

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
RODNEY FREIER, JR.) Docket No. 2017-59
FROM A DECISION BY THE)
DEPARTMENT OF REVENUE (Sales Tax))

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

Rodney Freier, Jr. appeared *pro se*.

Karl D. Anderson, of the Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue.

DIGEST

Rodney Freier, Jr. appeals the Department's denial of his Request for Motor Vehicle/Use Tax Refund. He claims there was no taxable sale because the same person possessed the vehicle in question at all times. The Department contends that it properly denied the refund because a transfer of the vehicle's title constituted a transfer of possession, so there was a "sale" as that word is defined in statute. It also contends that Mr. Freier is not the proper party to request a refund.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David Delicath, and Board Member E. Jayne Mockler held a hearing to receive evidence and argument as to whether the Department's decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. The State Board finds that a refund is available because there was no "sale" as that word is defined in the relevant state statute. We further find that Mr. Freier was not the proper party to request a refund because he was not the taxpayer against whom the tax was levied.

ISSUE

Mr. Freier generally contends that his transaction with Jason Patterson was not a taxable sale of a motor vehicle.

The Department articulated two issues that we paraphrase as whether:

1. A taxable sale occurred when Mr. Freier transferred title to the car to Mr. Patterson.
2. Mr. Freier has standing to request a tax refund given the tax was not due from him.

JURISDICTION

The State Board shall “review final decisions of the department upon application of any interested person adversely affected.” Wyo. Stat. Ann. § 39-11-102.1(c) (2015). An aggrieved taxpayer may file an appeal with the State Board within 30 days of the Department’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). Mr. Freier filed his appeal 16 days after the Department issued its final decision. (Ex. 500; Ex. 100 at 1). Accordingly, we have jurisdiction to decide this matter.

FINDINGS OF FACT

1. Mr. Freier bought, financed, and paid sales tax on a car for the use of his girlfriend, Amber Patterson. (Ex. 100 at 6; H’rg Recording). Mr. Freier initially held title to the car. (H’rg Recording).
2. In February 2017, to help Mr. Freier and Ms. Patterson qualify for a mortgage, Ms. Patterson’s brother, Jason Patterson, took out a loan to pay off Mr. Freier’s loan. (H’rg Recording). Mr. Freier transferred the car’s title to Mr. Patterson. *Id.* At the hearing, neither party produced a bill of sale between Mr. Freier and Mr. Patterson. *Id.* Mr. Freier testified that there was no bill of sale. *Id.*
3. At all relevant times, Ms. Patterson was the only one who drove the car. (H’rg Recording). She made the loan payments and paid for insurance. *Id.*
4. The Department determined that the transfer of title to Mr. Patterson was a sale upon which \$1,449 in sales tax, interest, and fees was due. (Ex. 502). Mr. Freier paid that amount to the Department on August 21, 2017. *Id.* Three days later he requested a refund on a form provided by the Department. (Ex. 501). The Department denied that request. (Ex. 500).
5. Mr. Freier appealed the denial to us. (Ex. 100 at 1). The primary questions are whether the transfer of title to Mr. Patterson was a taxable sale of the car and whether Mr. Freier was a proper party to request a refund. We held an evidentiary hearing on January 11, 2018. Mr. Freier testified, as did Kim Lovett, the Administrator of Department’s Excise Tax Division. (H’rg Recording).

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

6. "Any person aggrieved by any final administrative decision of the department may appeal to the state board of equalization." Wyo. Stat. Ann. § 39-14-209(b)(i) (2015). Our role in such matters is to adjudicate the dispute between the parties.

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department. The statutory mandate to the Board is not to maximize revenue or to punish nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

7. The Department is an agency under the Wyoming Administrative Procedures Act, therefore this Board acts as an adjudicatory forum for contested hearings of an agency decision. Wyo. Stat. Ann. § 16-3-101(b)(i) (2015). We shall "review final decisions of the department upon application of any interested person adversely affected," Wyo. Stat. Ann. § 39-11-102.1(c) (2015).

