

Cite as Det. No. 13-0373, 33 WTD 376 (2014)

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. 13-0373
)	
...)	
)	Registration No. . . .
)	

[1] RCW 82.32.730: RETAIL SALE TAX – STREAMLINED SALES TAX (SST) – DESTINATION-BASED SOURCING. Under the Streamlined Sales and Use Tax Agreement, Washington sources the sales of tangible personal property or retail-taxable services to the location where such property or services are received by the purchaser. Sales of leased charter vessels from a location in Washington, where the vessel is to be used both within and outside of Washington, are sourced to the Washington location where those vessels are leased and received by the purchaser.

[2] RCW 82.32A.030; RCW 82.32.050: TAXPAYER RESPONSIBILITIES – WAIVER – MISUNDERSTANDING OF TAX OBLIGATIONS. Taxpayers are responsible for knowing their tax reporting obligations and for paying taxes in a timely manner, and to seek instructions from the Department when they are uncertain about their tax obligations. The Department is required to assess tax against a taxpayer if it determines that tax has been paid less than that properly due. A taxpayer’s misunderstanding of its tax obligations is not a basis for waiver of tax assessed.

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 Washington business that leases charter vessels for use both within and outside of Washington appeals an assessment of retail sales tax on its sales of leased charter vessels, and seeks waiver of the assessment based on its lack of awareness of the requirement that it source those sales to the Washington location where the charter vessels are received by the purchaser. The taxpayer’s petition is denied.¹

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

ISSUES

1. Whether, under RCW 82.32.730(1)(b), a taxpayer is required to source its retail sales of leased charter vessels to the location where those charter vessels are leased and received by the purchaser.
2. Whether a taxpayer's misunderstanding of its obligation to collect and remit retail sales tax on retail sales sourced in Washington provides a basis to waive a tax assessment for uncollected retail sales tax.

FINDINGS OF FACT

[Taxpayer] leases charter vessels for use both within and outside of Washington. The Audit Division of the Department of Revenue (Department) reviewed the taxpayer's records for excise tax purposes for the period January 1, 2008, through September 30, 2011. The Audit Division identified sales of leased charter vessels that were received by the purchaser in Washington to be used both within and outside of Washington, where the taxpayer had not collected or remitted to the Department applicable retail sales tax.² As a result, an assessment for uncollected and unremitted retail sales tax (in addition to other tax deficiencies not at issue in this appeal) was issued to the taxpayer.³

The taxpayer appealed the assessment of retail sales tax on the sales of leased charter vessels, and seeks waiver of the assessment based on its lack of awareness of the requirement that it source those sales to the Washington location where the charter vessels were received by the purchaser. The taxpayer does not assert that the taxes assessed were not due or that the applicable tax statutes and rules were not properly applied to the taxpayer. The taxpayer did not appeal any other portion of the assessment.

ANALYSIS

1. Sourcing of retail sales under RCW 82.32.730.

Washington imposes a retail sales tax on each retail sale within this state. RCW 82.08.020. The term "retail sale" is defined in RCW 82.04.050 and includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4)(a). The seller must collect the retail sales tax from the buyer and remit it to the Department. RCW 82.04.050(1), (2). If any seller fails to collect retail sales tax, or remit collected retail sales tax to the Department, it is personally liable to the Department for the amount due. RCW 82.04.050(3).

² The leases at issue did not require recurring periodic payments.

³ Document No. 201306340, issued October 31, 2012, includes assessments of retail sales tax of \$. . . , retailing business and occupation (B&O) tax of \$. . . , a credit of wholesaling B&O tax of \$. . . , service and other activities B&O tax of \$. . . , use tax and/or deferred sales tax of \$. . . , interest of \$. . . , and an assessment penalty of \$. . . , for a total amount of \$. . .

On March 22, 2007, the Streamlined Sales and Use Tax Agreement (SSUTA) was signed into law and changed the manner in which sales taxes are sourced in the state of Washington. *See* Substitute Senate Bill (SSB) Laws of 2007, ch. 6. This change was codified in RCW 82.32.730, which provides, in pertinent part:

(1) Except as provided in subsections (5) through (7) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection . . .

(a) When tangible personal property, an extended warranty, or a service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, or a service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller

RCW 82.32.730(1)(a), (b).⁴

Prior to the enactment of RCW 82.32.730, retail sales tax applied only to the lease or rental of tangible personal property when the use of the property occurred in Washington. *See* Excise Tax Advisory 3072.2009 (ETA 3072)⁵, entitled "Rentals of Tangible Personal Property Used Both Within and Without Washington," *citing Longview Tugboat Company v. State*, 64 Wn.2d 323 (1964). . . .

Under the new destination-based sourcing in the SSUTA and RCW 82.32.730, sales are sourced to the "location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs." RCW 82.32.730(1)(b). *See* Det. No. 09-0203, 29 WTD 31, 33 (2010) (pursuant to RCW 82.32.730(1), a commercial printer's sales of print services and printed materials to be distributed to multiple locations is sourced to the location where the print services and printed materials are delivered).

Here, the taxpayer leases charter vessels from its business location in Washington to be used both within and outside of Washington. During the audit period, the taxpayer did not collect retail sales tax on leases of vessels to be used outside of Washington. As set forth above, RCW 82.32.730(1)(b) requires that the taxpayer source its sales of leased charter vessels to the Washington location where those charter vessels are leased and received by the purchaser. The assessment of uncollected and unremitted retail sales tax on the taxpayer's sales of leased charter vessels received in Washington was correct.

⁴ [Under RCW 82.32.730(2)(b), the lease or rental of tangible personal property that does not require periodic payments is sourced as a retail sale of that property under RCW 82.32.730(1).]

⁵ ETA 3072 replaced ETA 447.04.221, which was cancelled following the enactment of RCW 82.32.730.

2. Misunderstanding of tax obligations as basis for waiver of tax.

The taxpayer does not assert that the taxes assessed were not due or that the applicable tax statutes and rules were not properly applied to the taxpayer. The taxpayer seeks waiver of the assessment for retail sales tax based on its lack of awareness of the requirement to collect the tax.

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, and to seek instructions from the Department when they are uncertain about those obligations. RCW 82.32A.005(2) and RCW 82.32A.030(2). Taxpayers also have a legal duty to maintain their records in such a manner that its tax liabilities can be determined. RCW 82.32.070. The Department endeavors to inform taxpayers about their tax liabilities and is available to answer questions about tax liability, but the ultimate responsibility for determining the tax due and how to properly report that tax lies with the individual taxpayer.⁶ Taxpayers may also request answers to a specific questions by submitting their questions in writing to the Department's Taxpayer Information and Education Section.⁷

If the Department determines that a tax has been paid less than that properly due, "the Department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only." RCW 82.32.050(1). The use of the word "shall" imposes a mandatory duty. *Waste Mgmt. of Seattle, Inc. v. Util. and Transp. Comm'n*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994). The Department does not have any discretion to waive this mandatory duty in this instance. As explained above, it is the taxpayer's obligation to know its tax reporting and collection responsibilities and seek clarification from the Department if there is a question of tax liability. The taxpayer's petition is denied.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 2nd day of December 2013.

⁶The Department provides taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence. It maintains twelve field offices around the state to assist taxpayers and answer questions without charge, maintains a toll free telephone information line, and also an internet site (www.dor.wa.gov).

⁷Taxpayers may submit written inquires to:
Taxpayer Information and Education
Washington State Department of Revenue
PO Box 47478
Olympia, WA 98504-7478