Cite as Det. No. 20-0334, 41 WTD 282 (2022)

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

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| In the Matter of the Petition for Correction of Assessment of<br><br>. . . | ) | D E T E R M I N A T I O N<br><br>No. 20-0334<br><br>Registration No. . . . |

[1] RCW 82.12.0251; WAC 458-20-178 – DEFERRED RETAIL SALES TAX OR USE TAX ON MOTOR VEHICLES: An individual taxpayer who holds title to vehicles and registers the vehicles in their own name is the owner of the vehicles, regardless of their providing the out-of-state address of their wholly-owned corporation. There is no legal basis for treating the corporation and the taxpayer as one entity for tax purposes.

[2] RCW 82.08.0266; WAC 458-20-238 – EXEMPTIONS – SALES OF WATERCRAFT TO NONRESIDENTS FOR USE OUTSIDE THE STATE: In order to be entitled to the exemption, (1) the watercraft must leave Washington waters within forty-five days of delivery; (2) the seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and (3) the seller must retain a completed exemption certificate to document the exempt nature of the sale.

[3] RCW 82.12.010(7); RCW 82.12.020(4); WAC 458-20-178 – USE TAX – VALUE OF THE ARTICLE USED: The use tax is imposed on vehicles and watercraft based on the purchase price of the items. The statute does not allow for imposition of the use tax based on the days the vehicles or watercraft were used in Washington. The Department's assessment of tax based on the manufacturer's suggested retail price or industry pricing guide is reasonable absent actual records.

[4] RCW 82.32.105(1); WAC 458-20-228 – WAIVER OF PENALTIES – LACK OF KNOWLEDGE: Lack of knowledge of a tax liability is not a basis the Department can consider for waiving the penalties imposed.

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.

Callahan, T.R.O. – A Washington individual protests the use tax assessment on vehicles and watercraft that he used in Washington, claiming that the vehicles and watercraft were his out-of-

state auto dealer's inventory. The individual also argues the Department should waive the penalties and interest assessed because he was not aware of Washington tax laws. We deny the petition.[1]

## ISSUES

1. Under RCW 82.12.0251 and WAC 458-20-178 (Rule 178), is the taxpayer liable for deferred retail sales tax or use tax for the motor vehicles purchased . . . [out-of-state] but brought into Washington for repairs, upgrades, display in an auto show, or to demonstrate for potential purchasers on behalf of a separate entity that the taxpayer owns?

2. Under RCW 82.08.0266 and WAC 458-20-238 (Rule 238), has the taxpayer demonstrated that his use of watercraft in Washington is exempt from use tax?

3. Under RCW 82.12.010(7) and Rule 178, should the Department measure use tax based on the fair market value or the fair rental value of the vehicles and watercraft?

4. Under RCW 82.32.105(1) and WAC 458-20-228 (Rule 228), does the taxpayer's lack of knowledge constitute a circumstance beyond its control sufficient for canceling penalties?

## FINDINGS OF FACT

[Taxpayer] owns [Corp], an [out-of-state] auto dealer. The business has approximately 50 vehicles at any one time. Some are titled to the Corp, and some are titled to Taxpayer personally, which Taxpayer states is for financing purposes. Taxpayer lives in . . . , Washington.

In June 2019, the Department's Compliance Division (Compliance) received a . . . referral that Taxpayer had multiple [out-of-state] plated vehicles at his Washington residence. Compliance investigated and found Taxpayer had registered with [out-of-state] Driver & Motor Vehicle Services 14 motor vehicles (Vehicles) and four watercraft (Watercraft) in his personal name using Corp's [out-of-state] address, while being a Washington resident.

Compliance observed social media posts Taxpayer put out to the public. Taxpayer appeared to be using the Vehicles and Watercraft in a personal manner in those posts, which included a picture of Taxpayer and his family camping in a recreational vehicle. Compliance verified with Washington State Patrol that several of the Vehicles were located at Taxpayer's residence consistently over the course of June and July 2019. Compliance also discovered that Taxpayer owned two personal residences located in Washington, registered to vote in Washington, subsequently voted in Washington elections, and has maintained a Washington driver's license.

