

Cite as Det No. 13-0055, 32 WTD 227 (2013)

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. 13-0055
)	
, , ,)	
)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .

RULE 210 – RCW 82.08.0259 – SALES TAX – SALES OF LIVESTOCK – SALES OF DOGS. Dogs are not defined as “livestock” in RCW 16.36.005 and, as such, are not subject to the livestock sales tax exemption whether they are sold for breeding purposes or as pets.

Weaver, A.L.J. – Taxpayer, a dog breeder, petitions for correction of an assessment of retail sales tax and retailing business and occupation (“B&O”) tax assessed on the sale of dogs for breeding purposes. We hold that dogs are not considered “livestock” for purposes of the retail sales tax exemption and, for that reason, the sale of dogs for breeding is taxable. Taxpayer’s petition is denied.

ISSUES

1. Whether, under RCW 82.08.0259, dogs that were sold for breeding purposes are exempt from retail sales tax because they are “livestock.”
2. Whether, under RCW 82.32A.020 or common law equitable estoppel principles, the Department is estopped from assessing retail sales tax because it did not provide notice to taxpayers of a legislative change.

FINDINGS OF FACT

Taxpayer . . . is a company engaged in the breeding and kenneling of . . . dogs. . . . Taxpayer began its [dog] breeding business in 1983. In . . . 2000, Taxpayer was advised by its accountant that “puppies that are registered and sold for breeding purposes are not subject to sales tax. Any puppies that are pet quality and sold as such are subject to sales tax.”

Based on this advice, Taxpayer began asking its customers whether they were purchasing their dog for breeding purposes or as a pet. If sold for breeding purposes, Taxpayer noted that fact on the sales contract, which included the dog's sire and dam's name. The contract included specific instructions regarding registration and the dog's registered name. The dogs were then registered with the American Kennel Club, a nationally recognized breeding association. Taxpayer's dogs are also registered with . . . a . . . database of many of the top ranked dogs in the world, including those purchased by Taxpayer for breeding purposes. These pedigreed . . . dogs sold by Taxpayer for purposes of breeding cannot be found in pet stores.

. . . [D]ogs are purchased from Taxpayer, because Taxpayer breeds [highly rated] dogs to be used for breeding. The puppies purchased by Taxpayer are bred based on [specialized] breeding requirements. The dogs [bred by taxpayer go through a number of tests and are rated according to the test results].

In April 2011, Taxpayer's books and records for the period January 1, 2007, through March 31, 2011, were examined by the Audit Division of the Department of Revenue ("Department"). The Audit Division concluded that Taxpayer's breeding dogs are not entitled to the "livestock" sales tax exemption. On November 16, 2011, the Audit Division issued Assessment No. . . . in the amount of \$. . ., which consists of \$. . . in retail sales tax, \$. . . in retailing business and occupation ("B&O") tax, a \$. . . credit for wholesaling B&O tax, \$. . . in service and other activities B&O tax, \$. . . in use tax/deferred sales tax, \$. . . in interest, and a 5% assessment penalty of \$. . . Taxpayer filed a timely appeal.

ANALYSIS

The retail sales tax is imposed on sales of tangible personal property in this state. RCW 82.08.020. However, RCW 82.08.0259 contains the following exemption:

The tax levied by RCW 82.08.020 shall not apply to sales of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm.

RCW 82.08.0259; *see also* RCW 82.12.0261 (applying the livestock exemption to use tax). WAC 458-20-210 ("Rule 210") likewise contains a "livestock" exemption and reads, as follows:

(6) . . . (i) **Livestock for breeding purposes.** The sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association is exempt from retail sales and use taxes. RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

Rule 210(6)(i). The term "livestock" is defined, by statute, as follows:

(15) “Livestock” means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute.¹ “Livestock” does not mean free ranging wildlife as defined in Title 77 RCW.

RCW 16.36.005(15) . . . Dogs are not on the list of “livestock” animals listed in RCW 16.36.005. Therefore, . . . the sale of dogs is not subject to the “livestock” exemption.

