SUPREME COURT OF WYOMING

Big Al's Towing and Recovery v. State of Wyoming, Department of Revenue

2022 WY 145 (2022) · No. S-22-0074 · Decided November 15, 2022

SUMMARY

The Wyoming Supreme Court held that roadside services consisting of jump-starting a vehicle, unlocking a vehicle, and replacing a flat tire with a spare tire were not taxable services under Wyo. Stat. Ann. § 39-15-103(a)(i)(J). The court concluded that an alteration requires a non-de minimis change making the vehicle different, while an improvement requires an increase in value. The court affirmed the Wyoming Board of Equalization and reversed the district court.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Boomgaarden, Justice; Fox, C.J.; Kautz, J.; Boomgaarden, J.; Gray, J.; Fenn, J.
JURISDICTION	Wyoming
DECIDED	November 15, 2022
DOCKET	S-22-0074
DISPOSITION	reversed
PROCEDURAL POSTURE	Big Al's appealed the Wyoming Board of Equalization's determination that its roadside services were not subject to sales tax. The Laramie County District Court reversed the Board and held the services taxable. Big Al's appealed to the Wyoming Supreme Court.
STANDARD OF REVIEW	Under the Wyoming Administrative Procedure Act, the Supreme Court reviews the agency decision directly and affords no deference to the district court. Because the facts were undisputed, the court reviewed the agency's application of the statute to those facts and its conclusions of law de novo, affirming conclusions that were in accordance with law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Big Al's Towing and Recovery v. State of Wyoming, Department of Revenue

TOPICS

sales and use tax · statutory interpretation · judicial review of agency action · administrative law · appellate procedure

PRACTICE AREAS

sales and use tax · administrative law · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether Big Al's roadside services constituted taxable services performed for the alteration or improvement of tangible personal property under Wyo. Stat. Ann. § 39-15-103(a)(i)(J).
2. Whether the Board of Equalization's decision that the services were not taxable was in accordance with law.

HOLDINGS

1. An alteration requires a change that makes the vehicle different in nature, form, or quality; the statute does not encompass a merely temporary or de minimis change.
2. An improvement requires a service that increases the value of the tangible personal property; merely restoring drivability or making the property operational is insufficient.
3. Jump-starting a vehicle, unlocking a vehicle, and replacing a flat tire with the vehicle's spare tire do not constitute taxable alteration or improvement services under Wyo. Stat. Ann. § 39-15-103(a)(i)(J).
4. When the issue is whether a taxable event occurred, the Department of Revenue bears the ultimate burden of persuasion; the burden applicable to claimed tax exemptions does not apply.

KEY QUOTATIONS

> *“To “improve” the vehicle, the service must increase its value.”* (¶ 21)

> *“The Board’s decision that Big Al’s roadside services of jump-starting a vehicle, unlocking a vehicle, and replacing a flat tire with the spare tire are not taxable under Wyo. Stat. Ann. § 39-15-103(a)(i)(J) is in accordance with law.”* (¶ 32)

FACTUAL BACKGROUND

Big Al's provided roadside services in Wyoming, including jump-starting vehicles, unlocking vehicles, and replacing flat tires with spare tires, often under contracts with motor clubs such as AAA. The services temporarily enabled a vehicle to start, allowed access to a locked vehicle, or permitted travel to a home or repair shop, but did not repair an underlying defect or increase the vehicle's value. After an audit, the Department of Revenue assessed tax and interest on the related revenue.

PROCEDURAL HISTORY

Following a Department of Revenue audit, Big Al's was assessed approximately $12,000 in tax and interest for roadside-assistance revenue earned from October 2016 through September 2019. The Board of Equalization concluded that jump-starting vehicles, unlocking vehicles, and replacing flat tires with spare tires were not taxable services under Wyo. Stat. Ann. § 39-15-103(a)(i)(J). The district court reversed, and the Wyoming Supreme Court affirmed the Board while reversing the district court.

DISPOSITION

reversed

CASES CITED

- Solvay Chemicals, Inc. v. Wyo. Dep't of Revenue, 2022 WY 122, ¶ 7, 517 P.3d 1123, 1127 (Wyo. 2022)
- Delcon Partners LLC v. Wyo. Dep't of Revenue, 2019 WY 106, ¶ 7, 450 P.3d 682, 684 (Wyo. 2019)
- Dep't of Revenue v. Bd. of Cnty. Comm'rs of Johnson Cnty., 2019 WY 7, ¶¶ 5-6, 432 P.3d 920, 922 (Wyo. 2019)
- Wyodak Res. Dev. Corp. v. Wyo. Dep't of Revenue, 2017 WY 6, ¶¶ 25, 26, 31, 387 P.3d 725, 732-33 (Wyo. 2017)
- Vance v. City of Laramie, 2016 WY 106, ¶ 12, 382 P.3d 1104, 1106 (Wyo. 2016)
- Lance Oil & Gas Co. v. Dep't of Revenue, 2004 WY 156, ¶ 4, 101 P.3d 899, 901 (Wyo. 2004)
- RME Petroleum Co. v. Dep't of Revenue, 2007 WY 16, ¶¶ 25, 48, 150 P.3d 673, 683, 690 (Wyo. 2007)
- Bd. of Cnty. Comm'rs of Sublette Cnty. v. Exxon Mobil Corp., 2002 WY 151, ¶ 24, 55 P.3d 714, 721 (Wyo. 2002)
- DB v. State (In re CRA), 2016 WY 24, ¶ 16, 368 P.3d 294, 298 (Wyo. 2016)
- Pedro/Aspen, Ltd. v. Bd. of Cnty. Comm'rs, 2004 WY 84, ¶ 27, 94 P.3d 412, 420 (Wyo. 2004)
- Painter v. Hallingbye, 2021 WY 78, ¶ 19, 489 P.3d 684, 691 (Wyo. 2021)
- In re Estate of Meyer, 2016 WY 6, ¶ 34, 367 P.3d 629, 639-40 (Wyo. 2016)
- Laramie Cnty. Sch. Dist. No. One ex rel. Bd. of Trustees of Laramie Cnty. Sch. Dist. No. One v. Kinstler, 2015 WY 143, ¶ 14, 361 P.3d 819, 822 (Wyo. 2015)
- Union Pac. Res. Co. v. Dolenc, 2004 WY 36, ¶ 13, 86 P.3d 1287, 1292 (Wyo. 2004)
- Seherr-Thoss v. Teton Cnty. Bd. of Cnty. Comm'rs, 2014 WY 82, ¶ 19, 329 P.3d 936, 945 (Wyo. 2014)
- Amoco Prod. Co. v. Dep't of Revenue, 2004 WY 89, ¶ 18, 94 P.3d 430, 438 (Wyo. 2004)
- Qwest Corp. v. State ex rel. Wyo. Dep't of Revenue, 2006 WY 35, ¶ 9, 130 P.3d 507, 511 (Wyo. 2006)
- Gonzales v. Oregon, 546 U.S. 243, 257, 126 S. Ct. 904, 916, 163 L. Ed. 2d 748 (2006)