

Cite as Det. No. 17-0003, 36 WTD 524 (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. 17-0003
)	
...)	Registration No. . . .
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...)	Registration No. . . .
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[1] Rule 173; RCW 82.04.050(1)(a); RCW 82.08.190(3); RCW 82.08.195(1): RETAIL SALES TAX – BUNDLED TRANSACTIONS – ONE NONITEMIZED PRICE – PRICE LIST – AUTOMOBILE REPAIR SERVICES – SERVICE KITS – CLEANING AND REPLACEMENT FLUIDS. Purchases of services kits used in automobile repair services are not bundled transactions subject to retail sales tax on the entire purchase price, if the price for each item in the service kit is separately identified, by product, on binding sales or other supporting sales-related documentation made available to the purchaser in paper or electronic form. Suitable documentation includes, but is not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

[2] Rule 173; RCW 82.04.050(2)(a); RCW 82.04.190(2)(c); RCW 82.08.020; RCW 82.12.020: USE TAX AND/OR DEFERRED SALES TAX – CONSUMER – PURCHASES FOR RESALE – CAR WASH SERVICES. Automobile dealers are the consumers of on-site fleet car wash services for the vehicles they hold as inventory available for sale to customers. Purchases of such services are subject to use tax and/or retail sales tax, and are not wholesale purchases for “resale in the ordinary course of business.”

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.

LaMarche, T.R.O. – Two affiliated Washington state auto dealerships located in . . . County (Taxpayer A) and . . . County (Taxpayer B), respectively, petition for adjustment of their assessments as follows: 1) both dealerships dispute the assessment of use tax and/or deferred sales tax on certain “service kits” they purchased, arguing that the purchase price of the kits can be bifurcated between retail and wholesale components and should not be taxed as bundled transactions; [and] 2) both dealerships dispute the assessment of use tax and/or deferred sales tax

on car wash services they purchased, arguing that the purchases were for resale. . . . We grant the petitions as to the issue of the service kits and remand to the Audit Division, and deny the petitions as to the remaining issue.¹

ISSUES

1. Under RCW 82.08.190, 82.08.195, and WAC 458-20-173, are Taxpayers' purchases of "service kits," which include cleaners that Taxpayers consume and replacement fluids that Taxpayers resell, bundled transactions subject to retail sales tax?
2. Under RCW 82.04.060 and WAC 458-20-173, are Taxpayers' purchases of car washing services, for vehicles they held in inventory, wholesale purchases not subject to use tax and/or deferred sales tax?

...

FINDINGS OF FACT

... (Taxpayer A), is located in ... County, Washington, and sells new and used vehicles, vehicle parts, vehicle repair services, extended warranties, gap insurance, and service contracts. Taxpayer A operates as an automobile dealership under a [Manufacturer] franchise agreement.

... (Taxpayer B), an affiliate of Taxpayer A, is located in ... County, Washington. Like Taxpayer A, Taxpayer B's business activities in Washington State includes sales of new and used motor vehicles, vehicle parts, vehicle repair services, extended warranties, gap insurance, and service contracts. Similarly, Taxpayer B operates as an automobile dealership under a [Manufacturer] franchise agreement.

The Audit Division (Audit) of the Department of Revenue (Department) conducted two simultaneous audits of the affiliates, Taxpayer A: Audit No. . . . , and Taxpayer B: Audit No. The period audited for both was January 1, 2011, through March 31, 2015 (Audit Period).

On December 11, 2015, in conjunction with Audit No. . . . , the Department issued an assessment against Taxpayer A for the periods of January 1, 2011, through March 31, 2015, Document No. . . . , in the amount of \$. . . , which consisted of \$. . . in service and other activities B&O tax; \$. . . in use tax and/or deferred sales tax; and \$. . . in interest. The assessment was not paid, but Taxpayer A timely filed a petition.

On December 11, 2015, in conjunction with Audit No. . . . , the Department issued an assessment against Taxpayer B for the periods of January 1, 2011, through March 31, 2015, Document No. . . . , in the amount of \$. . . , which consisted of \$. . . in retail sales tax; \$. . . in service and other activities B&O tax; \$. . . in use tax and/or deferred sales tax; \$. . . in motor vehicle sales tax; and \$. . . in interest. The assessment was not paid, but Taxpayer B timely filed a petition.

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

Because the taxpayers are affiliates, and have common issues and similar facts, the Department consolidated the cases.

Service Kits. During the Audit Period Taxpayers purchased “service kits” from a vendor, which consisted of different types of system cleaners and replacement fluids that Taxpayers used when servicing their customers’ vehicles. Taxpayers’ automotive services include “flushing” and cleaning of existing fluids using the system cleaners in the kits, and subsequent replacement with new fluids, also from the kits. Taxpayers did not pay retail sales tax or use tax on their purchases of the service kits. Audit imposed use tax and/or deferred sales tax on purchases of the service kits, inclusive of both cleaning fluids and replacement fluids, on the basis that the purchases were bundled transactions. The details are provided in Audit Report (Taxpayer A) Schedule 3A & Workpaper A, and Audit Report (Taxpayer B) Schedule 5 & Workpaper B.

