

Cite as Det. No. 18-0205, 38 WTD 272 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 18-0205
)	
...)	Registration No. . . .
)	

WAC 458-20-262; RCW 82.08.050(7); RCW 82.08.02745: RETAIL SALES TAX – EXEMPTION – EXEMPTION CERTIFICATE. Taxpayer’s acceptance of a fully completed Agricultural Employee Housing Exemption Certificate relieves it of personal liability for uncollected retail sales tax and Taxpayer had no statutory duty to investigate the validity of the exemption being claimed by the buyer.

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.

Casselman, T.R.O. (as successor to Stojak, T.R.O.) – A construction contractor (Taxpayer) protests the Department of Revenue’s disallowance of a retail sales tax exemption certificate that Taxpayer accepted for a contract to build agricultural employee housing. We grant Taxpayer’s petition in part and deny the petition in part.¹

ISSUES

1. Whether Taxpayer’s acceptance of an Agricultural Employee Housing Exemption Certificate from a buyer relieves it of personal liability for uncollected retail sales tax under RCW 82.08.050(7)(b).
2. Whether Taxpayer is required to remit . . . retail sales tax [it collected in error] to the Department under RCW 82.08.050 and WAC 458-20-217.

FINDINGS OF FACT

Taxpayer is a construction contractor located in . . . Washington. Taxpayer specializes in constructing custom homes, but also provides other construction and remodeling related services. In August of 2015, [a non-profit corporation (Nonprofit)] hired Taxpayer to build two homes, on land owned by [Nonprofit], in the . . . Washington area. The contract for work was signed by Taxpayer and [the] Executive Director of [Nonprofit] at that time. Taxpayer had not previously

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

done work for [Nonprofit], so Taxpayer met with [the Executive Director], who explained the program to Taxpayer.

At the start of the project, [Nonprofit] provided to Taxpayer a “Farmers’ Certificate for Wholesale Purchases and Sales Tax Exemptions” . . . signed by [the Executive Director].² The exemption certificate appeared to Taxpayer to be fully completed, and Taxpayer accepted it. The Farmers’ Certificate contains ten types of retail sales tax exemptions and requires the appropriate box be checked. In this case, Agricultural Employee Housing was checked as the claimed exemption. The Farmers’ Certificate that Taxpayer offered to the Department contained the following information (with the responses shown in italics):

Page 1:³

Items purchased:

The retail sales tax exemption is available for these items:

- *Constructing, repairing, decorating, or improving new or existing buildings or structures used as agricultural employee housing.*
- *Tangible personal property that becomes an ingredient or component of a building or structure used as agricultural employee housing during the course of the construction, repairing, decorating, or improving.*

Is the agricultural employee housing being built on agricultural land? Yes No

If yes, please provide parcel number:

Page 2:

Tax Registration Number (TRA) (if applicable): . . .

Type of Entity Individual/Sole Proprietor Corporation LLC/LLP Partnership
 Other (explain)

Name of Buyer: . . .

Farm Name:

Mailing Address: . . .

Authorized Signature: . . .

Date: *3/9/11*

Title: *Executive Director*

Phone Number: . . .

The Farmers’ Certificate contained the following notice after the data element section:

A seller who accepts this completed certificate is relieved of the responsibility to collect retail sales or use tax unless the seller fraudulently fails to collect the tax or solicits the purchaser to participate in unlawfully claiming the exemption.

² The exemption certificate provided by Taxpayer in connection with this review appears to be a prior version of the exemption certificate currently on the Department website. Nevertheless, the data elements shown on the exemption certificate in the “Retail Sales Tax Exemption” section are identical to those on the current form. The current Department form, Farmers’ Certificate for Wholesale Purchases and Sales Tax Exemptions, can be found on the Department website at:

<https://dor.wa.gov/sites/default/files/legacy/Docs/forms/ExcsTx/ExmptFrm/FarmersRetailSlTsTxExmptCert.pdf>, (site last visited June 27, 2018).

³ Taxpayer received the form condensed into one page. The one page contained all relevant data elements. In the current Department form, an introductory question is whether the certificate is for “single use” or “blanket” use.

Seller must retain a copy of the certificate.
Do not send to the Department of Revenue.

(Emphasis in original.)

