

Cite as Det. No. 17-0142, 36 WTD 583 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of) D E T E R M I N A T I O N
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 No. 17-0142
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 Registration No. . . .
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RCW 82.08.010; WAC 458-20-247 – RETAIL SALES TAX – SELLING PRICE – TRADE-INS – MOTOR VEHICLE BROKER: Taxpayer’s motor vehicle broker, who took delivery of trade-in vehicle, was not the “seller” of the new vehicle because the motor vehicle broker did not serve as broker to the seller of new vehicle; therefore, Taxpayer did not deliver its trade-in vehicle to the “seller” and the trade-in vehicle is not excluded from the consideration tendered for the new vehicle. However, even if Taxpayer’s motor vehicle broker was the “seller,” Taxpayer would still not qualify for the trade-in exclusion because Taxpayer’s motor vehicle broker did not accept ownership of the trade-in vehicle.

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.

Anderson, T.R.O. – The purchaser of a motor vehicle requests a partial refund of retail sales tax paid on the purchase of a new motor vehicle. The purchaser asserts that he is entitled to a reduction in the “selling price” of the new motor vehicle because he traded in another motor vehicle as consideration for the new motor vehicle, and his motor vehicle broker served to umbrella the transactions. Petition denied.¹

ISSUE

Whether the purchaser of a motor vehicle has shown that he traded in another motor vehicle as consideration for the purchased motor vehicle under RCW 82.08.010 and WAC 458-20-247.

FINDINGS OF FACT

In March of 2016, . . . (“Taxpayer”) hired . . . (“[Brokers]”), [out-of-state], to serve as his motor vehicle broker. He sought to sell his existing car, a BMW Model X3 (the “Old Car”) and to purchase a BMW Model X1 with a special seat configuration to accommodate an existing health condition (the “New Car”).

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

[Broker] found a buyer for the Old Car – [Washington Dealer] – and negotiated a sale price of \$ [Broker] also found a BMW dealer able to order a car meeting Taxpayer's specifications – [Out-of-state Dealer] – and negotiated a purchase price of \$. . . for the New Car (including delivery). Taxpayer authorized [Broker] to proceed in both these transactions. On March 29, 2016, Taxpayer executed two contracts: (1) An agreement to sell the Old Car to [Washington Dealer]; and (2) An order for the New Car from [Out-of-state Dealer].

On or about May 2, 2016, [Washington Dealer] took possession of the Old Car in exchange for \$. . . (the contract to sell provided [Washington Dealer] with 30 days to do so). A Washington State Department of Licensing Form titled "Vehicle/Vessel Bill of Sale" lists Taxpayer as the seller and [Washington Dealer] as the Buyer. [Broker] is listed as the broker in two [out-of-state] Motor Vehicle Brokering Agreements for the Old Car – one lists Taxpayer as the consumer and the other lists [Washington Dealer] as the consumer.² The entire amount that [Washington Dealer] paid for the Old Car went to pay off the outstanding balance of Taxpayer's loan secured by the Old Car.

On or about June 4, 2016, . . . , an agent of [Out-of-state Dealer] delivered Taxpayer his New Car. Both the [out-of-state] DMV Vehicle/Vessel Transfer and Reassignment Form and the Retail Installment Sale Contract for the New Car show [Out-of-state Dealer] as the Seller and Taxpayer as the Buyer. [An out-of-state] Motor Vehicle Brokering Agreement for the New Car lists [Broker] as the Broker and Taxpayer as the Consumer and states that [Out-of-state Dealer] paid [Broker] a fee. The Retail Installment Sale Contract shows \$. . . in retail sales tax on the \$. . . cash price of the New Car. The Retail Installment Sale Contract has a section to account for motor vehicles traded in exchange for the car being purchased; there are several lines where the value of the trade-in (either, positive or negative) can be listed. Taxpayer's Retail Installment Sale Contact for the purchase of the New Car does not list a trade-in and the lines to account for a trade-in are all marked "N/A."