On July 25, 2019, a Compliance employee telephoned Taxpayer to inquire about the ownership of the Vehicles and Watercraft. Taxpayer failed to explain why he registered the Vehicles and Watercraft to the Corp's [out-of-state] address, while he registered the titles of the Vehicles and Watercraft under his personal name.

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

On October 21, 2019, the Department issued an [Assessment] for $. . . , which consisted of use tax of $. . . , watercraft excise tax (WET) of $. . . , a five percent assessment penalty of $. . . , an unregistered vessel penalty of $ . . . , a 29 percent late payment penalty of $ . . . , and interest of $ . . . . Compliance assessed use tax on the Vehicles and Watercraft, and WET on the Watercraft. Taxpayer did not provide purchase or insurance documents for Vehicles or Watercraft, so Compliance based their taxable value on the manufacturer's suggested retail price (MSRP) or industry pricing guide.

Taxpayer did not pay the Assessment and petitioned the Department's Administrative Review and Hearings Division for correction of the Assessment. Taxpayer claims that the Vehicles and Watercraft were Corp's inventory and thus should not be liable for use tax or WET.

*Vehicles:*
Taxpayer acknowledges that the Vehicles entered Washington, but claims they were the Corp's inventory and present in the state for one or more of the following four reasons:

- Transportation into Washington for repairs or upgrades,
- Displayed at an auto show or other event for marketing purposes,
- Demonstrated to a potential purchaser, or
- Driven by Taxpayer for testing and assessment purposes.

Specifically, Taxpayer alleges the following:[2]

| | *Model* | *Purchased Date* | *Sold Date* | *Taxable value* | *Argument* |
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| #1 | . . . | . . . | . . . | $. . . | Purchased new and upgraded over a period of 6 weeks . . . . A portion of the work was done at two auto repair shops in Washington. The truck was driven to Washington less than three times a week as a demo. |
| #2 | . . . | . . . | . . . | $. . . | Purchased as a show vehicle for the show. . . . Repair work including a custom roll cage and performance parts done at an auto repair shop in Washington. The vehicle was taken to . . . in Washington for two events in 2015. The vehicle was driven into Washington as a demo vehicle less than 15 times between January and June 2016. |
| #3 | . . . | . . . | . . . | $. . . | Purchased new in . . . [out-of-state]. Work was completed in an auto repair shop in Washington for custom lift kit, wheels, tires, and bumpers. The vehicle was sold to [an entity] in Washington. The vehicle was driven in Washington less than twice per week between March and September before it was sold. |

[2] Petition dated . . . .

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| #4 | . . . | . . . | . . . | $. . . | Purchased new in . . . [out-of-state]. The vehicle was in Washington for custom bumpers, custom powder coating, wheels, and tire installations. . . . |
| #5 | . . . | . . . | . . . | $. . . | Installed a custom lift kit, wheels and tires, LED lighting, and custom paint matching that in auto repair shops in Washington. Truck was shown at the [out-of-state] show . . . . The truck was stored . . . when not being worked on or displayed in a show. |
| #6 | . . . | . . . | . . . | $. . . | Purchased with a bad motor from . . . [an out-of-state] dealer, then stored until April when an auto repair shop in Washington rebuilt the engine of the vehicle. The vehicle had paint upgrades done in Washington [before being sold]. |
| #7 | . . . | . . . | . . . | $. . . | Purchased . . . [out-of-state], driven . . . [out-of-state] and listed for sale. It was driven into Washington 2-3 times a week from May 2, 2016, to August 23, 2016, then stored and sold by the Corp. |
| #8 | . . . | . . . | n/a (Taxpayer did not sell the Vehicle) | $. . . | Purchased . . . [out-of-state] and stored at [seller's] location for sale on consignment. |
| #9 | . . . | unknown | unknown | $. . . | Taxpayer claims he cannot find any files for this vehicle. |
| #10 | . . . | unknown | unknown | $. . . | Taxpayer claims he cannot find any files for this vehicle. |
| #11 | . . . | . . . | . . . | $.. . | Purchased from [an auto dealer] . . . [out-of-state] for the . . . show. Upgrades were performed by the Corp. and an auto repair shop . . . [out-of-state]. The truck went to an auto repair shop in . . . , Washington for bumper and rack installation before the . . . show. The truck was driven to Washington for four photoshoots after the . . . show. |
| #12 | . . . | . . . | . . . | $. . . | Purchased . . . [out-of-state] and stored by the Corp. |
| #13 | . . . | . . . | . . . | $. . . | Purchased new . . . [out-of-state] and stored at [seller's] location for sale on consignment. |
| #14 | . . . | . . . | . . . | $. . . | Purchased at an auto auction . . . [out-of-state] and sold at the same auction. The upholstery was redone at an auto repair shop in Washington. The vehicle also had service work done by a mobile mechanic in June |