8. As the adjudicating body, we "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]" Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

9. Normally, a party asserting that it should be exempt from a tax has the burden of proof. *PacifiCorp, Inc. v. Dept. of Revenue, State of Wyo.*, 2017 WY 106, ¶ 11, 401 P.3d 905, 909 (Wyo. 2017) (citing *Comm'rs of Cambria Park v. Bd. of Cty. Comm'rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946)). But, "[i]n proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion." Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006).

B. Application of the law to the facts

10. This case requires us to decide whether the transfer of title from Mr. Freier to Mr. Patterson was a sale subject to sales tax and whether Mr. Freier is a proper party to request a refund from the Division. We address each of those questions separately.

The transfer of title from Mr. Freier to Mr. Patterson was not a taxable “sale” as that term is defined in Wyoming Statutes section 39-15-101(a)(vii) (2015).

11. When statutory language is unambiguous, our job is to “give effect to the plain and ordinary meaning of the words” without resorting to the rules of statutory interpretation. *Powder River Basin Res. Council v. Wyo. Oil and Gas Conservation Comm’n*, 2014 WY 37, ¶ 19, 320 P.3d 222, 228 (Wyo. 2014) (quoting *Mountain Cement Co. v. S. Laramie Water & Sewer Dist.*, 2011 WY 81, ¶ 13, 255 P.3d 881, 885-86 (Wyo. 2011)).

12. “[W]here there is plain, unambiguous language used in a statute there is no room for construction, and a court may not look for and impose another meaning.” *Keser v. State*, 706 P.2d 263, 266 (Wyo. 1985) (quoting *Sanchez v. State*, 567 P.2d 270, 274 (Wyo. 1977)).

13. A statute is unambiguous if “reasonable persons are able to agree on its meaning with consistency and predictability.” *Kebschull v. State ex rel. Dep’t of Workforce Serv.’s, Workers’ Comp. Div.*, 2017 WY 94, ¶ 38, 399 P.3d 1249, 1258 (Wyo. 2017) (citing *Wyodak Res. Dev. Corp. v. Wyo. Dep’t of Revenue*, 2017 WY 6, ¶ 25 387 P.3d 725, 732 (Wyo. 2017)).

14. The sale of a motor vehicle is subject to excise tax. Wyo. Stat. Ann. § 39-15-103(a)(i)(M) (2015).

15. A “sale” is “any transfer of possession in this state for a consideration[.]” Wyo. Stat. Ann. § 39-15-101(a)(vii) (2015). The words of Paragraph (vii) unambiguously require a “transfer of possession.”

16. There is no applicable definition of “possession” or “transfer of possession” in statute or rule, so we look to its “plain and ordinary meaning.” *Harvey v. State Dep’t of Transp.*, 2011 WY 72, ¶ 12, 250 P.3d 167, 172 (Wyo. 2011) (where a key term was not defined in statute, Court looked to the term’s “plain and ordinary meaning.”).

17. The word “possession,” in the context of personal property such as a motor vehicle, is commonly understood to mean actual, physical possession.

18. If we were in doubt about the plain and ordinary meaning of “possession,” we would look to a common dictionary definition. *See, e.g., Kebschull*, ¶ 39, 399 P.3d at 1258 (The word “solely” was not defined in statute, so Court looked to definition in Merriam Webster’s Collegiate Dictionary).

19. Common dictionary definitions of “possession” include, “the act of having or taking into control” and “control or occupancy of property without regard to ownership.” Merriam Webster’s Collegiate Dictionary 968 (11th ed. 2014). We believe those definitions are consistent with the plain and ordinary understanding of “possession.”

20. In its letter denying the refund request, the Department admitted that “the vehicle hasn’t physically changed possession,” but nonetheless asserted that a taxable sale occurred because “the title indicates a change in ownership and a new loan was created for the vehicle thus meeting the definition of a taxable sale[.]” (Ex. 500 at 3).

21. At the hearing, Ms. Lovett clarified the Department’s position that the transfer of title was a transfer of possession for purposes of Wyoming Statutes section 39-15-101(a)(vii) (2015). (H’rg Recording).

