

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

IN THE MATTER OF THE APPEAL OF)	
CILENSEK CONSTRUCTION, INC.)	Docket No. 2024-03
FROM A DECISION BY THE DEPARTMENT)	
OF REVENUE (Excise Tax license))	

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

APPEARANCES

Ben Cilensek, owner, appeared on behalf of taxpayer, Cilensek Construction, Inc.¹

Senior Assistant Attorneys General, Karl D. Anderson and James Peters, Wyoming Attorney General’s Office, appeared on behalf of the Wyoming Department of Revenue.

DIGEST

[¶ 1] Taxpayer, Cilensek Construction, Inc., appeals a Department of Revenue final determination denying Cilensek Construction’s request for a refund of use tax paid on a trailer. Cilensek Construction bought the trailer in Montana and licensed it in Sublette County, but the Department determined that it must pay the Sweetwater County sales tax rate.

[¶ 2] The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, held a hearing and received evidence from both parties. Mr. Cilensek testified, as did Bret Fanning, the Administrator of the Excise Tax Division of the Department. We will reverse.

ISSUES

[¶ 3] Cilensek Construction identified four issues:

¹ For the sake of clarity, we will refer to Ben Cilensek as “Mr. Cilensek” and to Cilensek Construction, Inc. as “Cilensek Construction.”

1. Is the Petitioner's request for a refund correct, proper and in accordance with the law?
2. Should Petitioner have paid sales tax based on the Sublette County rate of 4% or the Sweetwater County rate of 6%?
3. Does the Petitioner in fact own a residence and reside in Sublette County?
4. Does the Petitioner in fact lease a building in Sublette County?

(Cilensek's Issues of Fact and Law and Exhibit Index, 1-4).

[¶ 4] The Department presented this statement of the issues:

- a. Is the Department's rejection of Petitioner's refund request correct, proper, and in accordance with the law?
- b. Should Petitioner have paid sales tax based on the Sublette County rate or the Sweetwater County rate?
- c. The Department denies and contests all factual contentions of Petitioner that the Department has not specifically admitted in this Preliminary Statement.

(Dep't. Prelim. Statement, 3).

JURISDICTION

[¶ 5] The State Board shall "review final decisions of the department [of revenue] upon application of any interested person adversely affected." Wyo. Stat. Ann. § 39-11-102.1(c) (2021). An aggrieved taxpayer may file an appeal with this Board within 30 days after the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2, § 5(e) (2021). The Department issued its final decision on January 31, 2024, and Cilensek Construction filed its appeal on February 23, 2024, so the appeal is timely and we have jurisdiction. (Ex. 500; Notice of Appeal).

FINDINGS OF FACT

[¶ 6] Mr. Cilensek is the owner of Cilensek Construction, and the sole member of Dull Knife, LLC. (Hr'g Rec. 4:50;). Cilensek Construction rents a Sublette County property from Dull Knife. (Ex. 100). Cilensek Construction occupies the Sublette County property and stores equipment in a building on that property. (Hr'g Rec. 11:10). Both Cilensek

Construction and Dull Knife registered their companies with the Wyoming Secretary of State, identifying the same address in Sweetwater County. (Exs. 500, 502).

[¶ 7] In 2023, Cilensek Construction bought a trailer from a dealer in Montana. (Ex. 500, A007). Mr. Cilensek titled the trailer in the name of Cilensek Construction in Sublette County. (*Id.*, A008). Cilensek Construction had titled vehicles and trailers at its Sweetwater County address in 1986 and again in 2021. (Exs. 104, 105). Cilensek Construction sought to pay the use tax in Sublette County as well, but the Sublette County officials (after inquiring about Mr. Cilensek's personal residence, the address on his driver license and the address on his voter registration) decided that he should pay use tax in Sweetwater County instead. (Hr'g Rec. 5:20; 7:30). That decision matters because the tax rate in Sublette County is 4%, while it's 6% in Sweetwater County. (Ex. 500, A002).

