

Cite as Det. No. 98-061, 18 WTD 120 (1999)

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>
Refund of	)	
	)	No. 98-061
	)	
...	)	Registration No. ...
	)	Use Tax.

RULE 178; RCW 82.12.020: -- USE TAX – TRUCKS – INTERVENING USE. A taxpayer who purchased a tanker truck and used it in business prior to leasing the vehicle to a lessee is not entitled to a refund of the use tax it paid upon initially registering the truck in Washington because of its intervening use of the vehicle before the lease.

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:

A corporation (the taxpayer) requests a refund of use tax that it paid when it registered a tanker truck with the Department of Licensing.<sup>1</sup>

FACTS:

De Luca, A.L.J. -- The taxpayer operates an “on-site diesel refueling business” in Washington. On February 5, 1997 the taxpayer registered a 1997 Mitsubishi tanker truck with the Department of Licensing. The taxpayer paid at that time \$4,975.35 in use tax and additional amounts for motor vehicle excise tax and other charges. Shortly prior to registering the vehicle, the taxpayer had purchased the truck and tank from an out-of-state dealer. The taxpayer used the tanker truck in its business operations from February 1997 until it leased the vehicle for sixty months to a Washington lessee beginning on June 15, 1997. The taxpayer now collects retail sales tax from the lessee on the monthly lease payments. The taxpayer believes that tax should not be paid twice on the vehicle and has requested from the Department of Revenue (the Department) a refund of the use tax it paid on February 5, 1997.

ISSUE:

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

Is the taxpayer entitled to a refund of use tax when it used the tanker truck for business in Washington prior to leasing the vehicle to the lessee?

#### DISCUSSION:

A "sale" is defined for our purposes in RCW 82.04.040 as . . .

any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. . . .

(Underlining ours). A "retail sale" is defined in RCW 82.04.050 as

(1) . . . every sale of tangible personal property. . . to all persons irrespective of the nature of their business . . . other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person;

Thus, purchases, as well as rentals or leases, of tangible personal property are considered retail sales unless the purchaser (lessor) purchases the article for resale with a resale certificate in the regular course of business without intervening use by the purchaser (lessor). In the present matter, if the taxpayer had purchased the tanker truck in Washington it would have owed retail sales tax unless it provided the vendor a resale certificate pursuant to RCW 82.04.470 and WAC 458-20-102 (Rule 102) and did not engage in intervening use of the tanker truck.

However, the taxpayer purchased the tanker trunk outside Washington and did not pay sales tax on its purchase price. After bringing the truck into Washington, the taxpayer used it in its business operations. Consequently, the taxpayer owed and paid use tax on the vehicle as provided in RCW 82.12.020:

**Use tax imposed.** (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same,. . . .

(2) This tax shall apply to. . . the use of every article of tangible personal property,. . .

(3). Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(Underlining ours). WAC 458-20-178 (Rule 178) is the rule the Department has adopted to implement the use tax statutes. Rule 178 provides in part:

(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. . . .

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person.

Thus, use tax applies when an article of tangible personal property is first put to use in this state and the purchaser or user has not paid retail sales tax on the article. No additional use tax liability arises with respect to any subsequent use of the same article by the same person. Except for bailees, payment by one purchaser shall not exempt any other purchaser of the same property from sale tax or use tax. Accordingly, when the present taxpayer paid the use tax on the tanker truck it was exempt from further use tax on the vehicle for any subsequent use it made of the vehicle. Rule 178(3). However, the taxpayer's lessee was not exempt from sales tax or use tax due to its subsequent purchase (lease) of the vehicle from the taxpayer. RCW 82.12.020(3).

Therefore, use tax was appropriately assessed because the taxpayer did not initially purchase the vehicle for resale (lease) and the taxpayer's admittedly used the vehicle in Washington prior to leasing it to the lessee. Such use amounted to intervening use. The subsequent leasing of the vehicle to the lessee resulted in a retail sale(s) that was separate and apart from the taxpayer's initial purchase of the truck and payment of the use tax. Consequently, sales tax is due from the lessee each month it makes its lease payment. RCW 82.04.040 and -.050.

In the future, if the taxpayer purchases an article of tangible personal property, such as a truck, and plans on reselling (including leasing) that property without intervening use in Washington to a purchaser or lessee, the taxpayer may give the vendor a resale certificate and not pay sales tax. We suggest that the taxpayer consult with the Department of Licensing regarding its licensing

requirements for vehicles that it purchases for resale (including leasing) whether the vehicles are purchased in Washington or outside the state. We also suggest that the taxpayer consult with the Department of Revenue regarding a waiver of use tax on vehicles that it brings into Washington for resale without intervening use.

**DECISION AND DISPOSITION:**

The taxpayer's petition for refund is denied.

Dated this 31st day of March 1998