

Cite as Det. No. 04-0158, 24 WTD 262 (2005)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 04-0158
	)	
...	)	Registration No. . . .
	)	February 25, 2004 Audit Division
	)	Refund Denial Letter
	)	Sales Tax Refund Request
	)	Docket No. . . .

RULE 196; RCW 82.08.037: RETAIL SALES TAX – BAD DEBT CREDIT – RETAILER – PRIVATE LABEL CREDIT CARD. A retailer whose customers purchased goods using a private label credit card is not entitled to a retail sales tax credit for the bad debts the financial institution that issued the credit card incurs. The bad debt credit is not available because the retailer did not incur the bad debt.

Lewis, A.L.J. -- A retailer requests refund of retail sales tax on purchases using a private label credit card where the credit card company never received payment. In this instance, Taxpayer does not qualify for a bad debt credit or refund, as provided in RCW 82.08.037, because it received payment of the full amount of the purchase, including the retail sales tax added to the purchase, and had no bad debt write-offs.<sup>1</sup>

ISSUE:

Is a retailer entitled to a retail sales tax credit for bad debts written off by the financial business that issued the private label credit card, which customers had used to purchase goods from the retailer?

FINDING OF FACTS:

Taxpayer operates . . . stores in Washington. Taxpayer collected and remitted retail sales tax to the Department of Revenue (“Department”) on the goods it sold to its retail customers in Washington. Some customers paid for the goods with cash, others paid with the use of credit

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

cards, including a private label [private label] credit card.

Contrary to what the name might imply, the [private label] credit card is not issued by Taxpayer or an affiliate of Taxpayer. Rather the credit card is issued by a separate financial institution, [Financial Institution]. Taxpayer entered into an Agreement with [Financial Institution]. Under the terms of the Agreement, [Financial Institution] agreed to extend credit to cardholders for purchases of goods or services from Taxpayer and other authorized entities.

[Financial Institution] makes its determination of the credit worthiness of the credit card applicant separate from Taxpayer. An individual wanting a card must complete a credit card application and have it approved by [Financial Institution]. Once the credit card is issued the credit card holder has a contractual obligation with [Financial Institution]. The Agreement requires [Financial Institution] to extend credit up to the pre-approved amount and the credit cardholder agrees to make all payments associated with the line of credit extended by [Financial Institution].

[Financial Institution] manages all the accounts for collection. When a customer defaults on making payments, it is [Financial Institution] that solely determines what collection and/or charge off processes will be employed.

Under the terms of the Agreement, the fee that [Financial Institution] charges Taxpayer for its customer's use of the credit card in making the purchase is based on [Financial Institution] credit card customers' payment history. [Financial Institution] provides Taxpayer with the charge-off and payment history of customers making purchases using a . . . private label credit card. This information is important because the charge-off history is used to determine the transaction fee [Financial Institution] charges Taxpayer when the credit card is used.

Taxpayer maintains that it is entitled to a retail sales tax credit for the customers' bad debts that were written off by [Financial Institution] since it bears the burden of the economic loss through the charge-off history based transaction fee [Financial Institution] imposes on each purchase made with a . . . private label credit card. Taxpayer maintains the accounts based in Washington qualify for the refund of retail sales tax related to the bad debt credit. Since Taxpayer received payment in full from the customers when they paid for their purchases using a credit card, Taxpayer does not have bad debts and, accordingly, could not write-off bad debts on its [federal income tax] returns.

On October 14, 2003, Taxpayer filed a petition requesting a refund of sales tax. On February 25, 2004, the Department's Audit Division denied Taxpayer's request. On March 22, 2004, Taxpayer filed a petition for refund with the Department's Appeals Division.

#### ANALYSIS:

RCW 82.08.037 and WAC 458-20-196 (Rule 196) allow the bad debt credit and provide:

A seller is entitled to a credit or refund for sales taxes previously paid on debts, which are deductible as worthless for federal income tax purposes.

The Washington Supreme Court, in *Puget Sound National Bank v. Department of Rev.*, 123 Wn.2d 284, 868 P.2d 127 (1994), explained the applicability of the statute. Specifically, the Court interpreted RCW 82.08.037 as having three requirements:

(1) the seller must be a person, (2) making sales at retail, and (3) entitled to a refund for sales taxes previously paid on debts which are deductible as worthless for federal income tax purposes.

*Puget Sound*, 123 Wn.2d at 287.

In this case, it is uncontested that Taxpayer, the seller, is a person. Similarly, it is uncontested that the sales for which a retail sales tax credit is requested were retail sales. In dispute is whether the third requirement has been satisfied since it was the credit card company that wrote off the bad debts and not Taxpayer.

Recently, in Det. No. 01-075ER, 23 WTD 64 (2004), the Department addressed the same facts as presented in this case. In that case, as here, the entity making the sale was different from the entity that financed the sale and had the bad debt write-off. The only material difference in Det. No. 01-075ER was the financial institution, not the retailer, filed the refund request. . . . Det. No. 01-75ER concluded that [the financial institution was not entitled to a credit under] RCW 82.08.037 . . . .

We conclude that Taxpayer, having not written off bad debts, does not qualify for a bad debt deduction.

#### DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

Dated this 23<sup>rd</sup> day of July, 2004.