

Cite as Det. No. 14-0152, 34 WTD 193 (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. 14-0152
 ...)
) Registration No. . . .
)

[1] RCW 82.04.050(3): RETAIL SALES TAX – RETAILING B&O TAX – SUNLESS TANNING. Under RCW 82.04.050(3) and as explained in a Special Notice, dated March 3, 2011, charges for sunless tanning, like traditional bed tanning, are retail sales subject to the retailing B&O tax and retail sales tax. These charges are retail sales regardless of whether the business provides both sunless and traditional bed tanning, or provides only sunless tanning.

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. – A taxpayer engaged in the business of providing sunless tanning services and selling beauty products petitions for correction of assessment, asserting that she should not be assessed sales tax on her sunless tanning services because she did not collect retail sales tax from her customers for those services . . . Taxpayer’s petition is denied.¹

ISSUE

... Whether, under RCW 82.04.050, sunless tanning is a retail-taxable service.

FINDINGS OF FACT

. . . [Taxpayer], is engaged in the business of sunless tanning, hair removal, and application of makeup. Taxpayer also sells tangible beauty products at her location and over the Internet. Taxpayer's business is located in . . . , Washington and she performed business activities previously in . . . and . . . , Washington. The Audit Division of the Department of Revenue (Department) performed a compliance audit of Taxpayer for the period of January 1, 2008 through June 30, 2012. The Audit Division initially contacted Taxpayer on June 8, 2012 in a letter. On June 26, 2012, the Audit Division sent a second certified contact letter. On August 2, 2012, the Audit Division sent a third certified contact letter, which was again certified as received. On September 11, 2012, the Audit Division hand-delivered a final notice with copies of estimated audit schedules. Taxpayer contacted the Audit Division on October 2, 2012, stating that she had filed her quarterly tax returns and wanted to set up a payment plan.

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

In its correspondence to Taxpayer, the Audit Division noted that, on April 16, 2012, Taxpayer's website indicated that she was selling 16 oz. jars of body scrub over the internet for \$. . . , plus \$. . . shipping and handling. Additionally, a note at the bottom of the website invited customers to shop Taxpayer's other sunless tanning products and that "WA state sales tax of 9.5% will be added to all shipments within Washington." *See Auditor's Detail of Differences and Instructions to Taxpayer*, p. 1.

On October 9, 2012, the Audit Division issued Assessment No. . . . , which totaled \$. . . , and included \$. . . in retail sales tax, \$. . . in retailing business and occupation (B&O) tax, \$. . . in service and other activities B&O tax, a \$. . . delinquency penalty, \$. . . in interest, and a 5% assessment penalty of \$. . . This assessment was based on estimated gross income of \$. . . in unreported income per year. The estimated income was split between service and other activities income (20%) and retail income (80%). The Audit Division estimated these amounts and divided those amounts into the tax categories listed above after comparing evaluating the nature of the industry, the business location, the number of employees, and the business activities listed on Taxpayer's websites.

Due to the fact that Taxpayer filed quarterly tax returns on October 2, 2012, the Audit Division met with Taxpayer with the purpose of adjusting the estimated assessment based upon actual books and records. On February 11, 2013, Taxpayer told the Audit Division, in a supervisor's conference, that she started collecting retail sales tax on product sales in 2009. Taxpayer was unable to provide detailed sales records prior to August, 2011, so the Audit Division estimated Taxpayer's income prior to that date, based upon a percentage of sales made after Taxpayer began keeping detailed sales records. The Audit Division determined that, in 2011 and the first two quarters of 2012, Taxpayer's product sales ranged between 6.07 to 10.05 percent as a percentage of total taxable income. Correspondingly, the Audit Division used an average of 8.06 percent to estimate unreported product sales.

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On April 2, 2013, the Audit Division issued an amended Assessment No. . . . with an adjusted total of \$. . . , which included \$. . . in retail sales tax, \$. . . in retailing B&O tax, \$. . . in service and other activities B&O tax, a delinquency penalty of \$. . . , an evasion penalty of \$. . . ,² interest of \$. . . , a 5% assessment penalty of \$. . . , \$. . . in additional interest from November 9, 2012 to May 2, 2013, and a small business credit of \$. . . . Taxpayer filed a timely appeal of this assessment.

On appeal, Taxpayer stated that she originally applied for her business license under the "Beauty Service" industry heading. She states that she was initially not planning on selling retail beauty products at retail, but only intended to provide makeup application and sunless tanning services. Taxpayer states that she assumed that those beauty services were not subject to retail sales tax. Taxpayer admits that she eventually began carrying tangible beauty products and further admits that she charged her clients sales tax on those items, but states that she did not charge sales tax to her clients on sunless tanning or other beauty services On appeal, Taxpayer contests the

² The Audit Division explained that, with respect to the evasion penalty, that penalty was applied only to the percentage of Taxpayer's total taxable income that was estimated to come from product sales upon which Taxpayer admitted collecting Washington retail sales tax. Taxpayer is not appealing the assessment of the evasion penalty.

sales tax assessed on the sunless tanning services she provided, because she did not collect sales tax from her clients on those services.

ANALYSIS

Sales of tangible personal property are sales at retail and are subject to the retail sales tax. RCW 82.04.050(1); RCW 82.08.020. Services defined as retail sales are likewise subject to the retail sales tax, and persons who charge for such services are required to remit retail sales tax and pay retailing B&O tax on the gross proceeds of the sales of those services. *See* RCW 82.08.020; RCW 82.04.050; RCW 82.04.250. RCW 82.04.050(3) states that the term “retail sale” includes amounts received by persons engaged in: “(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.” RCW 82.04.050(3)(g) (emphasis added).

On March 3, 2011, the Department issued a Special Notice which reads as follows:

Sunless Tanning is a Retail Sale

Sunless tanning, also referred to as spray tanning, airbrush tanning, or UV-free tanning, is a common alternative to the traditional bed tanning. Sunless tanning is the application of chemicals to the skin to produce an effect similar in appearance to a traditional suntan. The chemicals can be applied via machine, a person using an airbrush, or manually using a lotion/cream. Sunless tanning generally involves the use of lotions and sprays that contain dihydroxyacetone (DHA) as the active ingredient.

Charges for sunless tanning, like traditional bed tanning, are retail sales subject to the retailing B&O tax and retail sales tax. These charges are retail sales regardless of whether the business provides both sunless and traditional bed tanning, or provides only sunless tanning.

See Special Notice, March 3, 2011.

In this case, Taxpayer was selling retail-taxable tangible personal property in the form of beauty products, upon which she collected retail sales tax. Taxpayer also engaged in retail-taxable sunless tanning services. Retail sales tax and retailing B&O tax was properly assessed on Taxpayer’s sales of tangible beauty products and on her sunless tanning services.

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DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this day of May 7, 2014.