

Cite as Det No. 10-0167, 30 WTD 89 (2011)

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. 10-0167
)	
...)	
)	Registration No. . . .
)	Doc. No. Audit No. . . .
)	Docket No. . . .
)	

RULE 170; RCW 82.08.020; RCW 82.04.070: RETAIL SALES TAX – RETAILING B&O TAX – GROSS INCOME – FULL CONTRACT PRICE - NO DEDUCTIONS: As the prime contractor, the taxpayer was required to report retailing B&O tax on the gross contract prices it charged its customers and collect retail sales tax from its customers measured by their full contract prices. There is no authority that allows the taxpayer to deduct amounts it paid the subcontractors from the gross or full contract prices it charged it customers when it reported its B&O tax and sales tax.

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.

De Luca, A.L.J. – A corporation (the taxpayer) providing commercial and residential painting services protests the disallowance of deductions for sales tax paid at source and the assessment of retail sales tax on portions of contract prices not reported by the taxpayer as gross proceeds of sales. Holding: We affirm the assessment. Petition denied.¹

ISSUES

1. Was it correct for the taxpayer to pay retail sales tax and retailing business and occupation (B&O) tax only on the portions of the gross proceeds of sales that it retained from its painting services and not on the portions of the gross proceeds that it paid to subcontractors?

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

2. Did the taxpayer comply with RCW 82.08.130 and WAC 458-20-102(11)(b) (Rule 102) in taking deductions for sales tax paid at source?

FINDINGS OF FACT

The taxpayer is corporation that during the audit period provided residential and commercial painting services in Washington. The taxpayer did not use resale certificates to buy paint and other supplies. Instead, the taxpayer usually paid sales taxes at the source of purchasing the paint and supplies and deducted the sales tax paid at source on its combined excise tax returns. On larger jobs the taxpayer hired subcontractors to help it and provided them with paint and supplies. The taxpayer did not give the subcontractors resale certificates for their services and did not obtain invoices from them.

When the taxpayer received payment from its customers it paid portions of the full contract prices to the subcontractors it hired. But the taxpayer reported sales tax and B&O tax only on the portions of the full contract prices it retained. It did not report tax on the amounts it paid to the subcontractors. The taxpayer asserted to DOR's Audit Division that it had contracts with the subcontractors making them responsible to collect and remit the sales taxes that were due on portions of the work that the subcontractors performed in fulfilling the taxpayer's contracts. But the taxpayer did not provide to DOR copies of those contracts.

The Audit Division audited the taxpayer for the period January 1, 2005, through June 30, 2008, and assessed the taxpayer \$. . . in retail sales tax, retailing B&O tax, interest, and a five percent substantial underpayment penalty. The assessment remains unpaid. In schedules 3A and 3B, the Audit Division assessed \$. . . in retailing B&O tax and \$. . . in retail sales tax, respectively, due to income reconciliation differences by comparing amounts reported on the taxpayer's federal income tax returns and in its bank deposits with the amounts it reported on its combined excise tax returns. The difference in amounts is attributed to the amounts that the taxpayer argues that the subcontractors received and were responsible for paying sales tax on.

In schedule 4, the Audit Division assessed \$. . . in retail sales tax on disallowed deductions for taxes paid at source to suppliers because the taxpayer did not keep and preserve suitable records showing that it actually paid tax at source on some of its purchases.

ANALYSIS

The taxpayer disputes the assessment. It claims that it lacked knowledge about its tax obligations. Nonetheless, it contends its contracts with the subcontractors should have fulfilled those tax obligations. But taxpayers doing business in Washington have certain responsibilities including but not limited to. . .

- (2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;
- (3) Keep accurate and complete business records;

- (4) File accurate returns and pay taxes in a timely manner;
- (5) Ensure the accuracy of the information entered on their tax returns;

RCW 82.32A.030. A lack of knowledge is not a legal basis to avoid or prevent an assessment of taxes properly owing and due.

"Sale at retail" or "retail sale"

[M]eans 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 presents a resale certificate under RCW [82.04.470](#)

RCW 82.04.050(1). The term "retail sale" also:

[S]hall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation,

Id. Thus, the taxpayer's purchases of paint and supplies and its painting services are considered retail sales unless the taxpayer used resale certificates to purchase the paint, supplies and subcontract labor, or obtained resale certificates from its non-consumer customers.² *Id.*, RCW 82.04.470 and Rule 102. Retail sales tax is imposed on retail sales, such as commercial and residential painting, pursuant to RCW 82.08.020.

DOR adopted WAC 458-20-170 (Rule 170) to administer statutes pertaining to constructing, repairing, decorating, or improving of buildings. The rule provides in pertinent part:

(3) Business and occupation tax.

(a) Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

(b) Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business and occupation tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

² Effective January 1, 2010, reseller permits issued by the Department of Revenue replaced resale certificates as the documentation necessary to substantiate wholesale purchases. WAC 458-20-10201.

(4) **Retail sales tax** (a) Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, permits, etc., required for construction and paid by the builder.

(Underlining added.) Indeed, the definition of “gross proceeds of sales” for B&O tax purposes states it

[M]eans the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(Underlining added.) RCW 82.04.070. Thus, as the prime contractor, the taxpayer was required to report retailing B&O tax on the gross contract prices it charged its customers and collect retail sales tax from its customers measured by their full contract prices. There is no authority that allows the taxpayer to deduct amounts it paid the subcontractors from the gross or full contract prices it charged its customers when it reported its B&O tax and sales tax.

We next address the paid at source deductions. The deductions are permissible if done properly. RCW 82.08.130 and Rule 102(11)(b).

Tax paid at source deduction. If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold. . . .

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code. . . .

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

In some instances, as documented in the audit report, the taxpayer failed to keep and preserve suitable records in support of the paid at source deductions it claimed, which resulted in their

disallowance. [Since the taxpayer did not provide] DOR with such records, the deductions were properly disallowed.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 26th day of May 2010.