

Cite as Det. No. 07-0206, 27 WTD 36 (2008)

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. 07-0206
)	
... )	
)	Registration No. . . .
)	Document No. . . . /Audit No. . . .
)	Docket No. . . .
)	

[1] RULE 18801; RCW 82.08.0281: RETAIL SALES TAX -- EXEMPTION - PRESCRIPTION DRUGS -- DIETARY SUPPLEMENTS - LICENSED DISPENSARY -- ADVANCE REGISTERED NURSING PRACTITIONER (ARNP). For periods prior to January 1, 2004, dietary supplements prescribed and dispensed by an advanced registered nursing practitioner were not entitled to a retail sales tax exemption for prescription drugs because they were not dispensed by a licensed dispensary.

[2] RULE 244; RCW 82.08.925: RETAIL SALES TAX -- EXEMPTION - DIETARY SUPPLEMENTS -- PRESCRIPTION -- ARNP. For periods after January 1, 2004, dietary supplements prescribed for human use and dispensed by an advanced registered nursing practitioner are exempt from retail sales tax under RCW 82.08.925.

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.

Okimoto, A.L.J. -- An advanced registered nursing practitioner (ARNP) protests the assessment of retail sales tax on sales of dietary supplements prescribed and dispensed by her to patients. We hold that dietary supplements prescribed and dispensed by her prior to January 1, 2004 were subject to tax because they were not dispensed by a licensed dispensary. We hold that sales of dietary supplements prescribed and dispensed by her after January 1, 2004 were exempt from retail sales tax under a new exemption that did not require them to be dispensed by a licensed pharmacist.<sup>1</sup>

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

## ISSUES

- 1) Were sales of dietary supplements to patients prescribed and dispensed by an advanced registered nursing practitioner exempt from retail sales tax under RCW 82.08.0281 and WAC 458-20-18801 (Rule 18801) for periods prior to January 1, 2004?
- 2) Are sales of dietary supplements to patients prescribed and dispensed by an advanced registered nursing practitioner exempt from retail sales tax under RCW 82.08.925?

## FINDINGS OF FACT

. . . (Taxpayer) holds an Advanced Registered Nursing Practice (ARNP) license with the state of Washington under Chapter 18.79 RCW. She conducts her advanced registered nursing practice in . . . Washington. Taxpayer's file was examined by the Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) for the period January 1, 2002 through December 31, 2005. As a result of this examination [an assessment was issued] for additional taxes, interest and penalties . . . Taxpayer appealed the assessment . . .

Taxpayer's ARNP license allows her to see patients, make diagnosis, prescribe treatment, and issue prescriptions to patients for both legend and nonlegend drugs, including dietary supplements. When her patients visit her office, she normally examines the patient, makes her diagnosis, and prescribes a treatment plan. If the treatment plan requires a prescription for dietary supplements (usually vitamins), she signs and dates the prescription, which includes the type of dietary supplement and dosage, gives a copy to her patient, and files a copy with the patient's records. Taxpayer then separately itemizes the charge for dietary supplements on the patient's bill and dispenses the supplement to the patient.

Because Taxpayer thought the dietary supplements were exempt prescription drugs under WAC 458-20-18801 (Rule 18801), Taxpayer did not charge retail sales tax on dietary supplements prescribed, sold, and dispensed by Taxpayer to patients. TAA did not dispute that the dietary supplements were legally prescribed prescription drugs, but disallowed the retail sales tax exemption solely because Taxpayer was not a licensed dispensary under Rule 18801(5)(b).

## ANALYSIS

### [1] Periods Prior to January 1, 2004

RCW 82.08.020 imposes a retail sales tax on each retail sale in this state. "Retail sale" includes "every sale of tangible personal property" to a consumer. RCW 82.04.050 and RCW 82.04.190.

For periods prior to January 1, 2004, however, RCW 82.08.0281 provided an exemption from retail sales tax for the sale of certain prescription drugs. It provided:

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The tax levied by RCW 82.08.020 shall not apply to sales of prescription drugs, including sales to the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge. The term "prescription drugs" shall include any medicine, drug, prescription lens, or other substance other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans, or for use for family planning purposes, including the prevention of conception, supplied:

(1) By a family planning clinic that is under contract with the department of health to provide family planning services; or

(2) Under the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions; or

(3) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist; or

(4) By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or

(5) By physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.

(Underlining added). WAC 458-20-18801 (Rule 18801) implements the above retail sales tax exemption and states:

(5) **Exemptions.** The following exemptions apply from the retail sales tax and use tax.

...

(b) The retail sales tax does not apply to sales of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, **but only when**

(i) Dispensed by a licensed dispensary

(ii) Pursuant to a written prescription

(iii) Issued by a medical practitioner

(iv) For diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. (See RCW 82.08.0281.)

(Underlining and bolding added.) Rule 18801 clearly provides that nonlegend drugs, including dietary supplements, must be dispensed by a licensed dispensary to be exempt from retail sales tax. Rule 18801(1) further defines a licensed dispensary as:

(e) "Licensed dispensary" means a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW.

In this case, Taxpayer acknowledges that her advanced registered nursing practitioner's office is not a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW. Instead, Taxpayer's ARNP license is authorized under chapter 18.79 RCW. It is only through the practice of Taxpayer's nursing profession that she is allowed to prescribe and dispense legend and nonlegend drugs to patients. We further note that RCW 82.08.0281 specifically limits the retail sales tax exemption to drugs supplied: "[u]nder the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions." RCW 82.08.0281. Consequently, since Taxpayer does not issue a written prescription "to a pharmacist" to dispense the nonlegend drugs, but instead dispenses them herself, her prescriptions do not meet the requirement of Rule 18801(5)(b)(i). Therefore, the sales tax exemption does not apply. Taxpayer's petition is denied on this issue.

#### [2] Periods After January 1, 2004

During the 2003 legislative session, the Washington State Legislature began its effort to conform Washington laws to the Streamlined Sales and Use Tax Agreement. As a result, it passed the Streamlined Sales Tax Act, Chapter 168, Laws of 2003 which specifically excludes "dietary supplements" from the definition of "drug." RCW 82.08.0281(4)(b). Concurrently, the Legislature enacted a specific retail sales tax exemption for prescribed "dietary supplements" that took effect January 1, 2004. The retail sales tax exemption for sales of dietary supplements is now contained in RCW 82.08.925 which provides:

The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription.

The new sales tax exemption requires that the items be 1) dietary supplements, 2) for human use, 3) dispensed or to be dispensed to patients, 4) pursuant to a prescription. We note that the new exemption does not retain the requirement that the prescription be written to a pharmacist or be dispensed by a pharmacist.

In applying the retail sales tax exemption under RCW 82.08.925 to Taxpayer's case, we note that "dietary supplement" includes vitamins. RCW 82.08.0293(2)(d)(i). Furthermore, it is not disputed that the dietary supplements are for human use and dispensed to patients. The final requirement is that they be dispensed pursuant to a prescription. The term "prescription" is broadly defined to mean: "an order, formula, or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe." RCW 82.08.0281(4)(a). In this case, Taxpayer, as an ARNP, is a duly licensed practitioner authorized by the laws of this state to prescribe and dispense legend and

nonlegend drugs. RCW 18.79.050. Consequently, since Taxpayer's sales satisfy the new requirements of RCW 82.08.925, we conclude Taxpayer's sales of prescribed dietary supplements occurring after January 1, 2004 are exempt from retail sales tax. Taxpayer's petition is granted for that period.

#### DECISION AND DISPOSITION

Taxpayer's petition is granted in part and denied in part.

Dated this 30<sup>th</sup> day of July 2007.