As all fields that were applicable to the project appeared to be completed, Taxpayer accepted the exemption certificate and did not charge [Nonprofit] sales tax[, except for an inadvertent charge of \$. . . ,] on the construction of the two homes. . . . [Nonprofit] paid this amount . . . to Taxpayer, and Taxpayer failed to remit this amount to the Department.

The Department audited Taxpayer's records for the period of January 1, 2014, through June 30, 2017 (audit period). A supervisory conference was held on August 1, 2017, at the Department's . . . field office. After the conference, the Department's Audit Division (Audit) sent Taxpayer a letter, also dated August 1, 2017, advising Taxpayer of its final decision. In this letter, the Department wrote in part,

Invoices charged to [Nonprofit] had retail sales tax charged, although at a small rate of .0012. [Nonprofit] paid the sales tax to [Taxpayer]. The auditor noted that sales tax had been charged, but at the wrong rate. As a result, the Auditor disallowed the exemption from retail sales tax on these two projects. The customer, [Nonprofit], later provided an Agricultural Employee Housing Exemption Certificate.

The letter then continued with no discussion of the exemption certificate. Rather, the letter only analyzed [Nonprofit's] eligibility for the exemption under RCW 82.08.02745. The letter in conclusion states that because [Nonprofit] did not qualify for the exemption, Taxpayer owes sales tax on the [Nonprofit] projects.⁴ Based on its audit findings, on August 18, 2017, Audit issued an assessment for \$⁵

Taxpayer timely sought administrative review of the assessment and filed a petition dated August 12, 2017. On October 18, 2017, Taxpayer submitted additional documentation to the Department. Included was a second Department exemption certificate, titled "Agricultural Employee Housing Exemption Certificate"⁶ dated July 12, 2017, and signed by the current Executive Director of [Nonprofit]. All fields are completed on this exemption certificate.

ANALYSIS

Washington imposes retail sales tax on each retail sale in this state unless an exemption applies. RCW 82.08.020. The term "retail sale" includes services rendered in respect to the construction, improvement, or repair of new or existing buildings or other structures, under, upon, or above real

⁴ The Department has determined that [Nonprofit] does not qualify for the exemption found in RCW 82.08.02745.

⁵ The assessment, Document No. . . . , consisted of \$. . . of retail sales tax, a credit of \$. . . of retailing B&O tax, \$. . . of wholesaling B&O tax, \$. . . of service and other activities B&O tax, \$. . . of use tax and/or deferred sales tax, and \$. . . of interest.

⁶ The current Department form, Agricultural Employee Housing Exemption Certificate, can be found at <https://dor.wa.gov/legacy/Docs/forms/ExcsTx/ExmptFrm/AgriculturalEmpHsngExmptCert.pdf>, and contains data elements that are the same as the data elements captured in the 2011 exemption certificate provided by Taxpayer. (Site last visited June 29, 2018.)

property of or for consumers. RCW 82.04.050(2)(b). The retail sales tax rate is applied to the selling price of each retail sale. RCW 82.08.020(1).

Retail sales tax is considered a debt from the buyer to the seller. RCW 82.08.050(8). “Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax.” RCW 82.08.050(10).

1. Taxpayer’s acceptance of an Agricultural Employee Housing Exemption Certificate from [Nonprofit] relieves it of personal liability for uncollected retail sales tax under RCW 82.08.050(7)(b).

RCW 82.08.050(7)(a) relieves sellers from retail sales tax liability if they obtain a fully completed exemption certificate within ninety days subsequent to the date of sale. Even if a seller does not obtain an exemption certificate within ninety days of the sale, RCW 82.08.050(7)(b) allows the seller, within one hundred-twenty days after a Department request, to obtain a fully completed exemption certificate from the purchaser, if the certificate is taken in good faith. RCW 82.08.050(7) provides:

(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

RCW 82.08.050(7). Thus, a taxpayer may prove the nontaxable nature of a transaction (using an exemption certificate or other means) within 90 days of the sale, 120 days of the Department’s request, or a longer period as provided by Department rule. RCW 82.08.050(7).

Taxpayer accepted an exemption certificate for the cost to construct homes for [Nonprofit]. The exemption claimed is found in RCW 82.08.02745, which provides that retail sales tax “shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing” RCW 82.08.02745(1).

