

Cite as Det. No. 15-0181, 35 WTD 16 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition for Correction of |) | <u>D E T E R M I N A T I O N</u> |
| Assessment of |) | |
| |) | No. 15-0181 |
| |) | |
| ... |) | Registration No. ... |
| |) | |

RCW 82.08.050(7); RCW 82.08.0281; RCW 82.08.0283: RETAIL SALES TAX – EXEMPTION – EXEMPTION CERTIFICATE. Acceptance of a blanket exemption certificate specific to RCW 82.08.0281 and RCW 82.08.0283 tax-exempt sales does not relieve the seller of its personal liability for retail sales tax due on sales of items not exempt under those statutory exemptions and the terms of those certificates.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Eckholm, A.L.J. – A seller of medical related products protests an assessment of retail sales tax asserting that, pursuant to RCW 82.08.050(7), its acceptance of blanket exemption certificates specific to RCW 82.08.0281 and RCW [82.08.0283] tax-exempt sales relieves it of personal liability for retail sales tax due on sales of items not exempt under those statutory exemptions. The taxpayer’s petition is denied.¹

ISSUE

Whether a seller has established, pursuant to RCW 82.08.050(7), that its acceptance of blanket exemption certificates specific to RCW 82.08.0281 and RCW [82.08.0283] tax-exempt sales relieves the seller of its personal liability for retail sales tax due on sales of items not exempt under those statutory exemptions and the terms of those certificates.

FINDINGS OF FACT

[The taxpayer] sells a variety of supplies and medical products to health care organizations. The taxpayer sells both tax-exempt prescription drug related products and medical related products (pursuant to RCW 82.08.0281 and RCW 82.08.0283), and products that do not fall within the statutory exemptions. The Department of Revenue (Department) Audit Division reviewed the taxpayer’s records for excise tax purposes for the period January 1, 2008 through December 31, 2009. In order to verify that the taxpayer correctly reported retail sales tax deductions during the

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

audit period, a random sample of invoices was taken. Review of the sample results revealed that the taxpayer primarily sells medical related products that are not tax-exempt. The non-exempt items included items such as tools and instruments, ambulance cots, printer and hardware kits, stretcher chair, medical/surgical bed, and consumable shaver blades and tubes.²

Many of the taxpayer's customers provided exemption certificates specific to tax-exempt sales of items pursuant to RCW 82.08.0281 and RCW 82.08.0283, an example of which provides as follows:

EXEMPTION CERTIFICATE
PRESCRIPTION DRUGS AND MEDICAL PRODUCTS AND DEVICES

I hereby certify [customer] is a licensed hospital in the State of Washington. All of the medical products that I purchase [are] for the care and use on patients pursuant to RCW 82.08.0281 or RCW 82.08.0283 and are used in the manner provided for in RCW 82.08.0281 or RCW 82.08.0283. This includes: contrast media; lab reagents and other diagnostic substances; nutrition products; irrigation solutions; delivery systems for contrast media; nutrition products and irrigation solutions; IV sets and other medical delivery products; drainage devices; syringes; catheters and needles (except biopsy); medical gas delivery devices; drainage devices; airway devices; and other similar products.

Therefore, all such products that [customer] purchases [from the taxpayer], will be for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans as set forth in RCW 82.08.0281 or RCW 82.08.0283 and are exempt from sales tax. [Customer] will maintain such records as are necessary to account for the use of these products. In the event any such products are not used as required by RCW 82.08.0281 or RCW 82.08.0283, it is understood that the hospital is required to report and pay use tax measured by the purchase price.

This is to be considered a blanket certificate and should be considered part of each order which [customer] may hereafter give to you, unless otherwise specified, and will be valid for a period of four years or until revoked by [customer] in writing.

...

This certificate does not apply to the purchase of reusable items, ace bandages, calibrators, probe covers, film, forceps, probes, blades, tools, drills, biopsy instruments, physical therapy and rehabilitation supplies (unless specifically noted above), plain vials and glass, computer products, and other non-medical products.

...

