

Cite as Det. No. 16-0380, 36 WTD 429 (2017)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 16-0380
)	
...)	Registration No. . . .
)	

[1] RCW 82.32.070; WAC 458-20-254: TAXPAYER’S DUTY TO PRESERVE RECORDS – PROOF OF TAX PAID. A blanket statement by a third-party servicer of vehicle leases that it collected and paid all applicable sales taxes on the vehicle lessor’s behalf is not a suitable record. Such a statement does not allow the Department to verify that retail sales tax was paid on a particular lease, preventing the Department from determining the amount of tax for which the lessor may be liable.

[2] RCW 82.08.050; RCW 82.12.045; WAC 458-20-17802: RETAIL SALES TAX – MOTOR VEHICLE SALES – DESIGNATED AUTHORITY TO COLLECT USE TAX ON VEHICLES. Sales of vehicles are retail sales subject to retail sales tax. The Department may designate its statutory authority for collection of use tax on vehicles to the director of licensing. A seller is not relieved of its responsibility to collect and remit retail sales tax on sales of vehicles simply because the director of licensing is authorized to collect use tax from the buyer if the buyer later registers the vehicle in Washington.

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.

Poley, T.R.O. – An equipment financing company seeks review of an assessment of retail sales tax on leases and sales of equipment and vehicles First, the company claims that third-party loan servicers collected and remitted the applicable retail sales tax on equipment leases. Second, the company claims that although it did not collect retail sales tax when selling used vehicles at auction, purchasers of the used vehicles should have paid use tax when registering the vehicles with other state agencies. . . . The petition is denied in part, granted in part, and remanded for adjustment based on records provided.¹

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

ISSUES

1. Did a finance company provide suitable records, under RCW 82.32.070 and WAC 458-20-254, to show that a third-party collected and remitted retail sales tax on equipment leases?
2. Under RCW 82.08.050, can a vehicle seller avoid personal liability for failure to collect retail sales tax because its purchasers would have to pay use tax, under RCW 82.12.045, when they registered the vehicles in Washington?

...

FINDINGS OF FACT

... (Taxpayer) is [an out-of-state] corporation that formed in 2007. Taxpayer provides financing of vehicles and large industrial equipment through traditional loans and various types of leases. For some leases, Taxpayer owns the property, leases it to a customer, and services the lease payments itself. For other leases, Taxpayer uses a third-party as an agent to service the lease. In the case of a traditional loan, Taxpayer loans funds to a customer to purchase the property and Taxpayer maintains a security interest in the property. As is common in the industry, Taxpayer disposes of leased property at the end of the lease term by selling it, either directly to an individual buyer or at auction.

Taxpayer does not maintain a physical location within Washington, but leases tangible personal property owned by Taxpayer within the state. Some of Taxpayer's disposition sales take place in Washington as well. Taxpayer did not collect retail sales tax on disposition sales that occurred in Washington. Taxpayer also did not collect and remit retail sales tax on leases that were serviced by third parties.

The Department of Revenue's (Department) Audit division (Audit) examined Taxpayer's books and records for the period January 2009 through December 2012. Audit discovered that Taxpayer did not remit retail sales tax as indicated above. Audit also discovered that Taxpayer earned apportionable income in the form of interest and finance charges, which should be reported under the service and other business & occupation (B&O) tax classification. However, Audit found that Taxpayer reported income only under the retail sales tax and retailing B&O tax classification.

...

On November 9, 2015, Audit issued a tax assessment against Taxpayer for unpaid retail sales tax, B&O tax, penalties, and interest. Taxpayer timely requested administrative review of the assessment on December 7, 2015, and provided additional records.

On April 13, 2016, Audit issued a post assessment adjustment (PAA), reducing the total amount due to \$ This amount included \$. . . of tax, \$. . . in original interest through December 9, 2015, \$. . . in delinquent penalty, \$. . . in assessment penalty, and \$. . . in additional interest from December 10, 2015, through the due date of the PAA.

On review, Taxpayer argues that it was not responsible for collecting retail sales tax on leases, claiming that it was not the owner of some of the vehicles. Taxpayer also argues that the third parties, who serviced the leases as an agent of Taxpayer, were responsible for collecting and remitting retail sales tax. To validate this claim and relieve Taxpayer from liability for the retail sales tax, Audit has agreed to accept a Certificate of Use and/or Deferred Sales Tax (Certificate) completed by the third-party servicers.² The Certificate requires an affiant to identify the property sold by invoice, date, purchase price, and description. The Certificate then requires an affiant to describe the tax it paid by amount, date, and the return or document used to remit the tax to the Department. Taxpayer provided several completed Certificates, which Audit accepted. Taxpayer also produced affidavits from several servicers, attesting that “the state and local sales taxes, if applicable, on the assets listed below, were reported and paid when due” or other similar language. Audit did not accept these affidavits.