The Department adopted WAC 458-20-262 (Rule 262) to implement RCW 82.08.02745. As a condition of the exemption, Rule 262(3)(a)(iv) requires a buyer to provide the seller with an exemption certificate. Rule 262 provides:

As a condition for exemption, the seller must take from the buyer an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "**Farmers' Retail Sales Tax Exemption Certificate**" which can be found:

.....

- (A) From the department's internet site at <http://dor.wa.gov>;
- (B) By calling taxpayer services at 1- 800-647-7706; or
- (C) By writing to:
Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be retained by the seller for a period of at least five years. An exemption certificate may be provided for a single purchase or for multiple purchases over a period of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050(7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest.

Rule 262(3)(a)(iv).

Taxpayer complied with RCW 82.08.050(7)(a) when it accepted the 2011 Farmers' Retail Sales Tax Exemption Certificate. All required data elements were captured. First, [Nonprofit] identified the retail sales tax exemption as Agricultural Employee Housing (number 7 on page 1 of the Department form). Second, [Nonprofit] identified the items purchased and indicated the employee housing was not being built on agricultural land. Third, all items were completed on page two of the Document form. Audit contends that because the date to the right of the signature block predates the project, the form is not "fully completed." There is no statutory support for this assertion.

Taxpayers have no statutory duty to investigate the validity of the exemption being claimed by the buyer, only to obtain a "fully completed" exemption form. Rule 262 does not place a burden of policing the acceptance of exemption certificates on the seller. Rule 262 simply provides that a seller take from the customer a completed exemption certificate. In disallowing the exemption certificate based on the fact that the buyer did not qualify for the exemption, the Audit Division has imposed upon the seller a burden to investigate and conclusively determine the buyer's

eligibility for an exemption. Such a strict liability burden is neither contained in the law nor the rule.⁷ . . .

Assuming *arguendo* that the Farmers' . . . Certificate was incomplete because of the 2011 date on the form, Taxpayer would have one hundred-twenty days after the Department requested additional documentation, to provide a valid exemption certificate. Taxpayer did just that. The Department met with Taxpayer on August 1, 2017, and informed Taxpayer that the Department did not consider the 2011 Farmers' . . . Certificate to be a "fully completed" exemption certificate. Audit issued its assessment on August 18, 2017. Taxpayer obtained the 2017 Exemption Certificate and presented this to the Department on October 18, 2017. It is undisputed that the Exemption Certificate dated July 12, 2017, is "fully completed." Because RCW 82.08.050(7)(b) clearly provides a seller one hundred-twenty days *after* a Department request to provide substantiation documentation, Taxpayer is entitled to relief on this issue.

2. Taxpayer is required to remit the . . . amounts [collected in error] to the Department under RCW 82.08.050 and WAC 458-20-217.

Retail sales taxes collected by a seller are "deemed to be held in trust by the seller until paid to the department." RCW 82.08.050(2). "Inherent in RCW 82.08 is the fact that taxes collected in the name of the state are not [the] property of the seller." *Kitsap-Mason Dairymen's Association v. Tax Commission*, 77 Wn.2d 812, 817, 467 P.2d 312, 316 (1970) The taxpayer in *Kitsap* improperly over-collected retail sales tax from its customers and failed to remit the over-collected tax to the state. The Washington State Supreme Court rejected the taxpayer's argument that "the amount of money collected in taxes is unimportant because it is liable to remit only the tax found due" *Id.* at 816. The *Kitsap* court went on to say that "[t]he integrity of the entire taxing system demands that funds collected as taxes be remitted to the state." 77 Wn.2d at 817, 467 P.2d at 316 Like the taxpayer in *Kitsap*, Taxpayer here must remit the full amount of taxes collected from its purchasers, regardless of whether it collected the tax from [Nonprofit] in error. Accordingly, Taxpayer is not entitled to retain the retail sales tax it collected in error.

DECISION AND DISPOSITION

We grant Taxpayer's petition in part and deny in part. Taxpayer is relieved from retail sales tax liability because it obtained a fully completed exemption certificate. Taxpayer is not entitled to retain the retail sales tax it collected in error.

Dated this 27th day of July 2018.

⁷ [This does not mean the tax will go uncollected. If a seller accepts an exemption certificate from a buyer, and the Department later determines the buyer did not qualify for the exemption, the Department may, in its discretion, proceed directly against the buyer for collection of the tax. RCW 82.08.050(10).]