Taxpayer paid the \$. . . in retail sales tax to [Out-of-state Dealer] but did not believe he owed retail sales tax on the full price of the New Car and contacted [Out-of-state Dealer] for an explanation. [Out-of-state Dealer] responded, in pertinent part:

. . . On behalf of [Out-of-state Dealer], we confirm that you paid \$. . . sales tax on your vehicle through us and [agent] to the State of Washington. This amount is 9% of the total price for your new car. We further apologize that our electronic bookkeeping system and our understanding of [out-of-state] regulations required us to pay this amount in full on your behalf rather than allowing [Broker] to handle the registration based on the net cost between the old car you sold and the new one you bought, and that you will now have to seek a refund from Washington for the overpay. . . .

On November 23, 2016, Taxpayer contacted the Department to request a refund of \$. . . (\$. . . value of Old Car x 9% retail sales tax rate) of retail sales tax paid on his purchase of the New Car.

² California regulates motor vehicle brokers; it requires them to register with the State of California, keep a log of transactions, and deposit funds received from brokered transactions into a trust account. https://www.dmv.ca.gov/portal/dmv/?1dmy&urle=wcm:path:/dmv_content_en/dmv/vehindustry/ol/autobrkr_end (May 17, 2017).

Taxpayer stated that he had traded in the Old Car for New Car and was entitled to deduct \$. . . from the purchase price of the New Car. In support, Taxpayer provided the following written correspondence from [Broker]:

As your broker, we (. . .) secured the sale of your BMW X3 VIN . . . to [Washington Dealer]for \$. . . as of May 2, 2016, and we (. . .) secured the special order and purchase of your new BMW X1 VIN . . . from [Out-of-state Dealer] for \$. . . (ordered on or about March 29, 2016 and delivered on or about May 26, 2016). The sell/trade/buy numbers work out as:

BMW X3 sale/trade: \$. . .

BMW X1 purchase: \$. . .

Net difference for Washington sales/use tax: \$. . .

On December 28, 2016, the Department's Taxpayer Account Administration Division ("TAA") denied Taxpayer's request for a refund because Taxpayer had failed to establish the trade-in of the Old Car took place. TAA noted that the bills of sale, installment sale contract, and brokerage agreements do not mention both the sale and the purchase of the motor vehicles; instead they refer exclusively to the sale of the Old Car or purchase of the New Car.

In response, Taxpayer points to WAC 458-20-247 and the written correspondence from [Broker]. Taxpayer asserts [Broker] acted as his broker and brokers may umbrella a trade-in transaction occurring between three parties over a period of time. Further, Taxpayer asserts that the written correspondence from [Broker] constitutes an invoice that complies with the recordkeeping requirements.

ANALYSIS

Washington imposes a retail sales tax on retail sales of tangible personal property; it is measured by the "selling price" of the retail sale. RCW 82.08.020.

"Selling price" is defined by statute to mean, "the total amount of consideration, except separately stated trade-in property of like kind . . ." RCW 82.08.010(1)(a)(i) (emphasis added). This provision allows a buyer to reduce its retail sales tax burden by tendering consideration in the form of like kind property instead of cash or non-like kind property.

WAC 458-20-247 is the Department's administrative rule explaining the application of the trade-in exclusion; it lists the following three requirements:

- (1) The buyer delivers the trade-in property to the seller;
- (2) The trade-in property is delivered as consideration for the purchase; and
- (3) The property traded in is "property of a like kind."

WAC 458-20-247(2). We focus on the first two requirements. There is no dispute that the Old Car constitutes property of a like kind to the New Car. *See* WAC 458-20-247(5)(“The term ‘property of like kind’ means articles of tangible personal property of the same generic

classification. It refers to the class and kind of property, not its grade or quality. . . Thus, as example, it means . . . motor vehicles for motor vehicles, . . .).

[Buyer delivery of trade-in property to seller.]

The first requirement to qualify for the trade-in exclusion is that the buyer must deliver the trade-in property to the seller. WAC 458-20-247(3).

“Seller” is defined in RCW 82.08.010(2)(a) to mean every person making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal. “In other words, a person need not be the owner of property to be deemed the seller of that property.” Det. No. 99-005R, 19 WTD 223, 227 (2000). We have previously found that a consignee or agent may qualify as a “seller” for purposes of the trade-in exclusion. *Id.* Thus, it is possible that, a broker, such as [Broker] could be the “seller” and accept delivery of trade-in property.

