

Cite as Det. No. 89-123, 7 WTD 229 (1989)

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 94-057, 16 WTD 160 (1996).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 89-123
)	
...)	Registration No. ...
)	.../Audit No. ...
)	

- [1] **RULE 102:** RETAIL SALES TAX -- EXEMPTION -- PURCHASES FOR RESALE IN THE REGULAR COURSE OF BUSINESS. Sellers who accept resale certificates are liable for the sales tax due if they fail to exercise reasonable diligence to ascertain whether the resale certificate is tendered by a person for goods to be resold in the regular course of business or whether the certificate is valid under Rule 102.
- [2] **RULE 190:** RETAIL SALES TAX -- EXEMPTION -- FEDERAL GOVERNMENT AND ITS DEPARTMENTS -- WASHINGTON AND OREGON CIVIL AIR PATROLS. The Washington and Oregon Civil Air Patrols are not federal departments, institutions or instrumentalities exempt from retail sales tax. Seller is liable for collection of retail sales tax on sales to such groups.
- [3] **MISCELLANEOUS:** TAX LIABILITY -- DUTY TO KEEP AND PRESERVE RECORDS -- FAILURE TO PRODUCE DOCUMENTATION. Persons engaged in business are required to keep and produce adequate records for examination during an audit. Taxpayer's busy schedule during the audit does not relieve it of its duty to produce proof of taxes collected or paid. Should accurate records be supplied within the statutory period allowed for refunds or adjustments, an adjustment can be made.

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 correction of assessment of retail sales tax on two sales for which resale certificates were taken, of sales tax on sales to Civil Air Patrol corporations and of use tax on purchases of goods for which it contends retail sales tax was paid.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is engaged in the business of selling and servicing aviation products. Its books and records were audited for the period from January 1, 1986, through September 30, 1987, and the above-captioned assessment resulted. Taxpayer protests three items in the assessment:

assertion of retail sales tax on sales for which taxpayer contends that it collected two valid resale certificates: taxpayer claims that one purchaser "gave us a signed resale certificate stating the work performed and parts were for resale. After the auditor informed us this resale certificate was not acceptable, ([the purchaser] apparently was fraudulent in tendering the certificate), we approached [him] for the taxes. He informed us that he was starting legal action against the state because he did not defraud us and the resale certificate is okay" and that the other purchaser had "a valid business in Seattle and signed a resale certificate;"

assertion of retail sales tax on two sales to Civil Air Patrol units: "I did not charge sales tax because it is general knowledge in the aviation industry (or at the very least, to me) that Civil Air Patrol is exempt from sales tax. When the auditor wanted proof of exemption I could not ready [sic] give it to him, and he therefore determined that tax was due . . . For your information, on July 1, 1946, the Civil Air Patrol was established as a private, non-profit corporation of a benevolent character, under document 36 USC 201-208." Taxpayer also supplied an employer identification number for the Civil Air Patrol; [brackets supplied] and

assertion of use tax on purchases for Equipment and Leasehold Improvements, on which taxpayer contends that it paid retail sales tax: taxpayer complains that the auditor "[a]pparently. . . wanted me to open the files personally and pull out each invoice. As I was trying to run my business at the same time of this audit, I was not able to assist him during the entire audit. I did devote probably 2 hours or more on other issues. Invoices are attached proving that sales tax was paid or is not due. . . and therefore use tax is not required. These items are from 1986. The assessment for 1987 was made by using some kind of 'factoring system' by the auditor in lieu of looking at the books. These numbers should be reduced accordingly."

DISCUSSION:

[1] On each retail sale the retail sales tax is imposed. RCW 82.08.020. "Retail sale" is defined by RCW 82.04.050:

- (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person . . . (Emphasis supplied.)

RCW 82.04.470 requires that sellers claiming exemption from liability for collection of retail sales tax on sales of tangible personal property take a resale certificate from the purchasers or meet the burden of proving that such sales were made to a purchaser who qualified for exemption from payment of tax. WAC 458-20-102 (Rule 102) was promulgated by the Department to implement the statute, and it has the same force and effect as the law itself. RCW 82.32.300. The Rule states, in pertinent parts, that

the seller [must take] from the buyer a resale certificate signed by and bearing the registration number and address of the buyer, to the effect that the property purchased is:

- (1) For resale in the regular course of business without intervening use. . .

When a vendor receives and accepts in good faith from a purchaser a resale certificate as described in this rule, the vendor is relieved of liability for retail sales tax

. . .[w]hen a vendor has not secured such a resale certificate he is personally liable for the tax due unless he can sustain the burden of proving (1) that the property was sold for one of the three purposes set forth above and (2) that the purchaser was eligible to give a bona fide resale certificate under the provisions of this rule.

Blanket resale certificates may be given in advance by known wholesalers . . . Blanket resale certificates remain valid only so long as the registration number shown thereon has not been cancelled or revoked. . . .All blanket resale certificates must be renewed at intervals not to exceed four years. (Brackets and emphasis supplied.)

Where a resale certificate has been improperly accepted or is invalid at the time of tender to the seller, the burden of proof lies with the seller to show that the property was sold for the permissible purposes and that the purchaser was eligible to use the resale certificate.