22. Although the Department argued that transfer of title *is* transfer of possession, we find that title and possession of personal property are not the same thing. *See e.g. Bohling v. State*, 2017 WY 7, ¶¶ 29-31, 388 P.3d 502, 509-510 (Wyo. 2017); *Capitol Hill State Bank v. Rawlins Nat’l Bank of Rawlins*, 160 P. 1171, 1176 (Wyo. 1916).

23. The statutory definition of “sale” formerly read “any transfer of *title or* possession,” which demonstrates the legislature’s understanding that title and possession are separate things; otherwise, one of those words would have been superfluous. Wyo. Stat. Ann. § 39-15-101(a)(vii) (2005) (emphasis added).

24. In 2006, the Legislature amended out the words “title or,” effective January 1, 2008. 2006 Wyo. Sess. Laws 14. The amendment shows legislative intent that transfer of title, by itself, would not be a “sale,” and that “transfer of possession” would thereafter be necessary to satisfy the statutory definition of “sale.”

25. Mr. Freier testified, and the Division did not dispute, that Ms. Patterson has had exclusive possession of the car since Mr. Freier bought it. (H’rg Recording).

26. We conclude the Department has not met its burden of persuading us that there was a transfer of possession, and therefore, has also not met its burden of persuading us that there was a taxable sale of the motor vehicle in question.

27. Because there was no taxable sale, the \$1,449 that Mr. Freier paid on behalf of Mr. Patterson was “erroneously paid” and the Department must refund it when presented with a proper claim for a refund. Wyo. Stat. Ann. § 39-15-109(c)(i) (2015).

Mr. Freier is not a proper party to request a refund from the Division.

28. The Department contended that Mr. Freier is not the proper party to request a refund of the sales tax he paid on behalf of Mr. Patterson. (H’rg Recording).

29. The Department did not raise the “proper party” theory in its final decision denying the refund request, but we have found no authority preventing the Department from countering an appeal with a legal theory it did not rely on in the appealable determination.

30. Because the Department considered the transaction between Mr. Freier and Mr. Patterson to have been a sale of a motor vehicle and considered Mr. Patterson to have been the purchaser in that sale, it believed he was liable for sales tax on that purchase. Wyo. Stat. Ann. § 39-15-103(c)(ii) (2015).

31. Wyoming Statutes section 35-15-109(c)(i) (2015) provides for refunds of “any tax, penalty or interest” “which has been erroneously paid.”

32. The tax was assessed against Mr. Patterson, and Mr. Freier paid the tax in Mr. Patterson’s name. (Ex. 502).

33. Any refund of the \$1,449 that Mr. Freier paid on Mr. Patterson’s behalf would go to Mr. Patterson, against whom the tax was levied. Accordingly, Mr. Patterson has a tangible interest in the outcome of this controversy, and Mr. Freier does not. Mr. Patterson is the only one who can request a refund of the sales tax.

34. A refund must be claimed within three years after the date of the erroneous payment, but that limitation period is tolled by a claim for a refund. Wyo. Stat. Ann. § 39-15-109(c)(i) (2015).

35. Mr. Freier filed his refund claim three days after paying the tax, which tolled the three-year limitation period. Therefore, Mr. Patterson will have two years and 362 days after the conclusion of this case to submit his claim.

CONCLUSION

36. The Department correctly determined that Mr. Freier is not a proper party to request a refund of the sales tax, but erred in determining that the transaction between Mr. Freier and Mr. Patterson was a taxable sale of a motor vehicle.

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ORDER

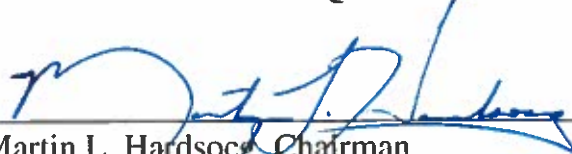
IT IS HEREBY ORDERED the Department of Revenue decision is **affirmed** on the grounds that Mr. Freier was not the proper party to request a refund; and

IT IS FURTHER ORDERED that this matter is remanded to the Department for further action consistent with this Decision and Order.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 17 day of April, 2018.

STATE BOARD OF EQUALIZATION



Martin L. Hardsocg, Chairman



David Delicath, Vice-Chairman



E. Jayne Meckler, Board Member

ATTEST:



Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 17th day of April, 2018, I served the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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