(Brackets ours) (emphasis added).

² Workpaper A3, Audit No.

The sample exemption certificate above, and similar sample exemption certificates provided, also included listings of specific exempt items similar to the items already listed within the certificate.³

The auditor did not accept the exemption certificates for the sales at issue because the certificates were specific to items subject to the RCW 82.08.0281 and RCW 82.08.0283 exemptions and could not exempt sales that did not qualify under the statutory exemptions. The auditor concluded that though the certificates contained a statement that the certificate is a blanket exemption certificate that should be considered part of each order thereafter given to the taxpayer by the purchaser, the blanket exemption did not (and could not) confer a tax exemption on a sale that was not statutorily authorized. As a result, the Audit Division issued an assessment against the taxpayer for tax deficiencies in the total amount of \$. . . , the majority of which is assessed unpaid retail sales tax related to the non-exempt items.⁴

The taxpayer appealed the retail sales tax assessment The taxpayer agrees that the sales of items at issue are not tax-exempt, but asserts that the exemption certificates provided were blanket certificates that it took in good faith from its customers and; therefore, it is not liable for any retail sales tax due on those sales, pursuant to RCW 82.08.050(7). The taxpayer indicated in its appeal petition that because it sells medical products and devices that are exempt under RCW 82.08.0281 and RCW 82.08.0283, as well as non-exempt medical products, it is proper to rely upon the customer to pay the applicable tax, if the customer so requests, and provides a blanket exemption certificate:

Since customers of [the taxpayer] could purchase exempt products as well as non-exempt products on a particular Purchase Order, the customer has requested that using a blanket certificate will allow them to remit the tax to the State more effectively and accurately . . . We do not disagree that the products are not subject to the exemptions provided by the Regulations, however, the Taxpayer has a recurring business relationship with the customer and by providing an Exemption Certificate to the Taxpayer, we believe that we were acting in good faith that the customer would determine the proper taxation of the products and devices and remit the necessary taxes to the taxing jurisdiction. . . .

After the audit, the taxpayer contacted its customers and requested that they complete Certificate of Use and/or Deferred Sales Tax Paid on the sales at issue. The taxpayer was able to obtain such certificates from a number of customers. The Audit Division made adjustments based on the certificates where they evidenced payment of the tax and included those adjustments in a post

³ The exemption certificates that the taxpayer accepted in relation to the non-exempt sales at issue contained language authorized within the Department's rule effective during the audit period that implemented the RCW 82.08.0281 exemption (prescription drugs), former WAC 458-20-18801(6)(a)-(b) (former Rule 18801(6)(a)-(b)). The Department has also accepted similar exemption certificates for the RCW 82.08.0283 exemption (medical products and devices) where the certificate evidenced the exempt nature of the sale. The Department amended former Rule 18801 in 2014 and the current rule, effective September 25, 2014, no longer includes specific exemption certificate language. See WSR 14-18-019 (August 25, 2014). The Department's approved exemption certificate for the RCW 82.08.0281 and RCW 82.08.0283 exemptions, "Sales Tax Exemption Certificate for Health Care Providers," is available at: <http://dor.wa.gov/docs/forms/excstx/exmptfrm/exempcerthealthcareprov.pdf>.

⁴ Document No. . . . , issued on May 19, 2014, included assessment of retail sales tax of \$. . . , use tax and/or deferred sales tax of \$. . . , and interest of \$. . . , for a total amount of \$

assessment adjustment.⁵ The taxpayer indicated that based on the certificates it received from its customers, its understanding that the customers would pay the use tax due was confirmed and that its reliance on the blanket exemption certificate was appropriate, particularly where its customers are well-informed hospitals and similar health care organizations. The taxpayer also provided customer statements that as a matter of practice the customer would have paid use tax or deferred sales tax on any items that were not exempt, and certain customers asserted that since the Department has audited their records for the same time period as the taxpayer's audit, they would have paid use tax at that time.

