

Cite as Det. No. 12-0336, 32 WTD 291 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON¹

In the Matter of the Petition for Correction of)	D E T E R M I N A T I O N
Assessment of)	
) No. 12-0336	
) Registration No. . . .	
) Document No. . . .	
) Audit No. . . .	
) Docket No. . . .	
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) Audit No. . . .	
) Docket No. . . .	

- [1] RULE 238; RCW 82.08.0266: RETAIL SALES TAX—VESSEL – SUFFICIENT DOCUMENTATION. Sales tax exemption certificates used by the nonresidents for sales of watercraft requiring United States Coast Guard documentation must state that the watercraft will be used outside of Washington and identify the state of principal use.
- [2] RULE 102; RCW 82.04.050(2008): RETAIL SALES TAX – RESALE CERTIFICATE – VESSEL. A boat purchaser, who did not present a resale certificate when he purchased the watercraft in Washington prior to July 1, 2008, and used the boat prior to leasing it, was liable for retail sales tax when the boat was delivered in Washington.

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.

Pree, A.L.J. – A Washington resident and his wholly owned [out-of-state] limited liability company (LLC) appeal identical assessments of use tax and/or deferred sales tax on a vessel purchased in Washington, which they believed was delivered outside of Washington. Because the documents they provided the seller do not meet the requirements for an exempt sale to a nonresident or the requirements for a purchase for resale, we deny the petition.

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

ISSUES

1. Under RCW 82.08.0266 and WAC 458-20-238, was the LLC's purchase of the vessel in Washington exempt from retail sales tax when the certificate it provided to the seller did not indicate that the vessel was documented with the United States Coast Guard or registered with the state of principal use?
2. Under RCW 82.04.050(2008) and WAC 458-20-102, could the LLC claim it purchased the vessel for resale when it did not provide the seller a resale certificate?

FINDINGS OF FACT

[Taxpayer LLC] is an [out of state] Limited Liability Company headquartered [in State A]. [Taxpayer], a Washington resident, owns [Taxpayer LLC]. In [early] 2008, [Taxpayer LLC] purchased a vessel . . . which it leased to another [State A] limited liability company owned by [Taxpayer], [Lessee LLC]. Neither [Taxpayer LLC], nor [Taxpayer], nor [Lessee LLC], (we will refer to them collectively as the "taxpayers") paid Washington sales or use tax on the vessel to the Washington Department of Revenue (Department). The Department's Compliance Division investigated.

As a result of the investigation, the Compliance Division discovered the vessel was delivered in Washington and concluded that the sale was not exempt from retail sales tax. The Compliance Division issued the two assessments referenced above against [Taxpayer and Taxpayer LLC]. The assessments are identical. Each assessed \$. . . in use tax and/or deferred sales tax, a \$. . . delinquent penalty, \$. . . interest, and a \$. . . assessment penalty.² Each assessment totaled \$. . ., and was due September 28, 2011. Compliance explained that if either [Taxpayer or Taxpayer LLC] agree to pay its respective assessment, the assessment against the other would be cancelled. The taxpayers appealed.

[Taxpayer] made the original offer to purchase the vessel for \$. . ., with a down payment of \$. . . . On . . ., 2008, [Taxpayer] assigned the offer to [Taxpayer LLC]. [Taxpayer LLC] paid the balance due on the offer and purchased the vessel.

[The following day], [Taxpayer] signed, under penalty of perjury, a document as [Taxpayer LLC's] managing member with a heading "EXEMPTION CERTIFICATE" (out of state delivery). The document stated that [Taxpayer LLC] was a [State A] limited liability company and a resident of [State A] with an [State A] office address. The seller's general manager signed a statement on the document certifying that he personally examined [Taxpayer LLC's] Articles of Organization filed [in] 2003, and its [State A] Certificate of Good Standing dated . . ., 2008. The document identified the vessel by name, year, model number, and length with an O/N and HIN followed by numbers, which we presume are the vessel's serial numbers. The document did not include any reference to United States Coast Guard documentation or registration with [State A].

² Watercraft excise tax (WET) was not assessed.

The document also stated, "Delivery of the vessel will take place in U.S. waters outside the state of Washington. In the event this vessel enters into Washington waters, [Taxpayer LLC] agrees to pay any necessary use tax directly to the state." The seller delivered the vessel to [Taxpayer] as managing member of [Taxpayer LLC] in Washington waters.³ Immediately after the purchase, the taxpayers took the vessel to a [Washington State] boatyard.

One month later . . . [Taxpayer LLC] signed a three year EXCLUSIVE VESSEL BAREBOAT LEASE AGREEMENT with [Lessee LLC]. [Lessee LLC] agreed to pay [Taxpayer LLC] \$. . . per month for the term of the lease. The lease automatically renewed for successive 12 month periods unless either party gave notice of its intention not to renew at least 120 days prior to the end of the term.

. . . The vessel's certificate of documentation . . . names [Taxpayer LLC] as the owner and names [a city in State A], as the hailing port. According to the taxpayers, [Lessee LLC's] subsidiaries developed, manufactured, and sold [products]. The taxpayers state that [Lessee LLC] used the vessel as a testing platform for new products it was developing for marine use. . . . [Taxpayer] also claims that, as a principal of [Lessee LLC], he used the vessel as an alternate office at the [State A] marina where it was moored, away from [Lessee LLC's] manufacturing facility, to meet customers and transact business. The vessel's insurance policy stated it was moored [in State A], and named [Taxpayer LLC] as the insured.

The taxpayers state the [Washington State] boatyard made repairs and improvements needed to lease the vessel. . . . Exclusive of repair days, the vessel was in Washington 13 days in 2008.

