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions.

This statute exempts sales to Alaskan residents (and others) if the contract of sale requires:

- (1) The seller delivers the goods to the purchaser or agent at their receiving terminal and
- (2) it is reasonably certain that the goods will arrive in Alaska.

We also note that Washington does not assess its taxes on sales of goods if shipped by a for-hire carrier to an out-of-state destination.<sup>7</sup> WAC 458-20-193 (Rule 193). In those instances, we must inspect the bill of lading to determine whether the seller delivered the vehicles to the for-hire carrier.

Applying the authority discussed above, we find the taxpayer was entitled to exempt the following transactions:

---

<sup>6</sup> The taxpayer also alleges the Audit Division did not assess tax on some transactions where the purchasers licensed their vehicles in another jurisdiction within a short period of time. Because the Audit Division did not assess tax on those transactions, we will not address them. Those transactions are not in dispute.

<sup>7</sup> If the carrier has express written authority to accept or reject the goods with right of inspection at the dealership, delivery would occur in Washington and be subject to tax unless otherwise exempt (ie. under RCW 82.08.0264).



- 1. . . . [The buyer] signed an affidavit of nonresidency, and we find he was a nonresident. The bill of lading indicates the car was shipped from the taxpayer's location out of Washington to the buyer's Alaska residence. The buyer did not drive it in Washington. Therefore, neither trip permits nor licenses were necessary. Considering the shipment time, the car was licensed in Alaska within a short time after the purchase. Somewhat troubling is the date on the bill of lading. The top portion indicates a received date of October 29, 1998, while the individual signing the document used the date October 28, 1992. Other than the signature, the form does not identify the shipper. However, because both the buyer's location was on an island and the vehicle was purchased late in the year when driving may have been impractical; and the buyer provided the declaration the vehicle was not delivered in Washington, we will accept the bill of lading. Therefore, the taxpayer substantially met the requirements and was not required to collect retail sales tax on this transaction.
- 5. The taxpayer delivered the vehicle to a for-hire carrier. The bill of lading sufficiently documents the vehicle was exported.
- 4. The taxpayer provided a copy of a bill of lading documenting the vehicles were shipped from the taxpayer's address to a Canadian location. The customs cargo control document dated March 26, 1994 corroborated the bill of lading. These facts were very similar to those considered by the BTA in *Evered, supra*.
- 8. The affidavit states the buyer was a nonresident and provides the trip permit number. We find the taxpayer has complied with RCW 82.08.0264 and Rule 177 regarding this transaction.

The remaining transactions do not qualify for the following reasons:

- 2. [This transaction] lacked a bill of lading required under Rule 193 that the taxpayer shipped the vehicle by for-hire carrier to a location out-of-state. The declaration alone was insufficient. The taxpayer did not fill out or sign the certificate of dealer.
- 3. The . . . transaction lacked a bill of lading required under Rule 193 and Rule 177 that the taxpayer shipped the vehicle by for-hire carrier to a location out-of-state. The declaration alone was insufficient. The taxpayer did not fill out or sign the certificate of dealer.
- 6. Neither the affidavit nor the certificate of dealer indicated the vehicle left the lot with Alaska plates. The buyer states he purchased the vehicle over the phone on August 19, 1992. While his letter indicated he was working as a fishing guide in Alaska from May 1, 1992 through Sept. 22, 1992, he signed an odometer disclosure statement on August 19, 1992. It appears he took possession of the vehicle in August in Washington, without complying with the exemption requirements under RCW 82.08.0264.

- 7. While the undated affidavit indicates the buyers were Montana residents, we find the purchaser's letter insufficient to establish the buyers were nonresidents of Washington. The taxpayer's salesman only saw a property deed with a water well log. They owned a home in Washington. The declaration alone that they drove the vehicle from Washington, without a trip permit number, is insufficient evidence regarding how the vehicle was transported from Washington. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 9. This purchaser signed a blank affidavit. He purchased the vehicle and took it to a storage space in Idaho. He sent the taxpayer a note stating he had not finished the purchase of his home. The taxpayer has not established the purchasers were nonresidents or how the vehicle left the state. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 10. The purchaser signed an affidavit, which did not address how the vehicle was transported outside the state. The purchaser stated the taxpayer issued the trip permit, but did not provide a copy, and the taxpayer has failed to provide the number of the permit on the certificate of dealer. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 11. While the purchaser signed an affidavit that he was an Alaska resident, there is not any indication of how the vehicle was transported from the state. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 12. While this purchaser signed an affidavit stating he was a nonresident, and later provided some indication he may be an Idaho resident, there are still questions regarding whether the purchaser was a Washington resident at the time of purchase. Again, there is not any indication of how the vehicle was transported from the state. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 13. The affidavit did not indicate how the vehicle was transported from Washington. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 14. Again, nothing in the file indicates how the vehicle was transported from Washington. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 15. Nothing in the file indicates how the vehicle was transported from Washington. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.

- 16. Both the residency and transportation issues lack documentation and explanation. We find the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 17. This Alaska purchaser signed an affidavit indicating the vehicle would be transported outside of Washington with Alaska plates, but without indicating the license number. The file contained copies of various Alaska licenses. Residency is not an issue. The taxpayer's employee did not complete the certificate of dealer to corroborate how the vehicle was transported out of Washington. Without any indication of the Alaska license number or when the plates were obtained, we find that the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 18. The affidavit does not indicate how the vehicle left Washington. We find that the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 19. The unsigned affidavit was inconsistent with the buyer's later statement that the vehicle was first registered in Oregon. This transaction demonstrates the problem with failing to document the transaction at the time of delivery, and trying to reconstruct the facts. We find that the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.
- 20. While this purchaser signed an affidavit indicating he was an Alaska resident, it appears he drove the vehicle out of the state without either Alaska plates or a trip permit. We find that the taxpayer has not complied with either RCW 82.08.0264 or Rule 177 regarding this transaction.

**DECISION AND DISPOSITION:**

The taxpayer's petition is granted in part.

Dated this 25<sup>th</sup> day of January 25, 1999