[¶ 8] Cilensek Construction paid the use tax (at the Sweetwater County rate) to the Sublette County treasurer, and then requested a refund from the Department. (Ex. 500, A004). The Department denied that request, stating:

It is our understanding that you paid \$6,102.24 in tax to the Sublette County Treasurer's office on November 13, 2013 for the purchase of a 2024 LOGN ENCTR, VIN# 59TGU4331R2012786; Official Receipt#: 202303834. The address on the bill of sale and title is listed as #2 Dull Knife Lane, Pinedale, WY which according to property tax records, is owned by Dull Knife, LLC located in Rock Springs, Wyoming. The Department was unable to verify any property owned by Cilensek Construction Inc at that address.

Mr. Cilensek then stated he rented a building in Sublette County for his construction company and provided a copy of the lease agreement between Cilensek Construction, Inc and Dull Knife, LLC. Both companies share the same ownership of Benjamin Cilensek found at 223 Liberty Street, Rock Springs, Wyoming. The Rental Agreement states the lease is for a 650 square foot building located at #1 Five Wounds Road, Daniel, Sublette County, Wyoming. The Rental Agreement is signed by Mr. Cilensek, but there is no date on the paperwork.² Unfortunately, the Department was unable to verify a building located at this address. Based on the information received from the Wyoming Secretary of State's office and available property tax records, the Department has denied your refund request.

² The first sentence of the Rental Agreement reads, "This Rental Agreement is made this 1st day of January, 2021, between DULL KNIFE, LLC, a Wyoming limited liability Company, hereinafter called the 'owner', and CILENSEK CONSTRUCTION, INC., a Wyoming corporation, hereinafter called the 'Tenant'." (Ex. 100).

The Department requested a copy of Mr. Ben Cilensek's driver's license. Mr. Cilensek stated that his driver's license currently reflects a Sweetwater County address and according to Mr. Cilensek, was told by the DMV that he would not be required to update his address to a current Sublette County address until his license was due to be renewed in 2024.

(Ex. 500, A001-02). Cilensek Construction's principal address and mailing address registered with the Wyoming Secretary of State's Office are in Sweetwater County. (Ex. 502). Bret Fanning, the Administrator of the Division's Excise Tax Division, testified that the filings from the Wyoming Secretary of State's Office were the main evidence of Cilensek Construction's residence. (Hr'g Rec. 1:09:45).

[¶ 9] On the day Cilensek Construction bought the trailer, it had no equipment in Sweetwater County except two trailers that were for sale, and for which it had identified buyers. (Hr'g Rec. 34:45). The bill of sale and certificate of title for the trailer show a Sublette County address for Cilensek Construction. (Ex. 500, A007-8).

CONCLUSIONS OF LAW

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

[¶ 10] This Board shall "review final decisions of the department upon the application of any person adversely affected[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2023). At the request of an adversely affected party, 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 instruction prescribed by the department." Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2023).

[¶ 11] We have described a petitioner's burden in this way:

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward³ and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to show the Department determination is incorrect, the burden shifts to the Department to defend its action.

Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2021).

³ The burden of going forward, also called the burden of production, is "[a] party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict." Burden of Production, Black's Law Dictionary, 236 (11th ed. 2014).

B. Did the Department correctly determine that Cilensek Construction's "principal residence" was in Sweetwater County?

[¶ 12] The operative statute provides that “the county treasurer shall collect and remit to the department the tax in effect in the county of the owner’s principal residence.” Wyo. Stat. Ann. § 39-16-107(b)(ii) (2023). In other words, we need to determine which county Cilensek Construction resided in. “Principal residence” isn’t defined in statute, but the Department’s rules define it as “a person’s⁴ true, fixed, and permanent physical Wyoming address to which a person intends to return.” Rules, Wyo. Dep’t of Revenue, ch. 2, § 2(u) (2023). As noted above, Cilensek Construction has the burden of proving by a preponderance of the evidence that its principal residence is in Sublette County. (*Supra*, ¶ 11). That burden requires us, of course, to examine and weigh the evidence presented by the parties at the hearing.

[¶ 13] We first note that the evidence of Mr. Cilensek’s principal residence, requested by both the Sublette County Treasurer and the Department, is irrelevant. The address on his driver license or voter registration, the address where he titled his personal vehicles, or the address where he and his family slept at night, have no bearing on this case. We are interested only in the principal residence of Cilensek Construction.

