Cite as Det. No. 14-0125, 34 WTD 160 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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. 14-0125
. . .	)	
	)	Registration No. . . .
	)	
	)	

[1]   ETA 3060.2009; RULE 108; RCW 82.08.010: RETAIL SALES TAX – DISCOUNTS – MANUFACTURER'S COUPONS. A taxpayer accepted coupons issued by manufacturers of certain goods the taxpayer sold at retail. The taxpayer does not dispute that it redeemed the manufacturer coupons at face value. Retail sales tax is properly assessed on the amount of manufacturer's discounts that the taxpayer excluded from the sales price of the goods.

[2]   RULE 217; RCW 82.08.050: RETAIL SALES TAX – HELD IN TRUST – OVERCOLLECTION OF SALES TAX. A taxpayer that over-collected sales tax based on programming errors in its point-of-sale system, where sales tax was charged on the full retail price of goods sold, rather than the discounted price, is still liable to pay the full amount of sales tax it collected to the state.

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.

Weaver, A.L.J. – Taxpayer, a natural pet food retailer, appeals an assessment of retail sales taxes it over-collected on sales of goods where its point-of-sale system mistakenly charged sales tax on the full retail price of goods sold to customers at a discount. Taxpayer also appeals retail sales tax assessed on manufacturer discounts that Taxpayer deducted from the retail sales price of goods it sold to its customers. Finally, Taxpayer protests the assessment on the grounds that the State of Washington receives a windfall by collecting over-collected sales taxes. Taxpayer's petition is denied.[1]

ISSUES

1. Whether a taxpayer can deduct the value of manufacturer discounts from the selling price under RCW 82.08.020(1).

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

2. Whether the face value of coupons tendered by customers is part of the selling price and subject to retail sales tax under RCW 82.08.020(1).

3. Whether, under RCW 82.08.050 and WAC 458-20-217, a taxpayer who over-collected sales tax is required to remit the over-collected amounts to the Department of Revenue.

FINDINGS OF FACT

[Taxpayer] operates retail stores at multiple locations in Washington and specializes in the sale of natural pet foods, treats, and supplements. The Audit Division of the Department of Revenue (Department) audited Taxpayer's records for the period of January 1, 2008 through December 31, 2011.

The Audit Division reconciled the collected retail sales tax amounts Taxpayer recorded in its records with the amounts remitted on its excise tax returns. The reconciliation compared retail sales tax collected throughout the audit period at all of Taxpayer's retail locations with the total amounts remitted on its excise tax returns. The Audit Division identified collected retail sales tax that was not remitted to the Department.

Taxpayer claims that the differences identified by the Audit Division are related to coupons it accepted from its customers. These differences were due to programming errors in Taxpayer's point-of-sale (POS) systems at its [Washington] locations. Taxpayer offered coupons and discounts to its customers, including a frequent buyer program. Frequent buyers received a store coupon for a certain number of dollars off their next purchase when they met certain prerequisites. Taxpayer claims that it reported income, net of discounts, on its excise tax returns. Due to the programming errors, Taxpayer mistakenly charged retail sales tax on the full selling price of items, even when the selling price was discounted. In other words, Taxpayer was charging sales tax on the pre-discounted price. The Audit Division assessed Taxpayer the amount of over-collected retail sales tax.

Taxpayer also accepts coupons issued by manufacturers of certain products it sells. These coupons offered a price reduction on goods sold by Taxpayer. Taxpayer failed to charge retail sales tax on the value of the manufacturers' discounts. The Audit Division assessed retail sales tax on the value of those discounts. On September 12, 2012, the Audit Division issued Taxpayer an assessment totaling $. . . , which included $. . . in retail sales tax, $. . . in use tax/deferred sales tax, and $. . . in interest. Taxpayer filed a timely appeal.

ANALYSIS

Washington imposes a retail sales tax on each retail sale in this state, which is equal to a percentage of the "selling price." RCW 82.08.020(1). "Selling price" includes "sales price," which means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property are sold. RCW 82.08.010(1)(a). "Selling price" or "sales price" does not include "discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale." RCW 82.08.010(1)(b).

Discounts are excluded from selling price under specified circumstances. WAC 458-20-108 (Rule 108) is the administrative rule that governs discounts. Rule 108(5) reads as follows (in pertinent part):

> **Discounts**. The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.
>   (a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

Rule 108(5).

The Audit Division disallowed certain deductions on Taxpayer's excise tax returns for coupons issued by a manufacturer. ETA 3060.2009 addresses coupons issued by manufacturers or distributors redeemable anywhere the manufacturer's products are sold. It reads, in relevant part, as follows:

> These coupons, like those described above, offer a price reduction of a specified amount on the purchase of specified items. The essential difference is that the manufacturer or distributor will redeem these coupons when they are turned in by the retailer. Redemption is usually at full face value plus a small handling charge. Thus, the retailer actually receives the full retail price for the articles sold and the sales cannot be treated as having been discounted. Accordingly, the retail sales tax is due on the full retail price.

ETA 3060.2009. . . . In this case, Taxpayer accepted coupons issued by manufacturers of certain goods Taxpayer sold at retail. Taxpayer does not dispute that it redeemed the manufacturer coupons at face value. . . . The Audit Division properly assessed retail sales tax on the amount of the manufacturer's discounts that Taxpayer excluded from the sales price of its goods.

Taxpayer also offered its customers coupons and discounts, including a frequent buyer program, which were bona fide discounts that reduced Taxpayer's gross proceeds of sales. ETA 3060.2009 addresses coupons issued by retail stores, like Taxpayer, and redeemable only at that store or affiliated stores of a chain as follows, as follows:

> [C]oupons offer a reduced price for a specific item upon presentation at the store. The coupons are usually published in a newspaper or handbill advertisement. The retail merchant absorbs the discount or price reduction. The price reduction is a true discount and retail sales tax is applicable only to the amount actually paid by the customer.

ETA 3060.2009. There is no dispute in this case that the retail sales tax was applicable only to the amount paid by Taxpayer's frequent buyer customers and its customers using coupons. The issue is that Taxpayer over-collected retail sales tax based on the pre-discount price of goods.

Taxpayer's final issue on appeal is a protest of the Department assessing it for retail sales tax amounts it collected and failed to remit. Taxpayer was over-collecting sales tax based on programming errors in its POS system which caused the POS system to charge sales tax on pre-

discount prices. [*Kitsap-Mason Dairymen's Ass'n v. Tax Comm'n*, 77 Wn.2d 812, 467 P.2d 312 (1970) is controlling authority on this issue.]

Under RCW 82.08.050 and WAC 458-20-217, retail sales tax shall be deemed held in trust by the seller until paid to the Department. In Det. No. 00-092, 24 WTD 47 (2001), we held:

> If sales tax was erroneously collected from the taxpayers' customers, then the over-reported sales tax comes from customers' funds. These are trust funds collected from customers for the benefit of the state. The money does not belong to the taxpayers and cannot be returned to the taxpayers until the taxpayers have refunded the over-collected sales tax to their customers.

24 WTD at 51. In *Kitsap-Mason Dairymen's Ass'n*, the taxpayer over-collected retail sales tax. It failed to remit the tax to the state. The Court held that the seller could not retain the over-collected sales tax for its own use, [stating "The integrity of the entire taxing system demands that funds collected as taxes be remitted to the state."] *Id.* at 817. As in *Kitsap-Mason Dairymen's Ass'n*, [the Taxpayer] charged excess sales tax, which is deemed to be held in trust, and it was required to remit the sales taxes it collected to the state.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 3rd day of April 2014.