

THIS DECISION WAS WITHDRAWN EFFECTIVE 10/31/2003

Cite as Det. No. 98-101, 18 WTD 260 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Ruling of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 98-101
)	
...)	Registration No. ...
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RULE 159; RCW 82.08.040; RCW 82.08.050: ESCROW AGENT – PAYMENT OF RETAIL SALES TAX. Escrow and closing agent for vessel sales is permitted to collect and remit retail sales or use tax on behalf of vessel dealers where certain criteria are met.

NATURE OF ACTION:

Escrow and closing agent for vessel sales requests ruling that it be permitted to collect and remit retail sales or use tax on behalf of the sellers.¹

FACTS:

C. Pree, A.L.J. (successor to Rene, A.L.J.) -- The taxpayer is engaged in the escrow and closing of vessel sale transactions. As such, in the normal course of its business, it collects and escrows all funds necessary to transfer titles, registrations, and certificates of documentation to vessels. Upon closing, it makes disbursements to all appropriate entities, agencies, and lienholders. The taxpayer notes that its standard current practice is to remit the sales tax to the selling vessel dealer in transactions involving one or more Washington vessel dealers. In transactions solely between individuals, the taxpayer acts under a power of attorney and pays the sales tax liability at the time of vessel registration with the Department of Licensing (“DOL”).

With respect to transactions involving one or more vessel dealers, the taxpayer requests a ruling that under certain limited conditions it be permitted to collect and pay sales or use tax directly to the DOL at the time of vessel registration to the new owner, relieving the vessel dealer of this

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

duty. The conditions under which the taxpayer proposes to perform this collection obligation are as follows:

1. The vessel in question is owned by an individual and not by the vessel dealer.
2. The vessel dealer has entered into a contractual agreement to promote the sale of the vessel with the principal and meets the requirements under “Agents and Brokers” set forth in WAC 458-20-159 (Rule 159).²
3. Upon the owner’s acceptance of the buyer’s offer, the taxpayer is retained as an agent of the buyer and/or seller as closing agent. The taxpayer explains that it acts in the same capacity as a real estate escrow company. The taxpayer assesses the validity and clarity of title; collects and escrows all funds and conveyances; disburses funds to retire all encumbrances, liens, and obligations; pays taxes and fees; and records new ownerships, mortgages, and interests with the appropriate governmental agencies. The taxpayer argues that while performing these duties, it is very clearly operating as an agent of the buyer and/or seller and, as such, owes no duty to the vessel dealer other than that of any other lien holder.
4. The vessel dealer will not perform any of the closing duties specified in #3 above.
5. The taxpayer will provide the vessel dealers with the five pieces of information required in Rule 159, as well as a copy of the DOL registration and tax receipt, to insure that the dealers comply with the ten day filing rule.³

² Rule 159 provides:

AGENTS AND BROKERS. Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

(1) The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

(2) The books and records, show the amount of gross sales, the amount of commissions, and any other incidental income derived by the broker or agent from such sales.

³ Rule 159 provides:

Bailees will be relieved from liability for the collection of the sales tax from buyers in those cases where they merely receive a commission on the sale and the entire transaction is closed directly between the owner and the buyer, if such sales are reported to the department by such bailees, within ten days after receipt of the sales commission and such report shows the following:

- (1) Name and address of seller;
- (2) Name and address of buyer;
- (3) Amount for which sold;
- (4) Approximate date of sale;

The taxpayer notes that allowing it to perform this service would be of greater service to its dealer clients, would provide better consistency of disbursement, and would speed up revenue collection for the Department of Revenue.

In response to the taxpayer's ruling request, Taxpayer Information and Education ruled:

When a vessel dealer is the seller, it is responsible for remitting the sales tax to the Department of Revenue. You, as escrow agent, should not remit the tax to the Department of Licensing.

When an unregistered party is the seller, you may, on behalf of the purchaser, pay the use tax due directly to the Department of Licensing.

ISSUE:

Under the circumstances described above, may the taxpayer remit the retail sales or use tax on behalf of the vessel dealers?

DISCUSSION:

RCW 82.08.020 imposes the retail sales tax on all sales at retail in this state, unless a specific statutory exemption applies. See, e.g., RCW 82.08.02665, which provides an exemption for sales of watercraft to residents of foreign countries, provided certain conditions are met. The retail sales tax is required to be paid by the buyer to the seller, and the seller is required to remit the tax to the Department. RCW 82.08.050. The seller is personally liable for payment of the tax to the Department. RCW 82.08.050.

RCW 82.08.040 provides:

Every consignee, bailee, factor, or auctioneer authorized, engaged, or employed to sell or call for bids on tangible personal property belonging to another, and so selling or calling, shall be deemed the seller of such tangible personal property within the meaning of this chapter and all sales made by such persons are subject to its provisions even though the sale would have been exempt from tax hereunder had it been made directly by the owner of the property sold. Every consignee, bailee, factor, or auctioneer shall collect and remit the amount of tax due under this chapter with respect to sales made or called by him: PROVIDED, That if the owner of the property sold is engaged in the business of selling tangible personal property in this state the tax imposed under this chapter may be

(5) Description of property sold.

Those failing to submit such report to the department within the time stated will be held responsible for payment of the sales tax to the state.

remitted by such owner under such rules and regulations as the department of revenue shall prescribe.

Rule 159 defines an agent, consignee, or bailee as “one who has either actual or constructive possession of tangible personal property, the actual ownership of such property being in another, or one calling for bids on such property.” The term “constructive possession” is defined in Rule 159 as “possession of the power to pass title to tangible personal property of others.”

See also RCW 82.08.010(2) (defines “seller” to include persons making sales as agents or brokers).

Thus, RCW 82.08.040 generally requires persons who sell property on behalf of others to collect and remit the retail sales tax with respect to those transactions. Thus, under RCW 82.08.040, the duty to collect and remit the retail sales tax is generally the duty of the vessel dealers. However, provided the taxpayer closes the sales transactions in a manner consistent with the facts set forth in its ruling request, we see no legal bar to the taxpayer collecting and remitting the sales tax on behalf of the dealers, as their agent. When the taxpayer remits these sales taxes, it should clearly specify that it is paying the taxes as an agent of the identified sellers. See RCW 82.32.070 and WAC 458-20-254 (Rule 254) regarding general record-keeping requirements.

In addition to the retail sales or use tax, RCW 82.49.010 imposes an excise tax “for the privilege of using a vessel upon the waters of this state,” unless the vessel is specifically exempt. The vessel excise tax is due and payable to the DOL at the time of registration of a vessel. RCW 82.49.030. The taxpayer has indicated that it intends to pay this tax on behalf of the purchasers at the time of vessel registration.

DECISION AND DISPOSITION:

The taxpayer’s request for ruling is granted.

Dated this 19th day of June, 1998.