

Cite as Det. No. 18-0150, 38 WTD 238 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for) D E T E R M I N A T I O N
Correction of Assessment of)
)
)
 No. 18-0150
)
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...) Registration No. . . .
)

[1] Rule 186; RCW 82.24.0010: CIGARETTE TAX –ROLL-YOUR-OWN CIGARETTES SUBJECT TO TAX. The Washington cigarette tax is imposed on the first sale, use, consumption, handling, possession or distribution of cigarettes within this state. Roll-your-own cigarettes are included in the definition of a “cigarette” and so subject to the tax.

[2] RULE 186; RCW 82.24.020; RCW 82.24.120: CIGARETTE TAX. Any person in possession of unstamped cigarettes in Washington State, unless specifically exempted, is liable for cigarette tax on those cigarettes. Evidence established that the Taxpayer was making sales of unstamped roll-your-own cigarettes and the sales were subject to cigarette tax and remedial penalty and in the absence of any specific argument to challenge the assessment that assessment is sustained.

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.

Kreger, T.R.O. – A retailer selling roll-your-own cigarettes protests estimated assessments of tax on untaxed roll-your-own cigarette sales. The Taxpayer was provided the opportunity to provide records and detail to substantiate actual sales, but no records were received. We therefore sustain the assessments as issued and deny the Taxpayer’s petition.¹

ISSUES

1. Did Taxpayer possess unstamped cigarettes within the meaning of RCW 82.24.020 and WAC 458-20-186(101), and therefore owe cigarette tax?
2. Did Taxpayer possess and sell unstamped roll-your-own cigarettes and owe retail sales tax and retailing business and occupation on the sale of those cigarettes under RCW 82.08.020?

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

3. . .

FINDINGS OF FACT

... (Taxpayer) is a Washington corporation engaged in the business of operating a retail vape store focusing on the sales of electronic cigarette supplies. The Liquor and Cannabis Board (LCB) initiated an investigation of the Taxpayer after receiving a complaint alleging the sale of untaxed roll-your-own cigarettes.

The LCB investigation resulted in surveillance of the business and residence of an individual doing business with the President of the Taxpayer that led to the issuance of a search warrant. Execution of that search warrant, by the LCB with police assistance, led to the discovery of 3 industrial roll-your-own machines, loose tobacco and hollow cigarette tubes, sales log books, purchase invoices, and other documents. Cartons of unstamped roll-your-own cigarettes were also seized. The completed LCB investigation report and evidence of sales activity was forwarded to the Department of Revenue (Department).

The Miscellaneous Tax Section of the Special Programs Division of the Department reviewed the LCB investigation report and evidence provided and issued the two assessments at issue in this petition to the Taxpayer.

The Department issued two assessments: Document No. . . . (Invoice No. . . .) for cigarette tax, interest and applicable penalties in the amount of \$. . . and Document No. . . . (Invoice No. . . .) for retail sales tax and retailing business and occupation (B&O) tax in the amount of \$. . .² Both assessments covered tax liabilities for the period of July 1, 2012, through December 31, 2016. The Taxpayer timely petitioned for review of both assessments.

. . .

ANALYSIS

RCW 82.24.020 imposes a cigarette tax at a specified rate per cigarette:

(1) There is levied and collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to 12.125 cents per cigarette.

* * *

(3) For purposes of this chapter, "possession" means both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

² Invoice No. . . . comprised \$. . . in cigarette tax, interest of \$. . . , and labeled as evasion penalty an evasion and cigarette tax remedial penalty of \$. . . , and a 5% assessment penalty of \$ Invoice No. . . . was comprised of \$. . . in retail sales tax, \$. . . in retailing B&O tax, \$. . . in litter tax, interest of \$. . . , and an evasion penalty of \$

(Emphasis added). *See also* WAC 458-20-186(101) (“The . . . cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.”).

Chapter 82.24 RCW requires a cigarette tax stamp, designed by the Department, to be affixed to the smallest container or package of cigarettes that will be sold, distributed, or consumed. RCW 82.24.030(1); RCW 82.24.060(1). No retailer may possess unstamped cigarettes. RCW 82.24.050(1).

The definition of “cigarette” expressly includes roll-your-own cigarettes. RCW 82.24.010(2).³ Only retailers who have obtained the proper licenses may provide consumers with access to a commercial cigarette-making machine to make roll-your-own cigarettes. RCW 82.24.050(3).

Violations of Chapter 82.24 RCW subjects the person to a remedial penalty:

(1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority of this section, is found to have failed to affix the stamps required, or to have them affixed as provided in this section, or to pay any tax due under this section, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration of this chapter, there must be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or ten dollars per twenty roll-your-own cigarettes, or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount is due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

* * *

(3) The keeping of any unstamped articles coming within the provisions of this chapter is *prima facie* evidence of intent to violate the provisions of this chapter.

RCW 82.24.120 (emphasis added).

The information provided by the LCB indicated that the Taxpayer was making sales of unstamped roll-your-own cigarettes and we sustain the conclusion that these sales were subject to cigarette tax under RCW 82.24.020 and the remedial penalty of RCW 82.24.120.

³ RCW 82.24.010(2) provides: “‘Cigarette’ means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. ‘Cigarette’ includes a roll-your-own cigarette.”

RCW 82.08.020 imposes a tax on each retail sale in this state. A retail sale means every sale of tangible personal property to all persons irrespective of the nature of their business. RCW 82.04.050(1)(a). The retail sales tax is imposed on the buyer, but it is the seller's responsibility to collect and remit retail sales tax to the Department. RCW 82.08.050(1) and (2).

...

While the Taxpayer disputed the "estimated tax assessment in its entirety" and generally challenged the use of an estimate, no specific argument was provided alleging specific errors in the assessment of tax, interest or penalties. Because the Taxpayer has not presented any specific arguments as to why the individual elements of the assessments were made in error, we decline to address any potential unspecified issues. As courts have noted, "[I]n the absence of argument and citation to authority, we will not consider these issues." *Trohimovich v. State*, 90 Wn. App. 554, 558, 952 P.2d 192 (1998), citing *J-U-B Engineers, Inc. v. Routsen*, 69 Wn. App. 148, 152, 848 P.2d 733 (1993).

The Taxpayer was provided the opportunity to produce additional records or information to support a different quantity of sales. However, no such detail was provided. We find that the estimate generated was reasonable and based on the information available and sustain the estimated assessments as issued.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of June 2018.