

Cite as 10 WTD 9

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
For Correction of Assessment of)	<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>
)	
)	No. 89-408A
)	Registration No. . . .
) . . ./Audit No. . . .		

[1] RULE 177 and RCW 82.08.0264: RETAIL SALES TAX -- EXEMPTION -- SALES TO WASHINGTON CORPORATIONS FOR USE OUTSIDE THIS STATE. A corporation with places of business in and out of this state may be considered a "nonresident" for purposes of RCW 82.08.0264 and WAC 458-20-177.

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:

The taxpayer appeals to the Director for a reversal of Determination 89-408 with respect to sales tax that was assessed on two motor vehicles purchased by the corporation for use outside this state.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- The taxpayer is a Washington corporation which does business as a wholesale distributor. The taxpayer's records were examined for the period . . . through . . . resulting in the above referenced assessment for \$ The taxpayer protested the portion of the assessment that assessed \$. . . in deferred sales tax on two automobiles.

The automobiles had been purchased in 1985 from a Seattle dealer for use by the taxpayer's sales representatives residing in Oregon and Montana. Both cars were registered and used out of state.

The taxpayer's petition stated:

[The vehicles] were immediately transported to their intended places of use in Oregon and Montana. We would

not have purchased from a Washington dealer if sales tax applied. Furthermore, we believed in good faith that we had followed dealer's instructions on not being subject to Washington state sales tax.

The taxpayer's petition was denied in Determination 89-408. The basis for the denial was that the taxpayer was a resident of Washington State and thus not entitled to the "nonresident" exemption provided by RCW 82.08.0264.

The taxpayer appealed the Determination.

The primary issue is whether the "nonresident" exemption provided by RCW 82.08.0264 can apply to the purchase of a vehicle by a Washington corporation for use out-of-state by a nonresident employee.

DISCUSSION:

RCW 82.08.0264 provides that the sales tax does not apply to:

sales of motor vehicles . . . to nonresidents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles . . . 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 . . . 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.

We agree that a corporation, unlike a natural person, may have more than one residence. That position is stated in a 1989 Board of Tax Appeals decision, Evered Lincoln Mercury, Inc., v. Department of Revenue, (Docket No. 85-183), as follows:

As a preliminary matter, the Department has administratively held that a corporation with places of business in one or more other states, is a "nonresident" for purposes of RCW 82.08.0264 and Rule 177. The reason is that a corporation, unlike a natural person, may have more than one residence. A corporation "resides" in any state in which it has a place of business.

If the salespersons had come to this state and personally purchased the automobiles, the exemption provided by RCW 82.08.0264 would apply. The sales would not be subject to sales tax if the delivery and nonresident affidavit requirements, as provided by WAC 458-20-

177 (Rule 177), were satisfied. We do not think the results should be different because the taxpayer paid for the vehicles.

We agree that a purchase of a vehicle by a Washington corporation for out-of-state use by its nonresident salesperson or out-of-state office is entitled to the exemption provided by RCW 82.08.0264, as long as the vehicle leaves the state with a valid one-transit permit or with foreign state license plates attached at the time of delivery. However, any subsequent use of the vehicle in Washington would subject the Washington corporation to use tax on the value of the vehicle at the time of its first use in this state.

At the time of the sales at issue, the taxpayer signed nonresident affidavits stating that the cars were purchased by a bona fide nonresident for use out of state. The taxpayer stated both automobiles were used exclusively out of state and that the vehicles have been traded in for new ones which were purchased out of state. Accordingly, we agree that the sales were exempt from both retail sales and use tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this day of August 13, 1990