

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JASON PATTERSON) Docket No. 2018-28
FROM A DECISION BY THE)
DEPARTMENT OF REVENUE (Sales Tax))

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

Taxpayer, Jason Patterson, Jr. appeared *pro se*.

Karl D. Anderson, Senior Assistant Attorney General, and Devin Kenny, Assistant Attorney General, Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue.

DIGEST

[¶ 1] Jason Patterson appeals the Department's denial of his Request for a 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.

[¶ 2] The Wyoming State Board of Equalization, Chairman David L. Delicath, Vice Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, considered the appeal on its merits¹ to determine 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 to Mr. Patterson because there was no "sale" as that word is defined in the relevant state statute.

¹ The transaction forming the basis for Mr. Patterson's refund request first came before the State Board in an appeal of an earlier Dep't denial of a refund request made by Rodney Freier, Jr. *See: In re Freier*, 2018 WL 1911602, Docket No. 2017- 59 (Wyo. State Bd. of Equalization Apr. 17, 2018) *aff'd in part & rev'd in part, Dep't of Revenue v. Freier*, Docket No. 189-831 (Wyo. Dist. Ct., 1st Dist., Mar. 21, 2019). This case was considered as an expedited case pursuant to ch. 2 § 15, Rules, State Bd. of Equalization. The parties stipulated to the inclusion of the exhibits and testimony from Docket No. 2017-59 as part of the record in this appeal. *Jt. Mot. to Assign Case to Expedited Docket & Stipulated Facts* (July 15, 2019); *Ord. Assigning Case to Expedited Docket* (July 16, 2019).

ISSUE

[¶ 3] Mr. Patterson contends that his transaction with Rodney Freier, Jr. was not a taxable sale of a motor vehicle. (Notice of Appeal).

[¶ 4] The Department argues that a taxable sale occurred when Mr. Freier transferred title to the car to Mr. Patterson. (Wyo. Dep't of Revenue's Br.).

JURISDICTION

[¶ 5] 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. Patterson filed his appeal seven days after the Department issued its final decision. (Notice of Appeal). Accordingly, we have jurisdiction to decide this matter.

FINDINGS OF FACT

[¶ 6] Mr. Freier bought, financed, and paid sales tax on a car for the use of his girlfriend, Amber Patterson. (Pet'r Ex. 7; H'rg Recording). Mr. Freier initially held title to the car. (H'rg Recording). 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 on the vehicle. (H'rg Recording). Mr. Freier transferred the car's title to Mr. Patterson. *Id.* Neither Mr. Freier nor Mr. Patterson party produced a bill of sale, and Mr. Freier testified there was no bill of sale. *Id.* At all relevant times, only Ms. Patterson drove the car. (H'rg Recording). She made the loan payments and paid for insurance. *Id.*

[¶ 7] 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).

[¶ 8] Mr. Freier appealed to the State Board. (Pet'r Ex. 1). The primary questions were 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 the Department's Excise Tax Division at that time. (H'rg Recording). The Board found that Mr. Freier was not the proper party to request a refund. *In re Freier*, 2018 WL 1911602, *5, Docket No. 2017- 59 at 7 (Wyo. State Bd. of Equalization, Apr. 17, 2018) *aff'd in part & rev'd in part*, *Dep't of Revenue v. Freier*, Docket No. 189-831 (Wyo. Dist. Ct., 1st Dist., Mar. 21, 2019). The Board further determined that the transfer of title to Mr. Patterson was not a taxable sale.

[¶ 9] The Department of Revenue appealed our decision to the District Court. On March 21, 2019 the District Court affirmed that Mr. Freier was not the aggrieved party and not the proper party to request a refund. *Dep't of Revenue v. Freier*, Docket No. 189-831 Order & Opinion, 4. The District Court reversed our determination that the transaction was not a taxable sale, concluding the issue was not properly before the State Board. *Id.* at 5.

[¶ 10] Mr. Patterson subsequently submitted a new refund request to the Department. (Jt. Mot. Attach., 004). The Department denied his request. (Jt. Mot. Attach., 001-3) Mr. Patterson appeals that decision. (Notice of Appeal).

CONCLUSIONS OF LAW

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

[¶ 11] The Board shall “review final decisions of the department upon application of any interested person adversely affected,” Wyo. Stat. Ann. § 39-11-102.1(c) (2017). 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).

[¶ 12] 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) (2017). 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

[¶ 13] This case requires us to decide whether the transfer of title from Mr. Freier to Mr. Patterson was a sale subject to sales tax.

[¶ 14] 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 & 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)). “Where 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). 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)).

[¶ 15] The sale of a motor vehicle is subject to excise tax. Wyo. Stat. Ann. § 39-15-103(a)(i)(M) (2017). A “sale” is “any transfer of possession in this state for a consideration[.]” Wyo. Stat. Ann. § 39-15-101(a)(vii) (2017). The words of paragraph (vii) unambiguously require a “transfer of possession.” 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*, 2011 WY 72, ¶ 12, 250 P.3d 167, 172 (Wyo. 2011) (Where a key term was not defined in statute, the Court looked to the term’s “plain and ordinary meaning.”).

[¶ 16] The word “possession,” in the context of personal property such as a motor vehicle, is commonly understood to mean actual, physical possession. 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 the Court looked to the Merriam Webster’s Collegiate Dictionary definition.). Common dictionary definitions of “possession” include, “the act of having or taking into control” and “control or occupancy of property without regard to ownership.” Meriam Webster’s Collegiate Dictionary 968 (11th ed. 2014). We believe those definitions are consistent with the plain and ordinary understanding of “possession.”

[¶ 17] The Department contends that there was a taxable sale because “the transfer of title for consideration necessarily involves the transfer of constructive possession of the vehicle.” (Dep’t Br. 5). At the hearing, Ms. Lovett clarified the Department’s position that the transfer of title was a transfer of possession for purposes of Wyoming Statute section 39-15-101(a)(vii) (2015). (H’rg Recording). 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. Bank of Rawlins*, 160 P. 1171, 1176 (Wyo. 1916).

[¶ 18] 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). In 2006, the Legislature amended out the words “title or,” effective January 1, 2008. 2006 Wyo. Sess. Laws 14, 24. That 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.” Mr. Freier testified, and the Division does not dispute, that Ms. Patterson has had exclusive possession of the car since Mr. Freier bought it. (H’rg Recording). We conclude that 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.

[¶ 19] Because there was no taxable sale, the \$1,449 paid on behalf of Mr. Patterson was “erroneously paid” and the Department must refund it. Wyo. Stat. Ann. § 39-15-109(c)(i) (2017).

CONCLUSION

[¶ 20] The Department 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

[¶ 21] **IT IS HEREBY ORDERED** the Department of Revenue's decision is **reversed and remanded** for issuance of a decision in keeping with the findings and conclusions in this opinion.

[¶ 22] 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 28 day of October, 2019.

STATE BOARD OF EQUALIZATION



David L. Delicath, Chairman



E. Jayne Mockler, Vice Chairman



Martin L. Hardsog, Board Member

ATTEST:



Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 29th day of October 2019, 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:

Jason Patterson
3601 Edison Avenue
Cheyenne, WY 82009

Karl D. Anderson
Supervising Attorney General
Devin Kenney
Assistant Attorney General
Kendrick Building
2320 Capitol Ave Cheyenne, WY 82002



Nadia Broome, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: State Board of Equalization
Teri Lucero, Administrator, Excise Tax Division, Department of Revenue
ABA State and Local Tax Reporter