Taxpayer's protest involves two resale certificates. In the former case, taxpayer claims that the resale certificate was valid and that the purchaser is "starting legal action against the state" on the grounds that the use was proper. Regardless of the outcome of the purported legal action, we find that the taxpayer failed to act in good faith pursuant to Rule 102 when it accepted the resale certificate. There were two copies of the same resale certificate; the only difference between the two is that an unidentified party wrote the taxpayer's name in the blank provided for the seller's

name on a blanket resale certificate. The certificates are not properly completed, lacking both a complete address and a correct Washington State business registration number. Further, both certificates list the name of the business as "[name] Opticians," and the party signing them certified that his business was "optical." Taxpayer has the burden of proving that an optician was purchasing aviation goods and services for resale in the regular course of his optical business. Complaints that either version of the certificate was valid on its face, which is clearly not the case, and that the purchaser is pursuing "legal action" are not proof that the optician was purchasing goods for resale in his business.

The latter resale certificate was to a leasing company. This resale certificate is also not valid. It recites that its effective dates are from November, 1978, through May, 1987, a period of eight and one-half years. The form, on its face, clearly states that "[a]ll blanket resale certificates must be renewed at intervals not to exceed four years." (Emphasis supplied.) Additionally, the auditor found that the sale was made in December, 1986, and that the purchaser was not eligible to present a resale certificate at that time. Not only was the date of the sale more than four years after the issue date of the purportedly-valid resale certificate, but a check on the purchaser's business registration number showed that the business was closed as of December 31, 1983. Because the [resale certificate] was clearly invalid, taxpayer has the burden of proving that the purchaser was eligible to give a bona fide resale certificate. A vague claim that a Tacoma-registered business "had a valid business in Seattle" is not proof that the purchaser was entitled to use a resale certificate, and the facts clearly demonstrate that he was not.

Taxpayer's petition is denied with regard to these two certificates.

[2] Taxpayer next protests assertion of tax on sales to the Washington and the Oregon Civil Air Patrol units, claiming that it is "general knowledge" in the aviation industry, or at the very least, to the taxpayer, that such groups are exempt from tax; it also helpfully provides the information that the Civil Air Patrol is a benevolent corporation, chartered under 36 USC 201-208.

Rule 190 states that

retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the federal government for the benefit of the public generally. (Emphasis supplied.)

Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972).

The Rule expressly provides for state tax exemptions for the United States and its departments, institutions and instrumentalities. A reading of Title 36 USC, sections 201-208, a portion of the Title of the United States Code chartering patriotic and benevolent corporations, yields no statutory language claiming the Civil Air Patrol as a department, institution or instrumentality exempt from state taxes.

Whether the Civil Air Patrol is a benevolent corporation generally known in the aviation industry and to the taxpayer to be exempt, and whether it is exempt from federal income or other taxes, it is not known to the State of Washington to be exempt from retail sales tax. The Patrol may be recognized and even partially funded by the United States, but it is not "directly operated and controlled" by the federal government, as required by Rule 190.

Taxpayer's petition is denied with regard to these two sales.

[3] Taxpayer next insists that two items, Equipment and Leasehold Improvements, were "assessed with tax erroneously. The auditor did not go through the files when he determined that tax was not paid." The remainder of taxpayer's complaint is detailed above. The auditor's response to the complaints was that

for nearly a year I have been trying to have the taxpayer or the taxpayer's CPA identify the amounts booked as Equipment and Leasehold Improvements on the Depreciation Schedule. The taxpayer's response to this is "the check register is over there; you figure it out." It is unknown whether the list of invoices sent with the appeal were capitalized or just everyday consumables. All that is needed to delete the tax in this area is the identification of the booked amounts and proof tax was paid.

The legislature has enacted RCW 82.32.070, which states that

[e]very person liable for any fee or tax imposed by chapters 82.04 through 82.27 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.

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.)

The legislature's use of the word "shall" makes mandatory the requirement that taxpayers maintain and produce records from which tax liability can be ascertained.

As the auditor promised, the audit can and will be easily adjusted if the taxpayer cooperates by producing true and accurate records of its business and gives the auditor the information from which to correctly determine the amount of tax due.

We remand the file back to the Audit Section for an examination of the tendered receipts to determine whether they are adequate proof of payment of retail sales tax. We caution the

taxpayer that failure to assist the auditor in performing a fair and thorough audit resulted in this assessment; cooperation might have eliminated the necessity of this appeal and is expected at the time of the reexamination of taxpayer's records. Further, the auditor also noted that, with regard to the alleged "factoring system," such system was used to project consumables only, not the assets protested in the audit. He notes and taxpayer's own petition materials agree that there is no dispute on the assessment of tax on the consumables. Consequently, we find that this contention is either misguided or an additional factual dispute for resolution during the conference with the Audit Section.

DECISION AND DISPOSITION:

Taxpayer's petition is denied with regard to the sales related to the two invalid resale certificates and with regard to the sales to the Civil Air Patrol. The file will be remanded to the Audit Section for examination of receipts submitted with taxpayer's petition to determine whether they are sufficient to justify an adjustment in the amount of retail sales tax asserted in the relevant categories.

DATED this 8th day of March 1989.