Cite as Det. No. 11-0210, 33 WTD 40 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Correction of Assessment of | ) | D E T E R M I N A T I O N |
| | ) | No. 11-0210 |
| . . . | ) | |
| | ) | Registration No. . . . |
| | ) | |
| | ) | Use Tax Assessments . . . |
| | ) | Docket No. . . . |

[1] RULE 178; RCW 82.12.010: USE TAX - USE IN WASHINGTON STATE. Washington State resident buyer of antique automobiles received the automobiles in Washington State, and exercised dominion and control over the automobiles in Washington State. Use tax liability arises because the Washington State resident did not pay any retail sales tax on these out-of-state purchases.

[2] RCW 82.12.010, RCW 82.04.050: USE TAX – PURCHASE FOR RESALE. Use tax was owed by Washington State resident buyer who did not pay any retail sales tax on out-of-state purchase of two automobiles. Buyer failed to demonstrate that it was in the automobile retailing business, or that it purchased the two antique automobiles for resale in the regular course of business.

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.

Munger, A.L.J. – Appeal of use tax assessments on two antique automobiles. Because both automobiles were delivered to Washington State where the Taxpayer is a resident, and neither automobile was purchased for resale, we affirm the assessments. . . . We sustain both assessments.[1]

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

## ISSUES

1. Whether the Taxpayer used two antique automobiles in Washington State, thus triggering the use tax when retail sales tax was not paid at the time of purchase.
2. Whether the automobiles were purchased for resale.
3. . . .

## FINDINGS OF FACT

The Taxpayer . . . is a resident of . . . Washington. . . . This appeal centers on the purchase of two antique automobiles from foreign sellers. The Taxpayer did not pay Washington State retail sales tax or use tax on either automobile. . . .

The Taxpayer purchased [antique automobile #1 which] was delivered to the Taxpayer [in 2005] in [Washington]. . . .

After the car arrived in [Washington], the Taxpayer had it inspected and serviced by a mechanic. In 2006, [antique automobile #1] was displayed at a car show in [Washington] . . . . Also in 2006 it was shown at [a] car event in [another state]. . . .

The September 28, 2009, [antique automobile #1] use tax assessment is for $. . . .

The other automobile at issue is [antique automobile #2] purchased from [a] seller [outside the United States]. [Antique automobile #2] was delivered to the Taxpayer in [Washington in] 2005. The purchase had been arranged the prior December. The price was $. . . . [Antique automobile #2] was inspected and repaired in [Washington]. After five months at the repair shop, it was shipped to [another state], and stored and participated in an antique car rally. [Taxpayer] at the hearing stated that he did not intend to resell [antique automobile #2] when he bought it. He states that he did trade it to someone [outside of Washington] in late 2005 or early 2006. Based on the above purchase price, the September 28, 2009, use tax assessment was for $. . . , which included interest and penalties.

The Taxpayer also asserts that collectors of antique cars, such as himself, will sometimes buy a car, restore it and gain good publicity for it by displaying it at car shows. Then, the car can be resold for a profit. In . . . 2008 [antique automobile #1] was listed for sale . . . . [Taxpayer]. however, was not registered as being in business, and provided no other records to document this claim that his hobby should be treated as a business.

## ANALYSIS

### 1. Use in Washington State

. . . Neither auto in this case was likely to have ever been driven on Washington streets. However, the term "use" for use tax purposes does not require that the Taxpayer have driven

around in Washington State in the cars for the tax to apply. RCW 82.12.020 imposes the use tax, and RCW 82.12.010(6) defines "use".

> (6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:
> (a) With respect to tangible personal property, . . . the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

WAC 458-20-178(3) implementing the use tax further explains:

> (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.

(Emphasis added). The gist of the Taxpayer's argument for both cars is that he did not drive either one around in [Washington] or otherwise have control of them while they were being serviced before being shipped [out of state]. Under the statute and rule cited above, "the first act within this state by which the taxpayer takes or assumes dominion or control" of the property creates the use tax liability. . . .

We conclude that for both automobiles, the Taxpayer's receipt of them in [Washington] and their subsequent inspection and servicing in [Washington] (for periods ranging from several weeks to several months) constituted "dominion and control" sufficient for Washington to impose its use tax. Additionally, the display of the [antique automobile #1 in Washington] constitutes use of exactly the type of use one would expect of [an antique] automobile . . . . [Taxpayer] need never have driven either auto to have triggered the use tax. He clearly exercised dominion and control over both autos after their arrival in [Washington]. The fact that it's unlikely he drove either car on public streets, or even kept them in the family garage, are not facts necessary to trigger the use tax under RCW 82.12.010. The statutory provisions of RCW 82.12.010 & 020 establish that any act of dominion or control over tangible personal property by a "consumer" of that property creates use tax liability. *Seattle Filmworks v. Department of Revenue*, 106 Wn. App. 448, 459, 24 P.3d 460 (2001) (actual consumption is not necessary; a preparatory act alone is sufficient to establish use); *Activate, Inc. v. Dep't of Revenue*, 150 Wn. App. 807, 822, 209 P.3d 524 (2009) ("use" does not require "actual use" of the tangible personal property).

**2. Purchases for resale**

Taxpayer asserts that his hobby should be treated as a business, i.e., that the cars were purchased for resale. The Taxpayer was not registered with the Department as a business, and has no proof, other than [antique automobile #1's] listing, that he is in the antique car business. The Taxpayer's own statement on the [antique automobile #2] contradicts the claim that it was purchased for resale.

A purchase for the purposes of resale in the regular course of business is not subject to the retail sales tax, because it is not a retail sale as that term is used in RCW 82.04.050(1).

> (1)(a) "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 . . . other than a sale to a person who:
>
> (i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, . . .

RCW 82.04.040(2) makes the following definition: "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved. WAC 458-20-106 further describes an isolated sale as "a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales."

To show entitlement to the resale exemption contained in RCW 82.04.050(1)(a), a taxpayer must show: "(1) it purchased the property for resale; (2) it resold the property in its regular course of business, and (3) it did not use the property before the resale." *Glen Park Associates, LLC, v. Dep't of Revenue*, 119 Wn. App. 481, 493, 82 P.3d 664 (2003). The absence of any one of these elements disqualifies the sale from this exemption. Like any tax benefit, "[a]nyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it." *Budget Rent-A-Car of Washington-Oregon, Inc. v. Department of Revenue*, 81 Wash.2d 171, 174- 5, 500 P.2d 764 (1972) (citing *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Commission*, 72 Wash.2d 422, 433 P.2d 201 (1967)). This standard applies to the retail sales tax exemption for sales for resale. *Seattle Filmworks, Inc. v. State Department of Revenue*, 106 Wn. App. 448 P.3d 460, 24 P.3d 460 (2001).

In the present matter, the Taxpayer made some attempt to sell [antique automobile #1] in 2008, three years after he had received it . . . . The Taxpayer's own statement about the [antique automobile #2] shows that it was not purchased for resale. Having one antique auto listed for sale, and trading one other in the past five years does not qualify . . . . We conclude that neither auto qualifies for this exemption from the retail sales or use tax. . . .

## DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 27th day of June, 2011.