Here, [Out-of-state Dealer] sold the New Car at retail to Taxpayer. [Out-of-state Dealer] is the “seller” under RCW 82.08.010(2)(a). Taxpayer delivered the Old Car to [Washington Dealer]; not [Out-of-state Dealer]. However, Taxpayer asserts that it satisfied this first requirement by using a broker ([Broker]), in accordance with the example in WAC 458-20-247(3).

The example in WAC 458-20-247(3) reads as follows:

For example, Broker enters into a consignment sale contract with Susan Smith to sell her Boat A. John Doe contacts Broker expressing interest in purchasing Boat A, provided his Boat B is accepted as a trade-in on the purchase. John Doe executes a purchase agreement with Broker which specifically identifies both Boat A being purchased and the trade-in. Broker accepts delivery and ownership of Boat B and places Boat B in Broker’s own inventory. In turn Broker arranges delivery of the craft purchased to John. The buyer (John) has delivered the trade-in property (Boat B) to the seller (Broker). There is no requirement that Broker purchase Boat A from Susan (thereby becoming the owner) prior to selling Boat A to John and accepting Boat B as trade-in property because, as a broker, Broker is the seller under RCW 82.08.010.

The example illustrates that a broker who is selling a boat on consignment is the “seller” even though the broker is not the owner of the consigned boat. Taxpayer’s transactions differ from the WAC 458-20-247(3) example because [Broker] did not serve as a broker to the seller ([Out-of-state Dealer]). Because [Broker] served as Taxpayer’s broker and not [Out-of-state Dealer’s] broker, we conclude that [Broker] was not the “seller” under RCW 82.08.010(2)(a). Taxpayer has failed to satisfy the first requirement of the trade-in exclusion because he did not deliver the Old Car to [Out-of-state Dealer].

[Delivery of trade-in property as consideration for new purchase.]

Assuming, arguendo, that Taxpayer did meet the first requirement of the trade-in exclusion, he would still fail to qualify for the trade-in exclusion because he does not meet the second

requirement: The trade in property must be delivered as consideration for the purchase. WAC 458-20-247(4)

As to the second requirement, WAC 458-20-247(4) explains:

Property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. This does not require simultaneous transfers of the property being traded in and the property being purchased, but does require that the delivery of the trade-in and the purchase be components of a single transaction. Sales documents, executed no later than the date the trade-in property is delivered to the seller, must identify the property purchased and the trade-in property as more fully explained in subsection (8) of this section.

The Department has previously ruled that a seller must accept ownership of the trade-in property and reduce the price of the purchased property, in order for the trade-in property to constitute consideration. Det. No. 00-203, WTD 394 (2000); Det. No. 03-0045, 23 WTD 238 (2004). The Retail Installment Sale Contract between Taxpayer and [Out-of-state Dealer] does not list a trade-in vehicle; therefore, the Old Car was not delivered as consideration for the purchase of the New Car.

Assuming arguendo, that [Broker] was the seller, Taxpayer would still fail to meet the second requirement because [Broker] did not accept ownership of the Old Car. Instead, [Broker] brokered two deals, one where Taxpayer sold the Old Car directly to [Washington Dealer] and [Washington Dealer] accepted ownership of the Old Car, and one where Taxpayer purchased the New Car from [Out-of-state Dealer]. The trade-in exclusion does not apply where a taxpayer sells property to one person and then buys like kind property from a different person because the trade-in is not actually used as consideration. *See* Det. No. 03-0045, 23 WTD 238 (2004).

As to Taxpayer's contention that the document provided from [Broker] constitutes a sales invoice that complies with the documentation requirements in WAC 458-20-247(8), the correct format does not change the nature of the transactions. The [Broker] document summarizes the information of the two separate transactions that [Broker] arranged for Taxpayer; it does not show a single transaction where the Old Car was delivered as consideration for the New Car.

Accordingly, we conclude that Taxpayer has failed to meet the first two requirements of the trade-in exclusion. Because Taxpayer has not met all the requirements of the trade-in exclusion, Taxpayer does not qualify for a refund of retail sales tax based the trade-in exclusion. Taxpayer's petition for a refund was correctly denied.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 31st day of May 2017.