

Cite as Det. No. 21-0082, 41 WTD 389 (2022)

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

In the Matter of the Petition for Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 21-0082
)	
...)	Registration No. ...
)	

RCW 82.08.9999; RCW 82.12.9999 - EXEMPTIONS—VEHICLES USING CLEAN ALTERNATIVE FUELS AND ELECTRIC VEHICLES. A vehicle must be on the Department of Licensing’s (DOL) qualifying list in order to qualify for the exemption. The Department’s authority is limited to issues of vehicle valuation outlined in RCW 82.08.9999(1)(a)(iii)(B) and RCW 82.12.9999(1)(a)(iii)(B); the Department cannot overrule DOL’s authority to issue final rulings on vehicle model qualification. RCW 82.08.9999(3).

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 vehicle owner protests the Department’s denial of his refund request for the use tax paid on a vehicle he purchased from an out-of-state auto dealer. The vehicle owner argues that the vehicle qualifies for the electric vehicles use tax exemption. We deny the petition.¹

ISSUE

Under RCW 82.08.9999 and RCW 82.12.9999, does the vehicle meet the electric vehicles use tax exemption requirements?

FINDINGS OF FACT

... (Taxpayer) purchased a new 2021 Toyota Prius Prime XLE (Vehicle) from a Toyota auto dealer, ... located in ..., Oregon [in 2020]. The Vehicle’s body style is Hatchback/Fastback and the vehicle identification number is ...

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

The Auto Dealer advertised the Vehicle as follows:²

Standard Equipment

MECHANICAL & PERFORMANCE

- Hybrid Synergy Drive System, TZEV
- 1.8L DOHC 16V VVT-i 4-Cylinder Engine
- EV, EV Auto, HV Modes
- 15-in Alloy Wheels with Covers
- Elec Power Steering (EPS);4-Whl Disc Brakes

In a Hybrid Synergy Drive System, when the engine of a vehicle is running, it charges the battery via the generator; when driving conditions allow it, such as in slow-moving traffic, the generator can cut out the gasoline engine and let the electric motor take over for zero-emissions traveling.³ The engine management system can sense when the car is stopped and will switch off the engine to conserve power and cut emissions, automatically starting up again when needed.⁴

The manufacturer of the Vehicle describes the Vehicle as:⁵

A plug-in hybrid vehicle (PHV) is similar to Prius, but with a larger battery and more powerful motors that allow it to run much longer in full EV [electric vehicle] Mode. You are in control and able to use less gas if you choose to plug it in either at home, at work or at a public charging station. If you don't want to plug it in, no problem, you can still drive the car in hybrid mode with great fuel economy.

The United States Department of Energy estimates that a 2021 Toyota Prius Prime has a battery capacity of *25 miles* of driving range in electric vehicle mode.⁶

The Department of Licensing (DOL) reviewed the Toyota Prius Prime model and concluded:

The electric-only range as determined and published by the Environmental Protection Agency on [fueleconomy.gov](https://www.fueleconomy.gov) must be greater than or equal to 30 miles for a vehicle model to be included in the list of eligible vehicle models. The final EPA-estimated electric-only range is 25 miles for the 2020 Prius Prime.

The sales price of the Vehicle was \$. . . . The Vehicle Buyer's Order shows that Taxpayer paid \$. . . of use tax (described as sales tax) for the Vehicle. The Vehicle was registered with DOL on

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³ <https://mag.toyota.co.uk/how-does-toyota-hybrid-work/#:~:text=The%20system%20delivers%20true%20synergy,over%20for%20zero%2Demissions%20travelling> (last visited April 5, 2021.)

⁴ *Id.*

⁵ <https://www.toyota.com/priusprime/faq/> (last visited April 5, 2021.)

⁶ United States Department of Energy, <https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=42814> (last visited April 5, 2021.) *See also* <https://www.toyota.com/priusprime/faq/> (last visited April 5, 2021.)