Additionally, Taxpayer claims that although it did not collect retail sales tax on disposition sales of vehicles in Washington, buyers would have paid use tax on those vehicles when registering them with other Washington agencies. Taxpayer asserts that the Department is attempting to collect tax twice on the same transaction. Taxpayer also claims that it was not the owner or seller of some of the vehicles that are listed as disposition sales in its asset management software because the software is limited in how it classifies receipts.

Taxpayer did provide additional documentation showing that some disposition sales took place [out-of-state] by an auctioneer or were sales to auto dealers for the purpose of resale. After reviewing these records, Audit determined that the documentation was sufficient to permit an adjustment for 17 of the 28 disposition sales included in the PAA. We grant Taxpayer’s petition with respect to this issue and remand it to Audit for the agreed upon adjustment to the PAA.

...

ANALYSIS

Leased property

Washington imposes retail sales tax on each retail sale in this state unless an exemption applies. RCW 82.08.020. “Lease or rental” means “any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.” RCW 82.04.040(3)(a). The term “retail sale” includes leasing of tangible personal property. RCW 82.04.050(4)(a); WAC 458-20-211(6) (Rule 211(6)). A lease involves a contract for a series of transactions, not a single transaction. *Gandy v. State*, 57 Wn.2d 690, 695, 359 P.2d 302 (1961); *see also* Det. No. 14-0008R, 34 WTD 84, 87 (2015). Each lease payment is thus a separate retail sale subject to retail sales tax. RCW 82.08.020; RCW 82.08.010; Rule 211(6).

It is the seller’s responsibility to collect retail sales tax from the buyer, and if the seller fails to do so, the seller is personally liable for the amount of tax. RCW 82.08.050. The term “seller” is

² Audit informed Taxpayer that it would only accept proof that a third-party collected and remitted RST for periods included in the assessment. Audit instructed Taxpayer that for future periods, Taxpayer was responsible for collecting and remitting the tax to the Department directly and would not accept a Certificate in the event of a future audit.

defined as “every person . . . making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal” RCW 82.08.010(2)(a).

Here, Taxpayer is the owner of property leased by customers. While third parties service the leases, the lease agreements are between Taxpayer and its customers. Taxpayer may direct its customer to pay lease payments to the third-party servicer as agent, but the servicer is not making the sale as an agent. As a “seller,” Taxpayer was required to collect and remit retail sales tax on each lease payment.

Taxpayer claims that it did not actually own some of the vehicles that it leased to customers. However, this claim is unconvincing as Taxpayer’s asset management software lists disposition sales for the same vehicles that Taxpayer claims it does not own. Moreover, as the lessor, Taxpayer is the “seller” of the lease transactions. *Gandy*, 57 Wn.2d at 695; 34 WTD at 87; Rule 211(6).

RCW 82.32.070 requires every person liable for payment of excise taxes to keep and preserve suitable records in order to determine the amount of any tax for which the taxpayer may be liable. This includes records that will demonstrate the amount of gross receipts and sales from all sources; the amount of all deductions, exemptions, credits, and refunds claimed; and the payment of retail sales tax or use tax. WAC 458-20-254(3)(b). A taxpayer must also keep its federal and state tax returns, and all documents and data used in the preparation of such returns. WAC 458-20-254(3)(c).

Taxpayer claims that its third-party servicers collected and remitted retail sales tax for leased property during the audit period. Audit has agreed in this limited instance to accept a completed Certificate from these third parties to show that Taxpayer’s customers paid retail sales tax and the retail sales tax was remitted to the Department.

Instead of completing a Certificate, however, several servicers wrote a generic affidavit that did not contain the data points required on the Certificate. While Taxpayer is not required by statute to use the Certificate form, the Department needs the information required by the form in order to relieve Taxpayer of its retail sales tax liability. *See* WAC 458-20-254(3); RCW 82.32.070. A blanket statement by a servicer that it reported and paid all applicable sales taxes on Taxpayer’s behalf is not a suitable record under RCW 82.32.070(1). Such a statement does not allow Audit to verify that retail sales tax was paid on a particular lease, preventing Audit from determining the amount of tax for which Taxpayer may be liable. *Id.* Thus, we find that Taxpayer has not proven it should be excused from paying retail sales tax in this instance.

