

Cite as Det. No. 14-0318, 34 WTD 066 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) D E T E R M I N A T I O N
Assessment of)
) No. 14-0318
 ...)
) Registration No.
)

[1] RCW 82.08.0273; ETA 3054.2011: RETAIL SALES TAX – NONRESIDENT EXEMPTION – RECORDS. Taxpayers must maintain records required under RCW 82.08.0273 for each nontaxable sale to nonresidents to qualify for the statutory exemption.

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.

Margolis, A.L.J. – A retailer appeals the assessment of retail sales tax on grounds that the measure of tax includes sales to qualified nonresidents. We deny the petition.¹

ISSUE²

Whether, under RCW 82.08.0273, Taxpayer has provided adequate records to substantiate tax-exempt nonresident sales.

FINDINGS OF FACT

[Taxpayer] sells nutritional and homeopathic products, including teas, candles, lamps, and hair and skin products. The Department of Revenue's (Department's) Audit Division (Audit) examined Taxpayer's records for the period January 1, 2010, through June 30, 2013, and on March 28, 2014, assessed Taxpayer \$. . . . The assessment was comprised of \$. . . in retail sales tax and \$. . . in interest.

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

² Taxpayer's Appeal Petition also identifies "Interstate and Foreign Sales" as an issue, and explains that it "has a product that [it] ships to other states that did not charge sales tax." Taxpayer's Petition, Page 2. However, Taxpayer provided no records to substantiate such sales during the audit period. Sellers are required to retain records proving out-of-state sales. WAC 458-20-193; *See also*, RCW 82.32.070 & WAC 458-20-254. Absent such records, we find no grounds to adjust the assessment.

In support of deductions that Taxpayer claimed on its excise tax returns for exempt nonresident sales, Taxpayer provided slips of paper on which was recorded the buyer's name and address. Audit explained to Taxpayer that this was insufficient documentation to support the deductions. Taxpayer contacted some out-of-state customers and obtained some driver's license numbers and expiration dates, but where Taxpayer was unable to obtain the required information, Audit disallowed the exemption.

ANALYSIS

RCW 82.08.0273 allows an exemption from retail sales tax for sales to nonresidents of tangible personal property for use outside the state. Exemptions are strictly construed in favor of application of the tax and the burden of proof is on the person claiming the exemption. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-175, 500 P.2d 764 (1972). RCW 82.08.0273, provides, in part:

- (3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.
- (b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

RCW 82.08.0273(4) specifically lists the documents vendors must keep to substantiate a sale qualifies for this exemption, and states as follows (in pertinent part):

- (a) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which must show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

As indicated above, RCW 82.08.0273(4)(a) specifically provides that a vendor is not required to make tax-exempt sales to nonresidents; that decision is left to the discretion of the vendor. But if the vendor does choose to accept the transaction as exempt, the vendor also accepts certain statutorily defined responsibilities to: (1) examine the proof of nonresidence; (2) determine whether the proof is acceptable; and (3) maintain records for each nontaxable sale, which shall show the type of proof accepted, including the identification number and the expiration date. RCW 82.08.0273(4)(a). The vendor must fulfill each of these three responsibilities to qualify the sale as tax-exempt. Det. No. 13-0249, 33 WTD 29, 31 (2014).

The Department issued ETA 3054.2011 (ETA 3054) containing the following specific instructions to sellers who choose to make RCW 82.08.0273 authorized tax-exempt sales to nonresidents:

...

Instructions to sellers

Sellers making exempt sales to eligible nonresidents must:

1. Examine one piece of identification that establishes proof of nonresidency. The identification must be a valid driver's license issued by the jurisdiction in which the out-of-state residency is claimed or a valid identification card issued by the out-of-state jurisdiction. The identification must A) bear the photograph of the holder B) show the holder's residential address, C) identify the holder's name, and D) be issued for the purpose of establishing residency.
2. *Maintain a record of the type of documentation accepted as establishing nonresidency in (1) immediately above, including identification numbers, expiration dates, the purchaser's name, and the purchaser's state of residency.*
3. *Record the documentation accepted as establishing nonresidency on the invoice or other written evidence of sale and retain the information or maintain a legible photocopy of the documentation establishing nonresidency as part of the seller's accounting records for the statutory period of five years (refer to RCW 82.32.070). In the case of a seller making cash sales without issuing invoices (for example, retail hardware stores) and maintaining a log, such a log must identify the date and amount of sale, and the information described in (2) immediately above or in the case of corporate nonresidents the corporate nonresident permit number.*

...

(Emphasis added.) Here, Taxpayer failed to maintain records for each asserted nontaxable sale to substantiate tax-exempt sales to nonresidents, as required by RCW 82.08.0273(4)(a). Taxpayer's records only showed customer names and addresses. Taxpayer did not maintain records of identification numbers and expiration dates. Where Taxpayer's records did not contain the requisite documentation, including identification numbers, expiration dates, the purchaser's name, and the purchaser's state of residency, the records fail to meet the requirements of RCW 82.08.0273(4)(a). See 33 WTD at 32. "Any vendor who makes sales without collecting the tax and who fails to maintain records of sales to nonresidents as provided in this section is personally liable for the amount of tax due." RCW 82.08.0273(6)(a). Thus, Audit correctly denied the deductions Taxpayer claimed for sales to nonresidents where Taxpayer failed to maintain the requisite records.^{3,4}

³ Taxpayer argues that it was unaware of the recordkeeping requirement. However, the Washington tax system is based largely on voluntary compliance. Because of that, the Washington Legislature has placed upon taxpayers the responsibility to know their tax reporting obligations. RCW 82.32A.030(2). The Department has consistently held that a tax assessment cannot be waived as a result of a taxpayer's lack of knowledge of Washington's tax system. See Det. No. 90-340, 11 WTD 81 (1990); Det No. 91-050, 10 WTD 400 (1990); Det No. 87-348, 4 WTD 281

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 2nd day of October 2014.

(1987). Thus, we find no grounds under the law to adjust the assessment based Taxpayer's claim that it was unaware of the documentation requirements.

⁴ Taxpayer asserts that other retailers that did not maintain identification expiration dates were allowed to take the exemption, and so the assessment against Taxpayer is unfair. Even if this concern is proven to be correct, that does not mean the Department must perpetuate past errors by repeating them with respect to other taxpayers. *See, e.g.*, Det. No. 00-206E, 21 WTD 66 (2002).