

Cite as Det. No. 13-0046, 33 WTD 51 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for	)	<u>D E T E R M I N A T I O N</u>
Correction of Assessment of	)	
	)	No. 13-0046
...	)	
	)	Registration No. . . .
	)	
	)	
	)	

[1] RULE 102; RCW 82.08.130: RETAIL SALES TAX – TAX PAID AT SOURCE DEDUCTION – VENDING MACHINES. Purchases of vending machines by a vending machine operator are used in its business and are not resold. Those purchases are subject to the retail sales tax and are not eligible for a “tax paid at source” deduction.

[2] RULE 244, RCW 82.08.0293: RETAIL SALES TAX – EXEMPTION – FOOD PRODUCTS – VENDING MACHINE ITEMS. A business selling items from vending machines needs to keep accounting records separating “food and food ingredients sold in a heated state and soft drinks” from “all other food or food ingredients.” Those two categories are taxed by separate formulas.

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.

Weaver, A.L.J. – A vending machine operator protests retail sales tax assessed on taxable food items that were originally categorized as “tax exempt” and on vending machine purchases on which taxpayers later took a “tax paid at source” deduction. Taxpayer’s petition is denied.<sup>1</sup>

ISSUES

1. Whether, under RCW 82.08.130, a vending machine operator is entitled to take a tax paid at source deduction for retail sales tax paid on vending machine equipment purchases.

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

2. Whether, under RCW 82.32.100, in the absence of adequate books and records, the Department can estimate the percentages of food and soda items sold by a taxpayer for purposes of applying WAC 458-20-244.

#### FINDINGS OF FACT

Taxpayers . . . operating as a sole proprietorship, operate a vending machine business in . . . Washington. Taxpayers sold food and soft drinks from vending machines. The Audit Division of the Department of Revenue (“Department”) audited Taxpayers’ books and records for the period January 1, 2008, through June 30, 2011.

During the audit, the Audit Division determined that Taxpayers over-deducted certain sales reported under the retail sales tax classification. For example, Taxpayers took a “tax paid at source” deduction on their vending machine equipment purchases.

Taxpayers also took a 100 percent deduction on all the food and beverage products they sold. The Audit Division informed Taxpayers that the taxation of food items sold from vending machines are taxed under a formula set forth in WAC 458-20-244 (“Rule 244”), which requires taxpayers to separately document the amount of their soft drink sales from their other food sales. Taxpayers could not provide the Audit Division with sufficient documentation to separate their soft drink sales from their food sales. The Audit Division then examined Taxpayers’ purchase invoices and used those to estimate that 65 percent of Taxpayers’ sales were food sales and 35 percent were soft drink sales. The Audit Division used these percentages to calculate Taxpayers’ retail sales tax liability under the Rule 244 formula.

On January 31, 2012, the Audit Division issued Assessment No. . . . in the amount of \$ . . . , which included \$ . . . in retail sales tax, a \$ . . . credit for retailing business and occupation (“B&O”) tax, \$ . . . in interest, and a 5% assessment penalty of \$ . . . Taxpayers appeal the assessment.

#### ANALYSIS

[1] RCW 82.04.050 defines a “retail sale” as every sale of tangible personal property other than the sale to a person who purchases the tangible personal property for resale in the regular course of business without intervening use by such person. *See* RCW 82.04.050(1)(a). The retail sales tax is imposed on all retail sales of tangible personal property unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale, or the sale is otherwise exempt from retail sales tax. RCW 82.08.020(1).

RCW 82.08.130 and WAC 458-20-102 allow for a deduction from retail sales tax paid to suppliers of materials which are subsequently resold at retail without intervening use. RCW 82.08.130 provides, in relevant part:

- (2) A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise

provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid . . . .

RCW 82.08.130(1), (2). In this case, Taxpayers purchased actual vending machines for use in their business. Taxpayers did not subsequently sell the vending machines at retail; instead, they used them to sell food and soft drinks to their customers. For these reasons, Taxpayers were required to pay retail sales tax on their vending machine equipment purchases and the “tax paid at source” deduction on those machines was properly disallowed by the Audit Division.

[2] RCW 82.08.0293(4) states that the “retail sale of food and food ingredients” is subject to sales tax if the food and food ingredients are sold through a vending machine. RCW 82.08.0293(4)(a). Except in the case of soft drinks and hot prepared food and food ingredients, the selling price of food and food ingredients sold through a vending machine is 57% of the gross receipts. *Id.* With respect to soft drinks and hot prepared food and food ingredients, the selling price is the total gross receipts divided by the sum of one plus the sales tax rate expressed as a decimal. RCW 82.08.0293(4)(b).

To help administer the taxation of vending machine food and soda pop sales, the Department promulgated WAC 458-20-244 (“Rule 244”) which specifically addresses how taxes on vending machine food sales are to be calculated and administered. Rule 244 requires taxpayers selling items from vending machines to separate “food or food ingredients sold in a heated state and soft drinks” from “all other food or food ingredients.” Rule 244(9). These two categories are taxed by separate formulas, set forth in Rule 244(9). During the period in question, Taxpayers did not use the Rule 244 formulas to determine its taxable sales and did not differentiate its sales of “soft drinks” from its sale of “other food.” Instead, Taxpayers took a 100% deduction of all its food product sales. Taxpayers’ failure to document which of its sales were for soft drinks and which were of other food items required the Audit Division to estimate Taxpayers’ tax liability based on their purchase invoices.

RCW 82.32.100 provides:

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

RCW 82.32.100(1). Under this statutory authority, the Department is authorized to estimate a taxpayer’s tax liability in the event the taxpayer fails to preserve and provide suitable records. RCW 82.32.100(1).

Taxpayers were unable to provide the Audit Division with sales records separating the amounts of their soft drink sales from their food sales. After analyzing Taxpayers’ purchase invoices, the Audit Division estimated that 35% of Taxpayers’ sales were of soft drinks and 65% were of

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“other food.” Using these percentages, the Audit Division calculated Taxpayers’ retail sales tax liability under the Rule 244(9) formula and issued the assessment. Because Taxpayers have not provided any documentation to prove their actual soft drink sales and actual “other food” sales, we will not disturb the percentages used by the Audit Division to determine Taxpayers’ retail sales tax liability.

DECISION AND DISPOSITION

Taxpayers’ petition is denied.

Dated this 20th day of February 2013.