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| | | | | | and July in Washington while the vehicle was stored at Taxpayer's residence. |

Taxpayer has estimated the number of days each Vehicle spent in Washington before being sold and provided a self-written history of Vehicles including initial purchase and sale dates. Taxpayer has not provided any source documents that would verify the estimated number of days spent in Washington or the prices [for which the Vehicles were] bought and sold.

Taxpayer argues that since the Corp owned the Vehicles and Watercraft, the measure of the use tax should be based on the tangible personal property's fair rental value, computed on a straight-line depreciation basis over a five-year period for the Vehicles, and a seven-year period for the Watercraft, "consistent with WAC 458-20-178(4)."[3] Essentially, Taxpayer asserts that the Corp was the grantor that granted Taxpayer, the bailee, the temporary right of possession and use of the Vehicles and Watercraft, and the measure of the use tax to the bailee, Taxpayer in this case, should be based on the reasonable rental value of tangible personal property.

Taxpayer also claims that he . . . should be allowed to offset the tax owed on one Vehicle by the amount of tax paid on another, as would be the case with a trade-in scenario.

Finally, Taxpayer claims that pictures showing Taxpayer personally using the Vehicles are a form of advertising, by showing potential buyers how the Vehicles may be used.

*Watercraft:*
Regarding the Watercraft, Taxpayer also admits that he used them in Washington as follows:[4]

| | *Model* | *Purchased Date* | *Sold Date* | *Taxable value* | *Argument* |
|---|---|---|---|---|---|
| W#1 | . . . | | | $. . . | Taxpayer claims he cannot find any files for this watercraft. |
| W#2 | . . . | . . . | . . . | $. . . | "Purchased . . .[out-of-state] and stored at the [Corp]. *It was used in Washington for 2-3 trips*." (Emphasis added.) |
| W#3 | . . . | . . . | . . . | $. . . | "Purchased new . . .[out-of-state] and stored at their location for sale on consignment. *This boat was only used in Washington for two weekends.*" (Emphasis added.) |
| W#4 | . . . | . . . | | $. . . | "Purchased . . . [out-of-state] and stored at [seller's] location for sale on consignment. *The boat was used in Washington four times in 2018 during the summer and once in June 2019*." (Emphasis added.) |

[3] Petition dated . . . , p.4.
[4] Petition dated . . . , p.8.

Taxpayer does not argue that the Watercraft entered Washington for upgrades or demonstration display for potential purchasers but asserts the measure of the use tax on the Watercraft should be based on the fair market value of the days that he used them in Washington.[5]

Taxpayer does not believe it should pay penalties and interest because it was not aware of Washington tax laws.

## ANALYSIS

1. *Under RCW 82.12.0251, RCW 82.08.0266, Rule 178, and Rule 238, is Taxpayer liable for deferred retail sales tax or use tax for the motor vehicles purchased . . . [out-of-state] but brought into Washington for repairs, upgrades, display in an auto show, or to demonstrate for potential purchasers?*

The retail sales tax is imposed on every retail sale occurring in Washington. RCW 82.08.020(1). A "retail sale" is "every sale of tangible personal property . . . to all persons irrespective of the nature of their business . . . ." RCW 82.04.050(1). The sales of watercraft and motor vehicles are subject to retail sales tax. RCW 82.08.020(1).

RCW 82.12.020 imposes the use tax and provides that the tax shall be collected from every person in this state for the privilege of using, within Washington, as a consumer, any article of tangible personal property. "Use" means "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[s]* installation, *storage*, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state." RCW 82.12.010(6)(a) (emphasis added).

Rule 178 implements the use tax statute and explains that the use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state, by a consumer, of any article of tangible personal property purchased at retail where the user or other specified persons have not paid retail sales tax on the purchase. Thus, the use tax applies upon the use of tangible personal property where the sale or acquisition has not been subject to retail sales tax. Rule 178(2). Use tax liability arises at the time the property purchased is first put to use in this state. Rule 178(5)(a).