Taxpayers claim that the purchase price for service kits can be bifurcated into retail and wholesale components. Taxpayers assert that only the portion of the price for each service kit attributable to the cleaners should be subject to use tax and/or deferred sales tax, and that purchases of the replacement fluids in the kits should be separately treated as wholesale purchases, on the basis that Taxpayers resell the replacement fluids to their customers. In support of their assertion, Taxpayers provided documents from the service kit vendor showing each kit number, and a description, price, and part number for each product in the kits. (*see* Taxpayer A correspondence March 12, 2016, and Taxpayer A petition, Exhibits J, K, and L); (*see* Taxpayer B petition, Exhibits J, K, and L). At the hearing on July 7, 2016, Taxpayers stated that price markups are consistent across all products (replacement fluids) in the kits that Taxpayers resell to their customers.

Car Washes. During the Audit Period, Taxpayers purchased on-site fleet car wash services for the vehicles Taxpayers held as inventory available for sale to customers. Taxpayers did not pay retail sales tax or use tax on those purchases. Audit imposed use tax and/or deferred sales tax on the purchases, on the basis that Taxpayers were the consumers of the car wash services. The details are provided in Audit Report (Taxpayer A) Schedule 3A & Workpaper A, and Audit Report (Taxpayer B) Schedule 5 & Workpaper B.

Taxpayers assert that their purchases of car wash services were wholesale in nature because they constituted purchases for resale.

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ANALYSIS

1. Service Kits

Washington State imposes sales tax on all sales of tangible personal property within the RCW 82.04.050 definition of “retail sale,” unless an exemption or exclusion applies. RCW 82.08.020; RCW 82.04.050. RCW 82.12.020 imposes a use tax “for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail” on which Washington retail sales tax has not been paid, unless an exemption or exclusion applies.

Here, Taxpayers do not dispute the assessment of use tax and/or deferred sales tax on cleaning fluids in the service kits, nor does Audit dispute that the replacement fluids in the kits were resold to Taxpayers' customers. However, Taxpayers assert that their service kit purchases are not bundled transactions subject to sales tax on the entire purchase price, inclusive of both cleaning fluids and replacement fluids. Instead, Taxpayers argue, the portion of the purchase price attributable to the replacement fluids should be treated separately as a purchase for resale not subject to retail sales tax pursuant to RCW 82.04.050(1)(a).

Under RCW 82.08.195(1), a bundled transaction is subject to retail sales tax "if the retail sale of any of its component products would be subject to [retail sales] tax" RCW 82.08.190(1)(a) defines a "bundled transaction" as "the retail sale of two or more products . . . where: (i) [t]he products are otherwise distinct and identifiable; and (ii) [t]he products are sold for one nonitemized price." RCW 82.08.190(1)(a).

RCW 82.08.190(3) states that "one nonitemized price" does *not* include:

[A] price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(Emphasis provided.)

After filing their petitions, Taxpayers provided documents from the service kit vendor showing each kit number, and a description, price, and part number for each product in the kits. We conclude that these documents constitute a "price list"² for purposes of RCW 82.08.190(3) and, therefore, we agree with Taxpayer that its purchases of service kits are not bundled transactions. Instead, each item in the service kits should be taxed as a separate line item. Audit concurs and agrees to a remand to allow Taxpayers the opportunity to provide purchase invoices corresponding to the items on Taxpayer A's Schedule 3A & Workpaper A, and Taxpayer B's Schedule 5 & Workpaper B, in order to calculate the correct amount of tax due.

Accordingly, we grant the petition as to this issue, and remand to the Audit Division for possible adjustments.

2. Car Washes

RCW 82.04.050 defines as a retail sale the activities associated with car washes, and states as follows:

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

² [The vendor must have made the "price list" available to Taxpayers contemporaneously with or at the time of the sales, or included the itemized information on the bills or invoices provided to Taxpayers.]

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, . . .

RCW 82.04.050(2)(a) (emphasis provided).

RCW 82.04.190 defines “consumer,” in relevant part, as follows:

(2)(c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business³

RCW 82.04.190(2)(c) (emphasis provided).

Therefore, unless Taxpayers can show that they purchased car wash services for the purpose of “resale in the regular course of business,” Taxpayers are “consumers” of the car wash services they purchased under RCW 82.04.190(2)(c), and those purchases are subject to use tax and/or deferred sales tax. RCW 82.08.020; RCW 82.04.050(2)(a); RCW 82.12.020; RCW 82.04.190(2)(c).

Here, Taxpayers purchased on-site fleet car wash services for the vehicles they held as inventory available for sale to customers. However, Taxpayers’ purchases of car washes are a normal business expense incurred to maintain the appearance of vehicles in inventory, and to prevent damage from grit and dust to existing paint and components. . . . Taxpayers are in the business of selling automobiles, not the resale of car wash services, and their purchases of car wash services are not purchases for resale in the regular course of business under RCW 82.04.190(2)(c).

...

Because Taxpayers, rather than their customers, were consumers of the car wash services at issue, Taxpayers’ purchases are retail transactions under RCW 82.04.050(2)(a). Therefore, Taxpayers are liable for use tax and/or deferred sales tax on those purchases. RCW 82.04.050(2)(a); RCW 82.12.020; RCW 82.08.050. Accordingly, we uphold the assessment and deny the petition with regard to this issue.

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DECISION AND DISPOSITION

We grant the petitions in part, and deny them in part.

Dated this 6th day of January 2017.

³ We note that Taxpayers cite to RCW 82.04.060(1)(b), which provides, in part, that a wholesale sale includes “[a]ny sale, which is not a sale at retail, of . . . [s]ervices defined as a retail sales in RCW 82.04.050(2)(a)” (Emphasis provided.) As we shall discuss, Taxpayers’ purchases of carwash services *are* retail transactions because Taxpayers are the consumers of those services, therefore RCW 82.04.060 does not apply.