

Cite as Det. No. 14-0335, 34 WTD 231 (2015)

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. 14-0335
)	
... )	
)	Registration No. . . .
)	

[1] WAC 458-20-185(301); RCW 82.26.130(2): TOBACCO PRODUCTS TAX. A tobacco product retailer who fails to keep required invoices of all tobacco products purchased is liable for the tax owed on any uninvoiced tobacco products, pursuant to RCW 82.26.130(2) and WAC 458-20-185(301).

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.

Eckholm, A.L.J. – A retailer of tobacco products disputes an assessment of tobacco products tax. The taxpayer’s petition is denied.<sup>1</sup>

ISSUE.

Whether a retailer of tobacco products who failed to maintain records evidencing its payment of applicable taxes on those purchases is liable for taxes due, pursuant to RCW 82.26.130(2).

FINDINGS OF FACT

[Taxpayer] operates a convenience store and sells tobacco products. On May 31, 2013, the Washington State Liquor Control Board (LCB) investigated the taxpayer’s tobacco product inventory and discovered that the taxpayer was in possession of untaxed tobacco products, and failed to maintain records evidencing payment of applicable taxes on the purchases of those products. The Department of Revenue (Department) Audit Division reviewed the information provided by the LCB and confirmed that the taxpayer’s records did not evidence payment of applicable taxes on the tobacco product purchases. As a result, an assessment was issued against the taxpayer for tobacco product tax, interest, and penalties, in the total amount of \$. . . .<sup>2</sup>

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

<sup>2</sup> Document No. . . . , issued July 26, 2013, included assessments of tobacco products/cigars of \$. . . , moist snuff of \$. . . , interest of \$. . . , and an assessment penalty of \$. . . , for a total amount of \$. . . .

The taxpayer appealed the assessment, asserting that it could provide additional evidence of its tobacco product sales and payment of taxes. The taxpayer also indicated that it was not open for business and engaged in selling tobacco products until July 1, 2012; therefore, the assessment should be adjusted for the period of May through June 2012. At the hearing on appeal, the taxpayer indicated that it would provide evidence of the opening date of its business and that it would welcome the opportunity to meet with the auditor for review of its additional records. The taxpayer was provided the contact information for the auditor. The auditor indicated the taxpayer did not contact him or provide any additional evidence regarding its tobacco product sales. The taxpayer did not provide any additional records on appeal or any evidence to substantiate its assertion regarding its business opening date.

### ANALYSIS

Washington imposes a tax on the distribution and sale of tobacco products in this state. RCW 82.26.020(1). Tobacco product retailers are subject to specific recordkeeping requirements, as follows:

- (1) Every retailer shall procure itemized invoices of all tobacco products purchased. The invoices shall show the seller's name and address, the date of purchase, and all prices and discounts.
- (2) The retailer shall keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section shall be preserved for five years from the date of purchase.
- (3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the tobacco products contained in the retail outlet, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation by the department.

RCW 82.26.080.

A tobacco product retailer who fails to keep required invoices of all tobacco products purchased is liable for the tax owed on any uninvoiced tobacco products. RCW 82.26.130(2).

The Department's administrative rule implementing tobacco product recordkeeping requirements is WAC 458-20-185(301) (Rule 185(301)), which provides, in pertinent part:

Books and records. An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) Distributors. Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be

brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) Retailers. Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

Rule 185(301).

In addition, as a general matter, all taxpayers have the obligation to generate, maintain, and preserve records necessary to establish their tax liability. RCW 82.32.070(1); WAC 458-20-254. As explained in RCW 82.26.120, all of the provisions of chapter 82.32 RCW “shall have full force and application with respect to taxes imposed under the provisions of this chapter.”

Here, the taxpayer did not provide the documentation to substantiate that it had paid the applicable tax on purchases of tobacco products; therefore, it is liable for the tax owed on such purchases. RCW 82.26.130(2). The taxpayer’s petition is denied.

#### DECISION AND DISPOSITION

The taxpayer’s petition is denied.

Dated this 22nd day of October 2014.