January 6, 2021. Since Taxpayer purchased the Vehicle from an out-of-state auto dealer, the Vehicle's Registration Certificate shows that DOL received use tax in the amount of \$. . . .⁷

Subsequently, Taxpayer submitted a refund request dated January 11, 2021, to the Department's Taxpayer Account Administration Division (TAA) for the use tax paid on the Vehicle. Taxpayer submitted a Green Transportation Sales Tax Refund Request, which has Taxpayer and Auto Dealer's information; Vehicle make; Vehicle model; model year; date of sale; and sales price of the Vehicle.

Taxpayer argued that the Vehicle qualifies for the clean alternative fuels and electric vehicles retail sales tax and use tax exemption under RCW 82.08.809 and RCW 82.12.809 because the Vehicle is "electrically re-energized and is capable of traveling at least thirty miles using only battery power" as provided by the statute.⁸

On February 1, 2021, TAA denied Taxpayer's refund request because the Vehicle is not on DOL's list of qualifying vehicles as required by the applicable statutes, RCW 82.08.9999 and RCW 82.12.9999. A 2021 Toyota Prius Prime is not on the DOL's qualifying list maintained on DOL's website.⁹ The only model of plug-in hybrid vehicle manufactured by Toyota that is on DOL's qualifying list is the 2021 Toyota Plug-in Hybrid RAV4, which has a battery capacity of 42 miles of driving range in electric vehicle mode.¹⁰

Taxpayer petitioned the Department's Administrative Review and Hearings Division for an administrative review of TAA's refund request denial. On review, Taxpayer argues that the Vehicle qualifies for the exemption because the Vehicle is capable of traveling 30 miles while using the electric vehicle mode. In support of his argument, Taxpayer provided photographs of the Vehicle's dashboard display showing EV mode "distance available on battery charge" of 32.3 miles.

Taxpayer also asserts that the DOL's qualifying list for the exemption is inaccurate and the Department is statutorily authorized to determine whether a vehicle qualifies for the exemption. Taxpayer argues that DOL exercises its discretion to qualify certain "neighborhood electric vehicles" on a case-by-case basis as stated on the DOL's published guidance titled Alternative Fuel Vehicles and Plug-In Hybrids Tax Exemptions – Frequently Asked Questions (FAQs).¹¹ The section of the FAQs that Taxpayer relies upon reads as follows:

Certain neighborhood electric vehicles can qualify as "passenger cars" if the vehicle is capable of operating upon a public highway. To be eligible, a vehicle

⁷ Taxpayer explained at the hearing the discrepancy of the amounts shown on the Buyer's Order and the Registration Certificate was certain fees charged.

⁸ RCW 82.08.809 and RCW 82.12.809 referenced in Taxpayer's petition were repealed. 2019 c 287 § 9 replaced RCW 82.08.809 and RCW 82.12.809 with RCW 82.08.9999 and RCW 82.12.9999, effective July 28, 2019.

⁹ <https://data.wa.gov/Transportation/WA-Tax-Exemptions-Potential-Eligibility-by-Make-Mo/aug9-4a7g> (last visited April 6, 2021.)

¹⁰ United States Department of Energy, <https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=42793> (last visited April 6, 2021.)

¹¹ Washington Department of Licensing, <https://www.dol.wa.gov/vehicleregistration/docs/faq-altfulexemptions.pdf> (last visited April 21, 2021.)

must meet the requirements in RCW 46.37 at the time of sale. The list currently lists vehicles that have previously qualified for the sales/use tax exemption; all other neighborhood electric vehicles will need to be verified on a case-by-case basis by the Department of Licensing at 360.902.3770 or titles@dol.wa.gov.

(Emphasis added.) On DOL’s Neighborhood/Medium-Speed Electric Vehicle Certification form, DOL explains a “neighborhood electric vehicle” is:

- A self-propelled, electrically powered four-wheeled motor vehicle;
- Speed is at least 20 miles per hour and not more than 25 miles per hour, attainable within one mile; and
- Conforms to federal regulations.¹²

Taxpayer contends that the requirement of a qualifying vehicle that must be travelling at least 30 miles using a single energized charge of battery power is absent from the statute.