The taxpayer indicated at the hearing that certain customers informed the taxpayer it would be easier for them to give a blanket certificate and pay the use tax. The taxpayer also indicated that following the audit the taxpayer began charging retail sales tax on non-exempt items and that certain of the taxpayer's large volume customers (Washington hospitals) simply do not pay the retail sales tax portion of the invoice.

ANALYSIS

Sales of tangible personal property are subject to retail sales tax. RCW 82.08.020(1)(a). The seller is required to collect retail tax due from a buyer. RCW 82.08.050(1). If any seller fails to collect the tax, the seller is personally liable to Washington for the amount of the tax. RCW 82.08.050(3). Sellers are not relieved of this personal liability unless they maintain proper records of exempt or nontaxable transactions and provide them to the Department when requested. RCW 82.08.050(4), (7).

Sales of prescription drugs and medical items may be exempt from retail sales tax per RCW 82.08.0281 and RCW 82.08.0283, if those sales meet the requirements of those statutory exemptions. A seller may accept an exemption certificate for sales of items exempt under RCW 82.08.0281 and RCW 82.08.0283 from a buyer. RCW 82.08.050(7); former Rule 18801(6).⁶ During the audit period, former Rule 18801 provided the proper form for exemption certificates for purposes of the RCW 82.08.0281 prescription drugs exemption and blanket exemption certificates, as follows:

(6) Proof of exemption. Persons selling legend drugs need only to substantiate that the drugs meet the definition of legend drugs and are for use in the diagnosis, cure, mitigation, treatment, prevention of disease or other ailments in humans. Resale certificates or other exemption certificates are not required for these sales. For sales to consumers of nonlegend drugs, sellers must retain in their files the written prescription bearing the signature of the medical practitioner who issued the prescription and the name of the patient for whom prescribed. See also WAC 458-20-150 Optometrists,

⁵ Post assessment adjustment (PAA) to Document No. . . . , issued on July 1, 2015, included assessment of retail sales tax of \$. . . , use tax and/or deferred sales tax of \$. . . , and interest of \$. . . , for a total amount of \$ The PAA credits the amounts of retail sales tax paid by the taxpayer's customers evidenced by the "Certificates of Use and/or Deferred Sales Tax Paid" the taxpayer obtained from its customers. The Audit Division accepted a majority of the certificates as supporting adjustments. Certain certificates were not accepted where they were incomplete, unsigned or undated.

⁶ See footnote 3, *supra*.

ophthalmologists, and oculists; 458-20-151 Dentists, dental laboratories and physicians; and 458-20-168 Hospitals.

(a) Hospitals and physicians who purchase drugs for use in providing medical services to patients may purchase the drugs without payment of retail sales tax if the drugs will only be dispensed under a physician's order. It is not required that the hospital or physician make a specific charge to the patient for drugs dispensed under a physician's order for the drug purchase to be exempt from retail sales or use tax. This also includes the purchases of intravenous sets, catheters, infusion pumps, syringes, and similar items which will be used for delivery of prescription drugs. The hospital or physician may give the nonlegend drug supplier an exemption certificate. The certificate should be retained by the seller for a period of five years after the last sale covered by the certificate. Certificates should not be sent to the department of revenue. The certificate should be in the following form:

Prescription drug exemption certificate

.....

(name of purchaser)

.....

(address of purchaser)

I hereby certify: That I am a registered Washington taxpayer. I may legally prescribe or dispense drugs or other substances. I further certify that the drugs and other substances listed below purchased from (name of vendor) will be prescribed and used for the treatment of illness or ailments of human beings. I shall maintain invoices and prescriptions or such other records as are necessary to account for the disposition of the drugs or other substances for which I have not paid retail sales tax. In the event that any such drug or substance is used without a prescription being issued, it is understood that I am required to report and pay use tax measured by its purchase price. If I have indicated that this is a blanket certificate, this certificate shall be considered part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid for a period of four years or until revoked by me in writing. Description of drugs and other substances to be purchased:

.....

.....

.....

Dated:

Single Purchase Blanket Certificate

(indicate by check mark if certificate is for a single purchase or continuing purchases)

.....

(signature of purchaser or authorized agent)
(title)

.....