Taxpayer claims that in January 2000, its accountant advised it that there was a distinction between dogs sold for breeding and dogs sold as pets. Indeed, in 2000, the text of RCW 82.08.0259 was different than its current iteration. Prior to July 22, 2001, RCW 82.08.0259 read as follows:

RCW 82.08.0259 Exemptions--Sales of purebred livestock for breeding--Cattle and milk cows. The tax levied by RCW 82.08.020 shall not apply to sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association; sales of cattle and milk cows used on the farm.

RCW 82.08.0259 (1980). Before July 22, 2001, the exemption statute applied to “purebred livestock for breeding purposes,” but did not reference a statutory definition of “livestock.” *Id.*

The prior version of Rule 210 likewise did not reference a statutory definition of “livestock.” Before it was changed to the current version on September 24, 2003, Rule 210 read, in relevant part, as follows:

(4) **Retail sales tax.** Farmers required to obtain a tax registration endorsement must collect and remit retail sales tax upon any retail sale for which a specific retail sales tax exemption is not provided. Retail sales tax exemptions are available for the following sales of agricultural products: . . .

(f) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breeding association. RCW 82.08.0259. Sellers claiming such an exemption should refer to WAC 458-20-122 for a description of the exemption certificate which must be retained by the seller.

Rule 210(4)(f) (1994) (effective until September 25, 2003). WAC 458-20-122, since canceled, reads, in relevant part:

(6) **Purebred livestock exemption certificate.** RCW 82.08.0259 provides a retail sales tax exemption for sales of purebred livestock for breeding purposes. To perfect a claim for this exemption, the seller must retain as a part of its records a copy of an exemption certificate, which is to be completed at the time of sale. This certificate must be substantially in the following form and completed in its entirety:

¹ We have failed to find any statute where dogs are designated as “livestock.”

Date of sale:

Seller's name:

Buyer's name:

Address of buyer:

Registered name of animal:

Registering breed association:

Purebred type:

I certify that the purebred animal named on this certificate is being purchased by me for breeding purposes.

Buyer's signature, Title:

WAC 458-20-122 (1994) (canceled on September 25, 2003).

Taxpayer raises estoppel arguments that Taxpayer relied on these prior authorities and claims that the Department failed to alert dog breeders of the 2001 legislative change of the definition of “livestock” in RCW 82.08.0259.² The Taxpayer Rights and Responsibilities are codified in chapter 82.32A RCW, and state, in relevant part:

To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW including, but not limited to, the responsibility to: . . .

(2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;

RCW 82.32A.030(2). Taxpayers have a corresponding right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer. RCW 82.32A.020(2). In this case, Taxpayer has not provided any official written advice or written tax reporting instructions from the Department. Taxpayer has offered a third-party letter from an accountant advising them of the accountant’s position of the state of the law in January 2000. The written advice from a third party cannot bind the Department.

. . . [Taxpayer relies on] common law equitable estoppel principles to contest the Department’s assessment of a tax, interest, or penalties. . . . Taxpayer may be correct in its claim that the law regarding the retail sales taxability of dogs sold for breeding changed or was clarified when the statutory definition of “livestock” was referenced in RCW 82.08.0259.³ However, it is

² We note that many of Taxpayer’s arguments focused on legislative changes to RCW 82.04.213. RCW 82.04.213 defines the terms “agricultural product” and “farmer” for purposes of applying the retail sales tax exclusion on certain items sold to farmers for the purpose of selling any agricultural product. *See* RCW 82.04.050(11). Because this matter does not implicate the sale of goods to farmers for the purpose of selling agricultural products, RCW 82.04.213 and its legislative history are inapplicable here.

³ We decline to determine whether dogs sold for breeding were subject to sales tax prior to July 22, 2001, as that issue is not before us, and any legal conclusion on the matter would be *dicta*.

Taxpayer's duty to become informed about its tax liabilities. RCW 82.32A.030(2); *see also* Det. No. 99-172, 19 WTD 277 (2000). Taxpayer's claim for relief on the basis of estoppel is denied.

We hold that because dogs are not "livestock" as that term is defined in RCW 16.36.005, the sale of dogs is not subject to the livestock exemption in RCW 82.08.0259. Because dogs are not livestock, as that term is defined, it is irrelevant whether they are sold for breeding or whether they are sold as pets. The sale of dogs is subject to sales tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 27th day of February 2013.