Accordingly, we conclude that Taxpayer is liable for retail sales tax on the amount of each lease payment while the leased property is located in Washington. The affidavits produced by Taxpayer do not contain sufficient information in order to relieve Taxpayer of its liability for retail sales tax.

Disposition Sales

As stated above, Washington imposes retail sales tax on each retail sale that occurs within this state, unless an exemption applies. RCW 82.08.020. The sale of tangible personal property is a retail sale. RCW 82.04.050(1)(a). The retail sales tax is to be collected by the seller, and if any

seller fails to collect the retail sales tax, the seller is personally liable for the amount of the tax. RCW 82.08.050(2). This personal liability in RCW 82.08.050 applies whether the failure to collect retail sales tax “is the result of the seller’s own acts or the result of acts or conditions beyond the seller’s control” RCW 82.08.050(3). We have consistently recognized a seller’s statutory responsibility for retail sales tax. Det. No. 05-0059, 24 WTD 430 (2005) (citing prior determinations and cases); *see also* Det. No. 14-0412, 34 WTD 386 (2015).

Here, Taxpayer disposed of vehicles it owned by selling them directly to purchasers in Washington.³ The disposition sale of a vehicle is the sale of tangible personal property and is subject to retail sales tax. Taxpayer did not collect retail sales tax on these sales, but Taxpayer is nevertheless responsible for remitting the retail sales tax to the Department.

Taxpayer claims that it should not be liable for the uncollected retail sales tax because any purchaser of Taxpayer’s vehicles would be required to pay use tax upon registering the vehicle with other state agencies. Taxpayer cites to RCW 82.12.045(1), which states:

In the collection of the use tax on vehicles, *the department of revenue may designate* the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for transfer of certificate of title to the vehicle

(Emphasis added). The statute further provides that these collection duties “*may be performed* by the director of licensing” as well. RCW 82.12.045(6) (emphasis added).

The Department adopted WAC 458-20-17802 (Rule 17802) to explain the measure of use tax upon the transfer of a vehicle acquired without the payment of retail sales tax. Rule 17802(1) states, “This rule does not relieve a seller registered with the department of the statutory requirement to collect sales tax when selling tangible personal property, including vehicles.”

The statutory authority for assessment and collection of use tax on vehicles was explicitly granted to the Department. RCW 82.32.300; Det. No. 13-0237R, 33 WTD 349 (2014). While the permissive language in RCW 82.12.045 indicates that the Department may delegate collection of the tax to other agencies, it does not preclude the Department from exercising its authority to assess and collect both retail sales tax and use tax from responsible parties. It also does not excuse a seller, under RCW 82.08.050, from its statutory responsibility to collect retail sales tax and from personal liability for the tax when it fails to do so.

The Department is not obligated to look to see if a buyer paid use tax when registering a vehicle sold by Taxpayer. However, Audit did search vehicle registration records for those vehicles sold by Taxpayer without collecting retail sales tax.⁴ Of the vehicles identified by Audit, only nine had

³ For instances where an auctioneer sold vehicles on Taxpayer’s behalf, Taxpayer is not liable for the retail sales tax. WAC 458-20-159. As described above, Audit has agreed to adjust the assessment where Taxpayer provided documents proving a vehicle was sold at auction by an auctioneer.

⁴ Pursuant to a sharing agreement between the Department and Washington’s Department of Licensing, Audit has permission in limited instances to search a database of electronic vehicle records.

paid use tax upon registering the vehicle in Washington. Audit did not assess retail sales tax on vehicle disposition sales when a buyer paid use tax on the vehicle subsequent to the sale.

Finally, as cited previously, taxpayers are [required] to keep and preserve suitable records in such a manner that their tax liabilities can be determined. RCW 82.32.070; WAC 458-20-254(3)(b). Taxpayer claims that its asset management software is limited in how it classifies receipts. Taxpayer's software lists disposition sales of vehicles that Taxpayer claims it did not own and did not sell. However, Taxpayer's choice of computer software does not absolve its responsibility to keep suitable records. As Taxpayer has not provided evidence that it was not the seller of these vehicles, we find that Audit had a right to rely on Taxpayer's books and records of sales.

For all of the above reasons, we conclude that Audit was within its authority to proceed against Taxpayer for uncollected retail sales tax on disposition sales.

...

DECISION AND DISPOSITION

Taxpayer's petition is denied in part and granted in part.

Dated this 6th day of December 2016.