

**BEFORE THE STATE BOARD OF EQUALIZATION  
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF            )  
**RICHARD WILKINS FROM A DECISION**    )  
BY THE DEPARTMENT OF REVENUE         )  
(Use Tax Refund)                            )

Docket No. **2018-37**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER**

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**APPEARANCES**

Petitioner Richard Wilkins appeared pro se.

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

**STATEMENT OF THE CASE**

Richard Wilkins appeals a decision of the Wyoming Department of Revenue denying his request for a use tax refund. Mr. Wilkins bought a car in another state, registered it in Wyoming, and paid Wyoming use tax. After Mr. Wilkins sold the car back to the manufacturer, the Department declined his request for a refund of the use tax.

An aggrieved taxpayer may file an appeal with the Wyoming State Board of Equalization within 30 days after the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). The Department issued its final decision on July 16, 2018. (Ex. 500, at 001). Mr. Wilkins filed his appeal 25 days later. (Ex. 502, at 011). Accordingly, the notice of appeal was timely and we have jurisdiction to decide this matter.

The State Board, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, held an evidentiary hearing. Mr. Wilkins testified, as did Terri Lucero, the Administrator of the Department's Excise Tax Division. Mr. Wilkins offered one exhibit and the Department offered four. All of the offered exhibits were admitted. After considering the evidence, the Board affirms the Department's decision.

## **ISSUE**

Mr. Wilkins appealed from the Department's decision declining his request for a refund of the use tax he paid on a Volkswagen Jetta that the manufacturer later bought back from him. In his Notice of Appeal, Mr. Wilkins stated that he wanted the Department to refund the use tax he paid on the Jetta, or, in the alternative, refund the use tax he paid on a Ford he bought to replace the Jetta. (Ex. 502, at 011). At the hearing, Mr. Wilkins seemingly abandoned his contention about the use tax on the Jetta and focused only on the use tax he paid on the Ford. (Hr'g Recording). Because Mr. Wilkins never asked the Department to refund the use tax on the Ford – and thus the Department never declined to do so – that claim is not properly before us and we will not consider it. Rather, we will limit ourselves to reviewing the Department's refusal to refund the use tax Mr. Wilkins paid on the Jetta.

The Department states the issue as: "Is the Department's sales tax refund denial correct, proper, and in accordance with law?" (Dep't Prelim. Statement, 3).

## **FINDINGS OF FACT**

1. Mr. Wilkins bought a Volkswagen Jetta from a dealer in Missouri in July 2015. (Ex. 501, at 004).
2. Mr. Wilkins does not remember whether he paid sales tax on the Jetta in Missouri, and presented no evidence that he did. (Hr'g Recording).
3. Mr. Wilkins registered the Jetta in Wyoming and paid \$1,022.70 in Wyoming use tax. (Ex. 501, at 005).
4. Volkswagen subsequently bought the Jetta back from Mr. Wilkins in settlement of a class action suit. (Ex. 501, at 010).
5. In February 2018, Mr. Wilkins asked the Department to refund the use tax he paid on the Jetta. (Ex. 501, at 003).
6. In May 2018, Mr. Wilkins bought a Ford, again from a dealer in Missouri, to replace the Jetta. (Ex. 502, at 012).
7. Mr. Wilkins registered the Ford in Wyoming and paid \$821.64 in Wyoming use tax. (*Id.*).
8. The Department denied Mr. Wilkins's refund request on July 16, 2018. (Ex. 500, at 001).

9. The Department based its denial on its rule that provides for a refund of sales tax “on any sale which is rescinded in its entirety.” (*Id.*).

## **CONCLUSIONS OF LAW**

### **A. State Board’s review function and burdens of proof**

10. This 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). 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).

11. 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).

12. This case presents only issues of law, so our standard of review is de novo. *BP America Prod. Co. v. Dep’t of Revenue*, 2005 WY 60, ¶ 12, 112 P.3d 596, 602-03 (Wyo. 2005).