[¶ 14] Because Cilensek Construction has the burden of going forward, we will first consider the evidence supporting its position:

- The Bill of Sale and Certificate of Title for the trailer at issue both show the Sublette County address for Cilensek Construction; (Ex. 500).
- Cilensek Construction previously titled a vehicle in Sublette County and paid the excise tax on the vehicle at the Sublette County rate. (Hr’g Rec. 14:40);
- Cilensek Construction leased real property with a building in Sublette County; (Ex. 100).
- Cilensek Construction “occupied” the rental property and stored equipment there; (Hr’g Rec. 11:10).
- Cilensek Construction didn’t have any equipment (that it was using or intended to use again) in Sweetwater County. (*Id.* 34:45).

That evidence convinces us that Cilensek Construction has satisfied its burden, so “the burden shifts to the Department to defend its action.” (*Supra*, ¶ 11). Accordingly, we turn to the evidence supporting the Department’s position.

⁴ Cilensek Construction is a “person” for purposes of the use tax statutes. Wyo Stat. Ann. § 39-11-101(a)(xiii) (2023).

[¶ 15] Mr. Fanning testified that Cilensek Construction’s filing with the Wyoming Secretary of State’s Office was the main evidence that Cilensek Construction resided in Sweetwater County. (*Supra*, ¶ 8). Exhibit 502 is Cilensek Construction’s SOS filing which shows an address in Sweetwater County as of April 25, 2023. But, that filing loses much of its impact in light of Mr. Cilensek’s testimony that his accountant filed the SOS filing without knowing that the business had moved to Sublette County. (Hr’g Rec. 23:55; 36:25). We also note that no statute, rule, decision of this Board, or decision of any court makes SOS filings dispositive of a business’s residence for use tax purposes.

[¶ 16] The Department also relied on the fact that Cilensek Construction didn’t own the Sublette County property. (Ex. 500). But the Department also had a copy of the rental agreement: it couldn’t have reasonably expected to find that Cilensek Construction owned a property that it was renting from Dull Knife. Further, no authority requires a taxpayer to own property in a county in order to be a resident of that county. The Department also found it significant that there was no date on the rental agreement, and claimed that it was “unable to verify a building located at [the] address” on the rental agreement. (Ex. 500). But, of course, there is a date on the rental agreement. (Ex. 100). And the rental agreement, along with ground-level and aerial photographs admitted at the hearing, demonstrated that the property and building do indeed exist. (Exs. 100, 101, 102).

[¶ 17] We find that the Department’s evidence does not overcome the evidence presented by Cilensek Construction.

DECISION

[¶ 18] Cilensek Construction satisfied its burden of showing that the Department’s decision was error, and the Department did not overcome its burden “to defend its action.” We will reverse the Department’s decision and order it to issue a partial refund.

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ORDER


[¶ 19] The Wyoming Department of Revenue's decision is **REVERSED**. It is **ORDERED** that the Department shall issue a refund to Cilensek Construction of the difference between the use tax collected at 6% Sweetwater County rate, and the amount that should have been collected at the 4% Sublette County rate.

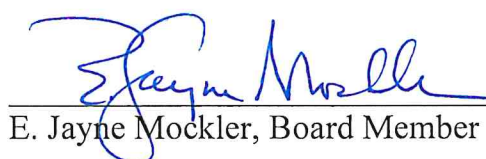
[¶ 20] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision

DATED this 1 day of August 2024.

STATE BOARD OF EQUALIZATION



Martin L. Hardsocg, Chairman

David L. Delicath, Vice Chairman

E. Jayne Mockler, Board Member

ATTEST:



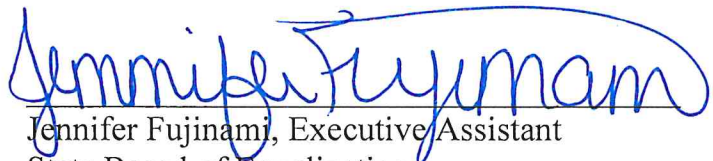
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 1 day of August 2024, 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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Cilensek Construction, Inc.
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Pinedale WY 82941

Karl D. Anderson
James Peters
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cc: Brenda Henson, Director, Wyo. Dep't of Revenue
Bret Fanning, Excise Tax Div., Wyo. Dep't of Revenue
ABA State and Local Tax Reporter
Wyo. State Library