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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. 13-0249
...)
) Registration No. . . .
) Document No. . . .
)
) Docket No. . . .

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.

Eckholm, A.L.J. – A retailer appeals an assessment for uncollected retail sales tax on purported sales to nonresidents, asserting that its documentation of the nonresident sales adequately met the requirements for tax-exempt nonresident sales authorized by RCW 82.08.0273. The taxpayer's petition is denied.¹

ISSUE

Whether the taxpayer maintained records required by RCW 82.08.0273 to substantiate tax-exempt nonresident sales.

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

FINDINGS OF FACT

[The taxpayer] sells pet supplies and grooming services, and operates a dog kennel in . . . Washington. The Department of Revenue (Department) Audit Division reviewed the taxpayer's records for excise tax purposes for the period January 1, 2008, through June 30, 2011. The auditor identified deficiencies in the taxpayer's records of purported nonresident sales where it did not charge retail sales tax. The auditor discovered that the taxpayer's logs of nonresident sales in all instances failed to record expiration dates of the identification examined, that in many instances the buyer's state of residency was not recorded, and that in some instances the state listed did not qualify for the nonresident retail sales tax exemption authorized by RCW 82.08.0273.^[2] The auditor determined that the taxpayer's records of nonresident sales did not contain the information required by RCW 82.08.0273 and Excise Tax Advisory 3054.2011 (ETA 3054) to substantiate the sales were tax-exempt. As a result, an assessment was issued against the taxpayer for the uncollected retail sales tax, and accrued interest, for a total amount of \$5,652.

The taxpayer timely appealed the assessment, asserting that its logs contain a column labeled "ODL" that signifies "Oregon Drivers' License," that it was unaware that the identification expiration date was required, that it now collects the expiration date, and that its failure to collect the required information resulted from the Department's failure to provide a specific form to document nonresident sales. The Audit Division responded that some of the logs did not contain a column labeled "ODL," that taxpayers are responsible, pursuant to RCW 82.32A.030, to become informed regarding applicable tax laws and seek assistance from the Department if they are uncertain regarding their obligations, and that though the taxpayer indicates that it now records the expiration dates, the logs for the audit period did not contain the information required by RCW 82.08.0273 and ETA 3054.

ANALYSIS

Retail sales tax is imposed upon retail sales. RCW 82.08.020. When a seller makes a retail sale, it is obligated to collect retail sales tax. RCW 82.08.050. When a seller fails to collect the retail sales tax, the seller becomes liable for the tax. RCW 82.08.050.

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). The nonresident exemption statute, 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 herein provided.

² [See RCW 82.08.0273(1)(b)(i)(identifying conditions for a state's residents to qualify for exemption).]

(b) Acceptable proof of a nonresident person's status shall include 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 (2)(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)(a) specifically lists the documents vendors must keep to substantiate a sale is qualified for this exemption:

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 shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(Emphasis added.)

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 any identification numbers and expiration dates. RCW 82.08.0273(4)(a). The vendor must fulfill each of these three responsibilities to qualify the sale as tax-exempt.

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

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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.

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(Emphasis added.) Here, the taxpayer failed to maintain the expiration date of the nonresident identification presented and did not record the state of the buyer's residence for all sales. The taxpayer failed to fulfill its responsibility to maintain the records required by RCW 82.08.0273(4)(a) and ETA 3054 to substantiate tax-exempt sales to nonresidents. "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). The taxpayer's petition is denied.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 13th day of August, 2013.