Taxpayer further argues that the Department’s denial of its claim for the exemption is contrary to the legislative intent of Engrossed Second Substitute House Bill 2042 (2019), which is to increase electric vehicle purchases for low-income residents.

...

ANALYSIS

Sales of tangible personal property, such as vehicles, in Washington are subject to retail sales tax unless an exemption applies. *See* RCW 82.04.050 and RCW 82.08.020. The tax is imposed upon the buyer, and collected by the seller who remits it to the state. RCW 82.08.050.

Use tax complements the retail sales tax and is imposed “for the privilege of using within this state as a consumer any article of tangible personal property acquired by the user in any manner.” RCW 82.12.020(1)(a). The use tax is measured by the value of the article used multiplied by the retail sales tax rate. RCW 82.12.020(4). The “value of the article used” is defined as the purchase price of an article of tangible personal property. RCW 82.12.010(7)(a); WAC 458-20-178(4).

Here, because Taxpayer purchased the Vehicle from an out-of-state auto dealer, the Vehicle was subject to use tax when Taxpayer brought it to Washington for personal use unless an applicable exemption applies. RCW 82.12.020(1)(a).

RCW 82.12.9999 provides a use tax exemption for vehicles using clean alternative fuels and electric vehicles, which in relevant part states:

- (1) Beginning August 1, 2019, beginning with sales made or lease agreements signed on or after the qualification period start date:

¹² Washington Department of Licensing, <https://www.dol.wa.gov/forms/420300.pdf> (last visited April 21, 2021.)

- (a) The provisions of this chapter do not apply as provided in (b) of this subsection in respect to the use of new or used passenger cars, light duty trucks, and medium duty passenger vehicles that:
- (i) Are exclusively powered by a clean alternative fuel; or
 - (ii) *Use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least thirty miles using only battery power;* and
 - (iii)(A) Have a fair market value at the time use tax is imposed for purchased vehicles that:
 - (I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed forty-five thousand dollars; or
 - (II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed thirty thousand dollars;
 - or
 - (B) Have a fair market value at the inception of the lease for leased vehicles that:
 - (I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed forty-five thousand dollars; or
 - (II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed thirty thousand dollars;
- ...
- (5) The definitions in RCW 82.08.9999 apply to this section.

(Emphasis added.) The retail sales exemption under RCW 82.08.9999 provides that “[t]he department of licensing must maintain and publish a list of all vehicle models qualifying for the tax exemptions under this section or RCW 82.12.9999 until the expiration date of this section, and is authorized to issue final rulings on vehicle model qualification for these criteria.” RCW 82.08.9999(3)(a) (emphasis added). In contrast, “[t]he department of revenue retains responsibility for determining whether a vehicle meets the applicable qualifying criterion under subsection (1)(a)(iii)(B) of this section and RCW 82.12.9999(1)(a)(iii)(B).” RCW 82.08.9999(3)(b).

The Department published a Special Notice titled New Clean Alternative Fuel and Plug-in Hybrid Vehicle Sales and Use Tax Exemption on August 19, 2019, to provide guidance on the exemption. The Special Notice states that if a buyer bought a vehicle out of state, the vehicle will still qualify if the vehicle meets the requirements for the exemption. The Special Notice further provides:

If use tax was paid to Department of Licensing and you did not get an exemption, you can apply for a refund by filling out the Application for Refund of Use Tax and mailing it to the address on the form with a copy of your purchase agreement, copy of the title, and proof of tax paid.

If use tax has not yet been paid, the exemption amount may be calculated at the Department of Licensing.

Id. at 4. [The] Application for Refund of Use tax form is a Department [form]. Thus, the Department advises buyers through the Special Notice to submit a refund request of use tax paid

to the DOL [to] the Department if the vehicle meets the requirements for the exemption. The requirements as applicable here are the vehicle. . . must be on the qualifying list maintained and published by DOL on its website. RCW 82.08.9999(3); *See* Special Notice, p.1.