(Revenue registration number of buyer)

(b) A blanket exemption certificate may be given if there will be continuing purchases from a particular supplier. Blanket exemption certificates should be renewed at intervals not to exceed four years. The purchaser should indicate by an appropriate check mark on the certificate whether the certificate is being used for a single purchase or will be for continuing purchases. It is unnecessary to list each and every drug on the exemption certificate if all drugs purchased from a particular supplier are exempt.

Former Rule 18801(6) (emphasis added).

The taxpayer does not dispute that the sales of items at issue in this matter do not fall within the RCW 82.08.0281 and RCW 82.08.0283 exemptions and are subject to retail sales tax. The taxpayer asserts that its good faith acceptance of blanket exemption certificates for sales of items exempt under RCW 82.08.0281 and RCW 82.08.0283 relieves it from liability for retail sales tax due on the non-exempt sales, pursuant to RCW 82.08.050(7), which provides, in pertinent part:

(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket

exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a “recurring business relationship” means at least one sale transaction within a period of twelve consecutive months.

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RCW 82.08.050(7) (emphasis added.)

The exemption certificates the taxpayer relied on in making tax-exempt sales of the items at issue, by their own language, do not apply to those sales, and the blanket exemption certificates could not have been accepted in regards to sales at issue because they are clearly not encompassed within the RCW 82.08.0281 and RCW 82.08.0283 exemptions. The items included tools and instruments, ambulance cots, printer and hardware kits, stretcher chair, medical/surgical bed, and consumable shaver blades.⁷ The sample exemption certificate provided by the taxpayer, set forth above, states “such products that [customer] purchases [from] [the taxpayer], will be for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans as set forth in RCW 82.08.0281 or RCW 82.08.0283 and are exempt from sales tax.” The sample exemption certificate specifically lists items covered, as follows:

All of the medical products that I purchase [are] for the care and use on patients pursuant to RCW 82.08.0281 or RCW 82.08.0283 and are used in the manner provided for in RCW 82.08.0281 or RCW 82.08.0283. This includes: contrast media; lab reagents and other diagnostic substances; nutrition products; irrigation solutions; delivery systems for contrast media; nutrition products and irrigation solutions; IV sets and other medical delivery products; drainage devices; syringes; catheters and needles (except biopsy); medical gas delivery devices; drainage devices; airway devices; and other similar products.

The sales of the items at issue here – tools and instruments, ambulance cots, printer and hardware kits, stretcher chair, medical/surgical bed, and consumable shaver blades – are not included in the list of items in the certificate and are not items similar to specifically listed items.

In addition, the items at issue are not the types of items where there may be an open question at the time of sale as to whether the statutory exemptions apply depending on the use of the items. For example, to meet the prescription drug exemption, RCW 82.08.0281, there may be a question whether an item sold falls within the statutory definition of a “drug,” and whether it is to be dispensed pursuant to a prescription. Another example might be whether the sale of an item falls within the medical items exemption, RCW 82.08.0283, where there may be a question whether the item meets the statutory definition of a “prosthetic device,” prescribed, fitted, or furnished by a person with the required licensure, and containing the required components.

Where the items sold were clearly not tax-exempt sales pursuant to RCW 82.08.0281 or RCW 82.08.0283, the seller could not have taken an exemption certificate, specifically applicable to those statutory exemptions, whether it was a blanket certificate or not, because the certificate did

⁷ Workpaper A3, Audit No.

not apply to the sales. The taxpayer is essentially asserting that it could have sold its customers *any* product (such as the printer and hardware kit sales captured in the sample) and relieved itself from the statutory liability for collecting retail sales tax on taxable sales because it had obtained from its customers a blanket exemption certificate applicable to the RCW 82.08.0281 or RCW 82.08.0283 exemptions.

The taxpayer has not established that it obtained exemption certificates applicable to the sales of the items at issue, thereby relieving it from the personal liability for the tax pursuant to RCW 82.08.050(7). The taxpayer's petition is denied.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 14th day of July, 2015.