. . . Exclusive of repair days, the vessel was in Washington 11 days in 2009

. . . Exclusive of repair days, the vessel was in Washington 11 days in 2010.

ANALYSIS

Washington imposes retail sales tax on tangible personal property purchased by a consumer in this state. RCW 82.08.020; RCW 82.04.050. Regarding whether a purchase of watercraft occurs in Washington, under RCW 82.32.730(7)(a), a sale of watercraft is sourced to the location at or from which delivery is made to the consumer. Because delivery to [Taxpayer LLC] occurred in Washington, if [Taxpayer LLC] was a consumer, the sale would be sourced to Washington. Similarly, delivery to [Taxpayer] occurred in Washington.

RCW 82.08.0266 exempts sales of watercraft to nonresidents for use outside the state:

³ The seller and [Taxpayer], under the title of managing member of [Taxpayer LLC], signed a PROTOCOL OF DELIVERY AND ACCEPTANCE form with the seller, which provided that the seller delivered the vessel to an [State A] resident, [Taxpayer LLC], at latitude . . . ; Longitude . . . at . . . AM on . . . , 2008. That location is in Washington.

The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the Federal Boating Act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as required by the department of revenue and signed by the purchaser or his agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, a copy of which shall be retained by the dealer.

[1] WAC 458-20-238 (Rule 238) states the requirements in subsection (3)(a)(i) to perfect a claim for exemption under RCW 82.08.0266:

Exemption requirements. The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

- (A) The watercraft must leave Washington waters within forty-five days of delivery;
- (B) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and
- (C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. . . . The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application.

The taxpayers assert their purchase of the vessel was exempt under RCW 82.08.0266. The taxpayers acknowledge delivery in Washington, but claim [Taxpayer LLC] was [a State A] resident, provided proof of [State A] residency, and took the vessel out of Washington within 45 days of the purchase. Rule 238(5)(b) provides an example of an Oregon resident who purchased a yacht in Washington, provided proof of Oregon residency, and took the yacht out of Washington in 45 days; but failed to complete the exemption certificate. "The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption." Rule 238(5)(b).

The taxpayer did not use the Department's retail sales tax exemption certificate. Rather, the taxpayer contends that the exemption certificate it used for out of state delivery contained substantially the same information for the nonresident sales exemption provided by RCW 82.08.0266. We disagree. The document used by the taxpayer did not state that the watercraft was for use outside of Washington as required by RCW 82.08.0266. The Department's exemption certificate and Rule 238 limit the exemption in RCW 82.08.0266 to "sales of watercraft requiring United States Coast Guard documentation or registration with the state in

which the vessel will be principally used.” Rule 238 (3)(a). The taxpayers’ document did not refer to Coast Guard registration or mention registration by any state of principal use. It did not establish the fact that the vessel was acquired for use outside of this state. The exemption certificate was not complete as required by Rule 238(a). Therefore, the taxpayers’ documents do not comply with RCW 82.08.0266 or Rule 238. Unless another sales tax exemption applies, retail sales tax was due on the . . . , 2008 transfer of the vessel. . . .

[2] In the alternative, the taxpayers contend that the LLC purchased the vessel for resale, not as a consumer. No resale certificate was provided to the seller. After delivery of the vessel in Washington, [Taxpayer] took control of the vessel and brought it to the Washington boatyard. [On that date], there was no evidence of use by [Lessee LLC] or even evidence contemplating acquisition for resale.⁴ A month later, [Taxpayer LLC] entered the lease with [Lessee LLC]. The Department upholds sales and use tax assessments on yachts allegedly purchased for resale or lease, but used by the owners who did not register as dealers or provide resale certificates. In Det. No. 86-251, 1 WTD 167, 170 (1986), we wrote:

To determine that a sale is for resale, the purchaser must actually and regularly be engaged in selling the type of property purchased, be registered with the Department of Revenue and reporting the appropriate taxes, and intend the sale to be for resale without intervening use at the time of the initial purchase.

At the time of purchase, the taxpayer was not registered with the Department. It had not sold, leased, or even entered a lease until a month after it used the vessel. [Taxpayer] and/or [Taxpayer LLC] motored the vessel from the delivery point to the Washington boatyard. They used the vessel. “The Department has consistently held that a taxpayer that both uses and leases the same article of tangible personal property is subject to retail sales tax or use tax based on the purchase price or acquisition value.” Det. No. 88-12, 5 WTD 1, 3 (1988).

At the time of the sale, RCW 82.04.050⁵ provided in subsection (1):

“Sale at retail” or “retail sale” means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers **other than a sale to a person who presents a resale certificate** under RCW 82.04.470 and who . . . (emphasis supplied)

Similarly, WAC 458-20-102 (Rule 102)⁶ provided in subsection (4), “All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate.”

⁴ The Compliance Division requested insurance records on . . . , 2010. After receiving partial records, which did not include all the years of use, Compliance noted discrepancies with the bareboat lease, and requested additional information. The taxpayers did not respond. Other discrepancies with the lease agreement, including payment for repairs, were also raised by the Compliance Division.

⁵ Effective until July 1, 2008.

Because the taxpayer did not present a resale certificate at the time it purchased the vessel in Washington, under RCW 82.04.050 and Rule 102, the purchase was a retail sale, subject to retail sales tax. [Taxpayer] and [Taxpayer LLC] used the vessel prior to leasing it to [Lessee LLC]. We conclude that retail sales tax was due . . . when the vessel was delivered in Washington.

DISPOSITION

Taxpayer's petition is denied.

Dated this 28th day of November 2012.

⁶ As of January 1, 2010, reseller permits, not resale certificates are used to substantiate wholesale sales. For sales prior to January 1, 2010, WAC 458-20-102A contains the quoted language that all sales without resale certificates are treated as retail sales.