### **B. Review of the Department’s decision**

13. A use tax is “[a] tax imposed on the use of certain goods that are bought outside the taxing authority’s jurisdiction. Use taxes are designed to discourage the purchase of products that are not subject to the sales tax.” *Use tax*, *Black’s Law Dictionary*, 1688 (10th ed. 2014).

14. Wyoming imposes a use tax on “[p]ersons making first use of taxable services or storing, using or consuming tangible personal property...” Wyo. Stat. Ann. § 39-16-103(a)(i) (2017).

15. “The legislature intended that the use tax be complementary to the sales tax. The purpose of the statute is to put property bought outside the state, for which no sales tax has

been paid, on an equal footing with property purchased within the state that is subject to tax.” *Wyo. Dep’t of Revenue v. Calhoun*, 981 P.2d 480, 483, (Wyo. 1999) (internal citations omitted).

16. Because Mr. Wilkins bought the Jetta in another state and brought it to Wyoming, he was statutorily required to pay use tax, rather than sales tax, in Wyoming. Wyo. Stat. Ann. § 39-16-103(a)(i) (2017), *supra* ¶ 14.

17. The record before us does not specify whether the Department classified Mr. Wilkins’s payment as sales tax or as use tax. (Ex. 501, at 005). In a pleading filed with this Board, the Department tells us that it was sales tax. (Dep’t Prelim. Statement, 1). But because the relevant law required use tax be paid, we will accept that the Department collected use tax, not sales tax, from Mr. Wilkins.

18. We do not understand Mr. Wilkins to contend that he did not owe use tax when he brought the Jetta into Wyoming. Rather, he contends that the Department should have refunded the use tax, as he requested, after Volkswagen bought the Jetta back from him.

19. The Department denied Mr. Wilkins’s refund request based on its rule requiring *vendors* to refund *sales* tax only when a sale is “rescinded in its entirety.” (Ex. 500, at 001); Rules, Wyo. Dep’t of Revenue, ch. 2, §5(f) (2014).

20. But Section 5(f) does not apply here because Mr. Wilkins paid use tax, not sales tax, and sought a refund from the Department (which collected the use tax), not from the vendor that sold him the Jetta (which collected neither sales tax nor use tax from him).

21. Wyoming Statutes section 39-16-109(c) (2017) provides for refunds of erroneously paid or overpaid use tax. That section does not apply here because Mr. Wilkins does not contend, and the evidence does not show, that the use tax in his case was erroneously paid or overpaid.

22. No Wyoming statute or Department rule provides for a refund of use tax in the event of a manufacturer’s buy-back or a rescission of the original sale.

23. The lack of a provision for refunding use tax after rescission of a sale makes sense because the event giving rise to use tax is not a sale. Rather, the taxable event occurs when property purchased elsewhere is stored, used, or consumed in Wyoming. Wyo. Stat. Ann. § 39-16-103(a)(i) (2017). A subsequent rescission of the original out-of-state sale does not change the fact that the taxable event occurred and cannot be un-done.

24. The Department lacks authority to grant a refund under the circumstances presented here, and correctly declined to do so.

**CONCLUSION**

25. There is no basis in statute or rule for the refund of use tax that Mr. Wilkins requested.

**ORDER**

**IT IS THEREFORE ORDERED** that the decision of the Wyoming Department of Revenue denying Mr. Wilkin's use tax refund request is **affirmed**.

**Pursuant to Wyoming Statutes section 16-3-114 (2017) 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 3<sup>rd</sup> day of December 2018.

STATE BOARD OF EQUALIZATION

  
\_\_\_\_\_  
Martin L. Hardsøeg, Chairman

  
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David L. Delicath, Vice-Chairman

  
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E. Jayne Mockler, Board Member

ATTEST:


  
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Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 3<sup>rd</sup> day of December 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 addressed to the following:

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cc: Terri Lucero, Excise Tax Division, Department of Revenue  
ABA State and Local Tax Reporter