RCW 82.12.0251 provides that use tax shall not apply with respect to the use:

> (2) By a *nonresident* of Washington of a motor vehicle . . . which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, . . . .
> (3) . . . [B]y a *bona fide resident of Washington*, . . . if such articles and services were acquired and *used by such person in another state while a bona fide resident* thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes; . . . .

[5] Petition dated . . . and reply dated . . . , to the Audit Division's petition response.

(Emphasis added.) Under RCW 82.12.0251, nonresidents of Washington are not subject to use tax on their vehicles if the vehicles are properly licensed in their state of residence and are not required to be licensed in Washington. Similarly, bona fide residents of this state will not be subject to use tax if their vehicles were acquired and used in another state in which they were residents for more than 90 days prior to entering Washington.

Here, it is undisputed that Taxpayer is a bona fide Washington resident, and that he purchased and registered the Vehicles under his personal name. A "consumer" is "any person who purchases, acquires, owns, holds, or uses any article of tangible personal property." RCW 82.04.190(1). . . . Taxpayer "assumed dominion or control over" the Vehicles when he drove them into Washington, which constitutes the "use" of the Vehicles. RCW 82.12.020(6)(a). Rule 178(2) explains the use tax is imposed where the user has not paid retail sales tax. Use tax liability arises at the time the property purchased is first put to use in this state. Rule 178(5)(a). Accordingly, the Vehicles are subject to use tax when Taxpayer took dominion and control over them. *Id.*

Taxpayer will receive the benefit of the exemption under RCW 82.12.0251(2) only if the use of the Vehicles fits precisely within the exemption. The first element of the use tax exemption, that the user must be a nonresident, is not met because Taxpayer is a Washington resident. Thus, Taxpayer is not entitled to the exemption from use tax under RCW 82.12.0251(2).

The use tax exemption under RCW 82.12.0251(3) is not applicable to Taxpayer either because there is no evidence that Taxpayer, as a bona fide Washington resident, acquired the Vehicles in another state as a resident of that state and used the Vehicles in that state in which he was a resident for more than 90 days prior to entering Washington. Therefore, Taxpayer is not entitled to the exemption from use tax under RCW 82.12.0251(3).

Taxpayer claims that the Vehicles are the Corp's inventory, and they were present in the state for repairs or upgrades, displayed at an auto show or other event for marketing purposes, demonstrated to a potential purchaser, or driven by Taxpayer for testing and assessment purposes. But Taxpayer has failed to demonstrate that he passed the titles of the Vehicles to the Corp for resale.

It is well settled that affiliated entities are [separate] persons within the meaning of Washington's Revenue Act. In general, transactions between affiliated entities are fully subject to tax. *Dep't of Revenue v. Nord Northwest Corp*, 164 Wn. App. 215, 230 (2011); *Washington Sav-Mor Oil Co. v. State Tax Commission*, 58 Wn.2d 518, 364 P.2d 440 (1961); RCW 82.04.030.

"The tax liability of a corporation must be considered without regard to its relationship to a parent or subsidiary company or to the existence of common officers, employees, facilities, or stock ownership." *American Sign & Indicator Corp. v. State*, 93 Wn.2d 427, 429, 610 P.2d 353 (1980). Washington law treats affiliated entities as different persons, each subject to tax on their taxable activities. *See* RCW 82.04.220.

The fact that Taxpayer wholly owns Corp does not provide an exception to the general rule that each business entity is a separate taxpayer. *Nord*, 164 Wn. App. at 230. Once Taxpayer registered the Vehicles under his personal name, Taxpayer owned the titles of the Vehicles. There is no legal

basis in the record for disregarding the separate legal existence of Taxpayer and the Corp and treating them as one entity for tax purposes. *See* Det. No. 17-0269, 37 WTD 130 (2017).

Taxpayer has not presented any evidence that the Corp owned the Vehicles to be considered for the nonresident use tax exemption under RCW 82.12.0251.

We conclude that the nonresident use tax exemption under RCW 82.12.0251 does not apply to Taxpayer's use of the Vehicles because Taxpayer is a bona fide Washington resident and used the Vehicles as a consumer.