The taxpayer has the burden of showing qualification for a tax deduction or exemption. *Budget Rent-A-Car of Wash.-Oregon, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-175, 500 P.2d 764 (1972); *Group Health Co-Op v. Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967). Tax exemptions are narrowly construed. *Budget Rent-A-Car*, 81 Wn.2d at 175. The exemption is narrowly construed and Taxpayer has the burden of showing the Vehicle qualifies for the exemption. *Id.*

A 2021 Toyota Prius Prime is not on the DOL's qualifying list maintained on DOL's website.¹³ The only model of plug-in hybrid vehicle manufactured by Toyota that is on DOL's list is the 2021 Toyota Plug-in Hybrid RAV4, which has a battery capacity of 42 miles of driving range in electric vehicle mode.¹⁴ . . .

We conclude that the Vehicle does not qualify for the exemption because . . . it is not on the DOL's qualifying list. RCW 82.08.9999; RCW 82.12.9999.

Taxpayer made several arguments in his petition. We will address each one in turn.

. . .

Taxpayer argues that DOL's qualifying list for the exemption is inaccurate and the Department is statutorily authorized to determine whether a vehicle qualifies for the exemption. The Department's authority is limited to issues of vehicle valuation outlined in RCW 82.08.9999(1)(a)(iii)(B) and RCW 82.12.9999(1)(a)(iii)(B); the Department cannot overrule DOL's authority to issue final rulings on vehicle model qualification. RCW 82.08.9999(3).

Taxpayer next asserts that DOL exercises its discretion to qualify certain "neighborhood electric vehicles" on a case-by-case basis as stated on the DOL's FAQs. The discretion to qualify certain "neighborhood electric vehicles" is not applicable here because it only applies to electrically powered four-wheeled motor vehicle that have a speed [capability] from 20 miles per hour to 25 miles per hour. The Vehicle does not constitute a "neighborhood electric vehicle" for the purposes of the exemption because its speed [capacity] exceeds 25 miles per hour.

. . .

Taxpayer further argues that the Department's denial of its claim for the exemption is contrary to the legislative intent of Engrossed Second Substitute House Bill 2042 (2019), which is to increase electric vehicles purchased by low-income residents. The goal of statutory construction is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, the plain meaning must be given effect as an expression of legislative intent. *State v. J.M.*, 144 Wn.

¹³ <https://data.wa.gov/Transportation/WA-Tax-Exemptions-Potential-Eligibility-by-Make-Mo/aug9-4a7g> (last visited April 6, 2021.)

¹⁴ <https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=42793> (last visited April 20, 2021.)

2d 472, 28 P.3d 720 (2001). “The legislative intent should be derived primarily from the statutory language.” *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). “Words in a statute must be given their usual and ordinary meaning unless a contrary intent appears.” *Streng v. Clarke*, 89 Wn.2d 23, 29, 569 P.2d 60 (1977). See Det. No. 12-0388, 32 WTD 267 (2013). See also *HomeStreet, Inc. v. Dep’t of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (“If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction.”).

The Washington Supreme Court explained this rule in *Agrilink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 396-97, 103 P.3d 1226 (2005):

Where statutory language is plain and unambiguous courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency. A statute is ambiguous if “susceptible to two or more reasonable interpretations,” but “a statute is not ambiguous merely because different interpretations are conceivable.”

The threshold question, then, is whether the language of RCW 82.08.9999 and RCW 82.12.9999 is plain and unambiguous, or is susceptible to two or more reasonable interpretations with respect to the exemption requirements provided in the statute. RCW 82.08.9999 clearly and unambiguously requires that a qualifying vehicle must be able to travel for 30 miles using only battery power, [as determined by DOL in its list of qualifying vehicles.]. This requirement also applies to RCW 82.12.9999. Based on the plain language of RCW 82.08.9999, there are not two or more reasonable interpretations of the exemption requirements that would require us to resort to statutory construction.

...

For all of these reasons, the Vehicle does not qualify for the exemption and the Department properly denied Taxpayer’s request for refund.

DECISION AND DISPOSITION

We deny the petition.

Dated this 23rd day of April 2021.