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

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 21-0142
)	
...)	Registration No. . . .
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RCW 82.32.060(1); WAC 458-20-299(4): REFUNDS – BUYER REQUEST OF RETAIL SALES TAX PAID IN ERROR. Buyer should seek a refund of retail sales tax paid in error directly from the seller. When seeking a refund from the Department, the buyer must include either a seller’s declaration or a buyer’s declaration.

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.

Willette, T.R.O. – An individual (Taxpayer) protests the Department of Revenue’s (Department) denial of a refund request for retail sales tax paid to an out-of-state seller on the purchase of an electric vehicle (EV) which qualifies for an exemption from the tax. We deny the petition.¹

ISSUE

Whether Taxpayer may receive a refund from the Department under RCW 82.32.060 and WAC 458-20-229 (Rule 229) of retail sales tax paid to the seller on the purchase of an electric vehicle that qualifies for an exemption from the tax.

FINDINGS OF FACT

Taxpayer purchased a used . . . [electric vehicle], the EV, from an auto dealer in . . . , Oregon on or about April 18, 2021. The purchase price was \$. . . . On the sales agreement, Taxpayer’s residence is listed at an address in . . . , Washington, and the seller delivered the EV to Taxpayer there. The sales agreement indicates that Taxpayer paid, to the dealer, the appropriate licensing and registration fees and that Taxpayer also paid retail sales tax on the purchase in the amount of \$. . . .

On May 21, 2021, Taxpayer mailed to the Department a “Green transportation sales tax refund request” on the amount of sales tax paid (\$. . .) to the Oregon auto dealer. Taxpayer also filed an

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

“Application for Refund of Use Tax,” asserting \$. . . in use tax had been paid. On that application, Taxpayer left blank the section which requests information about where the use tax has been paid and when it was validated. Taxpayer’s application stated that the use tax was not due because of the “Purchase of E.V. vehicle.” A copy of the sales agreement was included with the application.

The Department sent Taxpayer a denial of his application for a refund. The denial states, in relevant part:

Based on the documentation you provided, the purchase does not qualify for a refund of sales tax from Department of Revenue (the Department). We have no record of the out-of-state dealership being registered with the Department. The sales tax paid at the time of purchase has not been received by the Department therefore, we cannot issue you a refund. The Department of Licensing applied the exemption correctly when the out-of-state dealership registered the vehicle. You will need to work with the dealership directly to request your refund.

Denial Letter, June 3, 2021, p. 1. Taxpayer timely filed a petition for administrative review that restates the grounds for which he believes he is entitled to a refund, namely that the EV is exempt from retail sales tax. . . . Taxpayer included the seller’s “tax i.d. #”, and stated, “with this information, D.O.R. should be able to see this transaction and provide our refund.” Petition for Review, June 4, 2021, p. 2.

In its response to the petition, the Department confirmed that the Department of Licensing (DOL) appropriately applied the exemption and collected the correct amount of tax for the portion of the sale not exempt from taxation. However, the Department found that the seller is not registered with the state, and the seller did not remit to the Department the difference (\$. . .) in tax paid by Taxpayer (\$. . .) and amount paid to DOL (\$. . .).

ANALYSIS

On each “retail sale” in the state, “there is levied and collected a tax[.]” RCW 82.08.020(1). A “retail sale” means “every sale of tangible personal property” RCW 82.04.050(1)(a). Retail sales sourced to Washington are subject to the retail sales tax. Sourcing refers to where the sale is deemed to occur, and, generally, that is the location where the sold items are received by the purchaser. *See* RCW 82.32.730(1)(b) (stating that the sale is to be sourced to the location “indicated by instructions for delivery”). A corresponding use tax is imposed by RCW 82.12.020 “for the privilege of using within this state as a consumer any . . . [a]rticle of tangible personal property acquired by the user in any manner” RCW 82.12.020(1). WAC 458-20-178 (Rule 178) addresses use tax and states: “Use tax complements the sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used, or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available.” Rule 178(2). 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).

The tax levied by RCW 82.08.020 or 82.12.020 does not apply, however, to up to \$16,000 of the selling price on used cars qualifying as alternative fuel vehicles. RCW 82.08.9999(1)(b)(iii); RCW 82.12.9999(1)(b)(iii). The DOL maintains a list of qualifying vehicles. *See* 82.08.9999(3)(a).

Taxpayer purchased a vehicle from a dealer in Oregon to be delivered to his address in . . . , Washington. Because the sale was sourced to Washington, the sale was subject to Washington's retail sales taxes, or, in the alternative, Taxpayer would be responsible for the use tax if retail sales tax was not paid. However, the . . . [EV] is a qualifying vehicle [under RCW 82.08.9999]. Therefore, the first \$16,000 of the EV purchase was exempt from taxation. The \$. . . use tax paid to the DOL was the appropriate amount of tax collected against the non-exempt balance of the purchase price.

When it is determined that “any amount of tax . . . has been paid in excess of that properly due,” the Department “must” credit the taxpayer’s account or refund the excess amount paid. RCW 82.32.060(1). Rule 229 details the process a taxpayer must follow to obtain a refund. Specifically, Rule 229(4) addresses how to obtain a refund when retail sales tax was paid in error. If the buyer believes they have paid retail sales tax on a transaction that they believe was not taxable, then:

the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate.

Rule 229(4)(a) (emphasis added).

Although a buyer should generally seek a refund directly from the seller, Rule 229 provides that the Department may issue a refund of the retail sales tax directly to the buyer if certain conditions are met. In addition to requiring a completed refund application, the Department requires either a seller’s declaration or a buyer’s declaration, both of which must be signed under penalty of perjury. Rule 229(4)(b). The seller’s declaration must substantiate the following:

- Retail sales tax was collected and paid to the department for which a refund is sought,
- The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department, and
- The seller will not seek a refund of the sales tax from the department.

Rule 229(4)(b)(i)(A)-(C).²

² The Department provides a form for the seller’s declaration which can be found at: <https://dor.wa.gov/sites/default/files/legacy/Docs/forms/Misc/41-0106.pdf>.

The buyer can substitute the seller's declaration with a buyer's declaration in the following circumstances:

- The seller no longer exists,
- The seller refuses to sign a seller's declaration, or
- The buyer is unable to locate the seller.

Rule 229(4)(b)(ii). The buyer's declaration should explain why the buyer is unable to obtain a seller's declaration, provide information about the buyer, and declare that the buyer has not and will not seek a refund any longer from the seller.³

Taxpayer filed a refund application as required by the rule, but Taxpayer did not also provide the Department with either a seller's declaration or a buyer's declaration. Based on the facts presented here, the circumstances likely do not exist that would allow for Taxpayer to substitute the buyer's declaration for the seller's declaration. Regardless, Taxpayer provided only the seller's tax identifier in an effort to have the Department figure out whether or not the retail sales tax had been paid. Merely providing a seller's tax identifier is insufficient under either consideration. Because Taxpayer has not provided one of the necessary declarations, Taxpayer has not complied with the requirements of Rule 229 to be eligible for a refund, and the Department was correct in denying the refund.

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Taxpayer should seek a refund from the seller directly or comply with the Rule 229 requirements when seeking a refund from the Department.

DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 27th day of August 2021.

³ The Department provides a form for the buyer's declaration which can be found at: <https://dor.wa.gov/sites/default/files/legacy/Docs/forms/Misc/41-0104.pdf>.