2. *Under RCW 82.08.0266 and Rule 238, has Taxpayer demonstrated that his use of the watercraft in Washington is exempt from use tax?*

With respect to watercraft, RCW 82.08.0266 provides an exemption for sales of watercraft to nonresidents for use outside Washington. RCW 82.08.0266 provides as follows:

> [Retail sales tax] 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 or her 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.

(Emphasis added.) Rule 238 explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard documentation or state registration. Rule 238(1). That administrative rule goes on to emphasize that the exemption "is limited to sales of watercraft requiring United States Coast Guard documentation or registration with the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958." Rule 238(3)(a).

In order to be entitled to the exemption, the following requirements must be met:

- The watercraft must leave Washington waters within forty-five days of delivery;
- The seller must examine acceptable proof that the *buyer is a resident of another state* or a foreign country; and
- The seller must retain a completed exemption certificate to document the exempt nature of the sale.

Rule 238(3)(a)(i) (emphasis added).

To the extent an exemption applies, the transaction is not subject to the tax. However, tax exemptions are not presumed, and the person claiming the exemption must clearly establish that

they are entitled to the exemption. *Group Health Co-op v. Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201, 205 (1967).

The record before us does not indicate Taxpayer is a nonresident of Washington that would qualify for the exemption under RCW 82.08.0266 and Rule 238. We are also not sure whether the Watercraft are "watercraft requiring coast guard registration or registration by the state of principal use according to the Federal Boating Act of 1958." Finally, we have not been provided with a copy of a completed exemption certificate relating to the sales of the Watercraft.

In short, none of the elements required under RCW 82.08.0266 and Rule 238 have been met. Therefore, the nonresident use tax exemption under RCW 82.08.0266 for the Watercraft is not applicable because Taxpayer owned and used the Watercraft in Washington at his own admission.

3. *Under RCW 82.12.010(7) and Rule 178, should the use tax be based on the fair market value or the fair rental value of the Vehicles and Watercraft?*

Taxpayer argues the use tax should be based on the fair rental value, not the fair market value, of the Vehicles and Watercraft. Taxpayer has estimated the number of days each Vehicle and Watercraft spent in Washington before being sold, and asserts that the use tax should be based on the rental value of the days each Vehicle and Watercraft was used in Washington.

RCW 82.12.020(4) provides "the [use] tax is levied and must be collected in an *amount equal to the value* of the article used." (Emphasis added.) RCW 82.12.010(7)(a) defines the term "value of the article used" as:

> *[T]he purchase price for the article of tangible personal property*, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. . . .

(Emphasis added.) The use tax on the Vehicles and Watercraft is based on the purchase price of the Vehicles and Watercraft. RCW 82.12.020(4). The statute does not allow the use tax based on the days the Vehicles or Watercraft were used in Washington. *Id.* Taxpayer did not provide purchase or insurance documents for the Vehicles or Watercraft to demonstrate the purchase price of the Vehicles. When a taxpayer fails to make records available for the Department to examine, "the Department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax," under RCW 82.32.100(1). In this case, the Department based the Vehicles' and Watercraft's taxable value on the MSRP or industry pricing guide, which we find reasonable absent actual records.

In addition, as we explained above, the Corp did not own the Vehicles or Watercraft because they were registered under Taxpayer's personal name. The Corp could not have possibly rented the Vehicles and Watercraft to Taxpayer when it did not have title to them.

Likewise, there is no evidence of a bailment agreement here either. RCW 82.12.020(3)(b) discusses bailment and use tax. It states that use tax does not apply:

> (i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;
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> (ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on *reasonable rental* as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;
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> (iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961;
> . . . .

(Emphasis added.)

WAC 458-20-211 (Rule 211) defines the term "bailment" as "the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor." Rule 211(2)(b). "The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character." Rule 211(7)(a). Corp was not the grantor of the Vehicles and Watercraft because it did not hold title to them. Therefore, there is no basis to determine Taxpayer's use of the Vehicles and Watercraft as a bailment arrangement.

*Trade-in credits:*
Lastly, Taxpayer also claims that . . . it should be allowed to offset the tax owed on a Vehicle by the amount of tax paid on another, as would be the case with a trade-in scenario.

