

Cite as Det. No. 13-0228, 33 WTD 140 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for) D E T E R M I N A T I O N
Correction of Assessment of)
) No. 13-0228
 ...)
) Registration No. . . .
)

[1] WAC 458-20-132; RCW 82.12.020: USE TAX – AUTOMOBILES – EXECUTIVE USE – Where a used car dealer does not keep a current model vehicle registered in the user's name use tax is due on the personal use calculated under the provisions detailed in the rule.

[2] WAC 458-20-132; RCW 82.12.020: USE TAX – AUTOMOBILES – EXECUTIVE USE – Licensing an older vehicle will not meet the requirements of Rule 132 and use tax on personal use of dealerships vehicles still applies.

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.

Kreger, A.L.J. – A used car dealership protests the assessment of use tax on executive use of dealership vehicles. As the Taxpayer does not have a recent model vehicle licensed in its name as required by WAC 458-20-132, we conclude that it is subject to use tax on use of an executive vehicle and sustain the tax assessed. The Taxpayer's petition is denied.¹

ISSUE

Where WAC 458-20-132 imposes use tax on executive use of a vehicle unless the car dealer has a current model vehicle registered in the user's name, and specifically defines a current model vehicle, does the fact that the Taxpayer asserts he cannot afford a current model vehicle provide a basis to waive the requirements of the rule?

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

FINDINGS OF FACT

[Taxpayer] is a Washington corporation engaged in the business of selling used cars. The Taxpayer primarily sells vehicles it purchases to other car dealers. The dealership is a family business operating in . . . Washington. The business is run by the owner, his wife and [another family member].

The Department of Revenue (Department) conducted an audit of the Taxpayer's business activities for the period of January 1, 2009 through March 31, 2012 and issued two assessments. Document Number . . . in the amount of \$. . . comprised the tax that the Taxpayer acknowledged was due, which was timely paid. Document . . . in the amount of \$. . . comprised of \$. . . in use tax and \$. . . in interest, was contested by the Taxpayer and timely appealed. The contested assessment solely constituted use tax for executive use of dealership vehicles, because the owner of the business did not have a late model vehicle licensed in his name.

The Taxpayer states that he was not aware of the executive use provisions. The Taxpayer acknowledges that vehicles from inventory are driven by the owner and his wife, but asserts that this is primarily for business purposes with extremely limited personal use. The Taxpayer asserts that the requirement under the rule for ownership of a "recent model vehicle" is not reasonable for small businesses . . . and that [the owner] cannot afford to purchase a new vehicle. The Taxpayer believes this requirement is intended for larger car dealerships, and new car dealers, rather than dealers . . . who deal primarily in older cars.

The Taxpayer would not object to licensing a vehicle in [the owner's] name, but stated that [the owner] could not afford a late model vehicle that would satisfy the requirements of the rule.

ANALYSIS

RCW 82.12.020(1)(a) imposes use tax on the privilege of using within this state as a consumer any:

- (a) Article of tangible personal property acquired by the user in any manner, . . .

A person who acquires tangible personal property solely for the purpose of resale in the regular course of business is excluded from the definition of "consumer." See RCW 82.04.190(1)(a). However, when a seller of tangible personal property uses items in inventory for purposes other than resale, such as personal use, the person is subject to use tax as a consumer.²

Rule 132 explains the application of use tax to the personal use of vehicles by automobile dealers and their associates. Rule 132(5) states:

The use tax does not apply to the display of new or used automobiles by dealers, their employees or other representatives. Neither does use tax apply upon the personal use or

² The use tax applies, unless the person paid retail sales tax at the time of purchase. See RCW 82.12.020(2).

demonstration of automobiles which have been sold or leased to dealers' employees or other representatives and upon which the retail sales tax has been paid. Also, use tax does not apply upon demonstrator vehicles if no such vehicles are actually used. However, where an automobile dealer purchases a passenger car or pickup truck without paying a retail sales tax and uses such car or truck for personal use or demonstration purposes, the use tax applies even if such personal car or demonstrator may later be sold by the dealer. [Emphasis added.]

Rule 132(7) explains the method used to calculate use tax liability on "executive"³ vehicles:

Executive vehicles - personal use of vehicles by executives and persons associated with a dealer. When a dealer or a person associated with a dealer (firm executive, corporate officer, partner, or manager) does not have a recent model car^[4] registered and licensed in its own name and regularly uses either one or various new cars from inventory for personal driving (whether or not such cars are also used for demonstration purposes) the use tax applies to the value of one such car for each two calendar years in addition to the tax which applies to demonstrator use by sales staff. The measure of the use tax is the same as the measure for the computation of use tax on subsequently used demonstrator vehicles, that is, twenty-five percent of the average selling price of all makes and models of new passenger cars and pickup trucks sold at retail during the preceding year.

Rule 132 (11) relates specifically to used car dealers and provides in part:

Used vehicle dealers who provide used cars for personal use to their sales staff or managers without charge are subject to use tax on one vehicle per year for each sales person or manager to whom a used vehicle is provided. The value for use tax reporting is the average selling price of all used vehicles sold in the preceding year multiplied by twenty-five percent. The use tax is due in the month in which the vehicle is first used for personal use. . . .

Where used car dealers satisfy the criteria for executive car use (no current model vehicle registered in the user's name) they are deemed to be using one executive or personal use vehicle per calendar year. In such cases use tax must be reported under the same formula as for subsequently used new demonstrator cars, that is, measured by twenty-five percent of the average selling price of all used cars sold during the preceding calendar year

Thus, for both new and used car dealers, where a person associated with a car dealership does not have a recent model vehicle licensed in that person's own name, the executive use tax provisions apply. We find no basis to limit the requirements of the rule to new car dealerships.

³ The term "executive use vehicle" means any vehicle from sales inventory, used by any person associated with the automobile dealership for personal driving, other than for demonstration or display purposes as defined above, when such person does not have a recent model vehicle registered and licensed in that person's own name on which retail sales tax was paid. Rule 132(2)(c)

⁴ The term "recent model vehicle" refers to a car of the current model year or either of the two preceding model years. Rule 132(2)(d)

The rule does not make an exception or provide for an older vehicle to be licensed to persons associated with used car dealers. To the contrary, the rule specifically refers to used car dealers who have “no current model vehicle registered in the user’s name. . . .” Rule 132(11) (emphasis supplied.)

The Taxpayer has the option of either having a late model vehicle licensed in [its owner’s] name or paying use tax for the executive use of dealership vehicles as computed under the provisions of Rule 132. Those are the only two options. Licensing an older vehicle in his name would not satisfy the requirements of Rule 132 and the Taxpayer would still owe use tax on personal use of dealership vehicles.

In this case, neither the owner of the Taxpayer nor his wife had a car registered under either of their names during the audit period. Therefore use tax on executive use of dealership vehicles applies and was properly assessed by the audit division. We sustain the assessment as issued and deny the Taxpayer’s petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 30th day of July 2013.