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BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	No. 88-280
. . .	)	Registration No. . . .
	)	
	)	

[1] **RULE 107, RCW 82.08.050 and RCW 82.32.070**: RETAIL SALES TAX -- PAYMENT -- DOCUMENTATION. The law requires that sales tax be separately stated and provides a conclusive presumption that the quoted selling price does not include sales tax. Collection of sales tax is the obligation of the seller; the Department is not obligated to act as collector by pursuing the buyer. Persons protesting assessment of sales tax must provide documentation establishing that the tax has been separately stated and charged and that such amount has been paid by the buyer to the seller or the buyer will be deemed not to have paid the tax. Lack of such documentation will bar the taxpayer from questioning the assessment.

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.

NATURE OF ACTION:

Taxpayer petitions for refund of sales tax and penalties assessed following audit of a construction contract.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is a construction company based in Portland, Oregon. In 1984, it won a construction contract for a public building in Washington. The contract documents stated that sales tax was included in the contract price. An audit by the Department of Revenue resulted in assessment of sales tax on the full price charged in the contract. The taxpayer paid the assessment and attempted to obtain reimbursement from the

purchaser, who refused to pay on the ground that the sales tax was included in the contract. Taxpayer states that it has been unfairly assessed sales tax on a contract price which already included sales tax and requests a refund of the assessed amount.

DISCUSSION:

[1] WAC 458-20-170 (Rule 170) states prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Under this rule, it is clear that the taxpayer owed retail sales tax on the full selling price of its contract. The auditor determined that such tax had not been paid.

Taxpayer claimed that the contract stated that the sales tax was included in the price. However, RCW 82.08.050 sets forth more stringent requirements for proving that sales tax has been paid:

> The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter.
> (Emphasis supplied.)

The statute also provides that collection of the sales tax is the obligation of the seller, although the Department may, in its discretion, proceed directly against the buyer for collection of the tax.

WAC 458-20-107 clearly restates these requirements:

> RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and customer billing receipts....This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between the seller and buyer. (Emphasis supplied.)

Finally, RCW 82.32.070 provides that

> [e]very person liable for any fee or tax imposed by chapters 82.04 through 82.28 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue.
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> . . .
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> Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved. (Emphasis supplied.)

In this case, the contract stated that the purchase price included sales tax. Contrary to the clear statutory requirement, the amount of the sales tax was not separately stated. Consequently, the auditor determined that the sales tax had not been collected and paid. The presumption, as noted above, is conclusive and is not overcome by the contract language. While we sympathize with taxpayer's displeasure in this result, the statutory requirements are clear, as is Rule 107, which implements the statute.

RCW 82.32.070 states that taxpayers who do not maintain the necessary documentation to prove a claim are barred from questioning an assessment at a later date. Here, taxpayer is barred due to a failure to show a separate and identifiable sales tax amount in the language of the contract. If evidence sufficient to overcome the presumption exists, taxpayer can submit it and petition for a refund within the four-year statutory period permitted by 82.32.060.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 20th day of July 1988.