Retail sales tax is calculated as a percentage of the "selling price" of the property sold. RCW 82.08.020(1). The value of certain "trade-in property" is excluded from the "selling price." RCW 82.08.010. WAC 458-20-247 (Rule 247) explains the trade-in property exclusion as follows:

> RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of the article used," in pertinent part, to mean the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, or tangible personal property, expressed in terms of money paid or delivered by a buyer to a seller. As a result, the buyer of tangible personal property is entitled to reduce the measure of retail sales or use tax if:
>
> - The buyer delivers the trade-in property to the seller;
> - The trade-in property is delivered as consideration for the purchase; and
> - The property traded in is "property of a like kind."

Rule 247(2). Trade-in property reduces the measure of the buyer's sales tax liability or the consumer's use tax liability. RCW 82.08.010; Rule 247(2).

Rule 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 it does require that the delivery of the trade-in and the purchase be *components of a single transaction*. Sales documents, executed not 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.

(Emphasis added.)

Rule 247(8) explains the recordkeeping requirement for trade-in property:

> (8) **Recordkeeping.** RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which tax liability can be determined. *To substantiate a claim for the trade-in exclusion, the sales agreement and/or invoice must identify both the property being purchased and the trade-in property.* Such identification includes the model number, serial number, year of manufacture, and other information as appropriate. The sales agreement and/or invoice must also specify the selling price and the value of the trade-in property. . . .

(Emphasis added.) In this matter, Taxpayer failed to substantiate its claim for the trade-in exclusion by providing the sales agreement and invoice to identify both the property being purchased and the trade-in property exchanged within a single transaction as required by Rule 247(8) and Rule 247(4). Taxpayer is not entitled to offset the use tax assessed on one vehicle by the use tax assessed on another as trade-ins under RCW 82.08.010 and Rule 247.

*4. Under RCW 82.32.105(1) and Rule 228, does Taxpayer's lack of knowledge constitute a circumstance beyond its control sufficient for canceling penalties?*

Taxpayer does not believe it should pay penalties and interest because it was not aware of Washington tax laws.

RCW 82.32.105 provides that penalties may be waived under certain circumstances. Under RCW 82.32.105(1), the Department will waive penalties where the failure to pay timely was the "result of circumstances beyond the control of the taxpayer." *See* Det. No. 15-0305, 35 WTD 37 (2016).

The Department adopted Rule 228 to administer RCW 82.32.105. Rule 228 explains that such circumstances must result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay, and must have directly caused the missed payment. Rule 228(9)(a)(ii).

Rule 228(9)(a)(ii) lists examples of circumstances that are beyond a taxpayer's control sufficient to cancel penalties:

- Erroneous written information from the Department;
- An act of fraud or conversion by the taxpayer's employee or contract helper which the taxpayer could not immediately detect or prevent;
- Emergency circumstances around the time of the due date, such as the death or serious illness of the taxpayer or a family member or accountant; or
- Destruction of the business or records by fire or other casualty.

Rule 228(9)(a)(iii) also lists examples of situations that are generally not beyond the control of a taxpayer:

- Financial hardship;
- A misunderstanding or lack of knowledge of a tax liability;
- Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer.

(Emphasis added.) Taxpayer argues that it was not aware of its tax obligation with Washington. In Det. No. 18-0062, 38 WTD 181 (2019), we reiterated that lack of knowledge of a tax liability is not a basis the Department can consider for waiving the penalty imposed. Therefore, Taxpayer's lack of knowledge is not a basis for us to waive the penalties. 38 WTD 181.

In addition, RCW 82.32A.030(2) charges taxpayers with "know[ing] their tax reporting obligations, and when they are uncertain about their obligations, seek[ing] instructions from the department of revenue. . . ." Because of the nature of Washington's tax system, the burden of becoming informed about tax liability falls upon Taxpayer, and it is Taxpayer who bears the consequences of a failure to be correctly informed. Det. No. 01-165R, 22 WTD 11 (2003). Thus, Taxpayer is required to know its tax reporting obligations. *Id.*

Finally, RCW 82.32.105(3) provides the two circumstances under which the Department will waive or cancel interest:

> (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or
>
> (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

As neither circumstance under RCW 82.32.105(3) is present in this case, Taxpayer is not eligible for waiver of interest.

## DECISION AND DISPOSITION

We deny the petition.

Dated this 16th day of December 2020.