

Cite as Det. No. 18-0208, 38 WTD 278 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
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)	No. 18-0208
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RCW 82.08.050: BUYER TO PAY, SELLER TO COLLECT TAX. Taxpayer is not entitled to a refund of retail sales tax remitted from the ticket sales for its 4-D ride simulations because Taxpayer’s website advertised ticket prices as including tax.

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.

Peña, T.R.O. – Operators of 4-D rides protest the Department’s denial of their requests for refunds of retail sales tax remitted from ticket sales. The petitions for refund are denied.¹

ISSUE

Are ride operators entitled to refunds of retail sales tax remitted from the ticket sales for its 4-D rides under RCW 82.08.050?

FINDINGS OF FACT

[Taxpayer 1] and [Taxpayer 2] operated 4-D virtual reality roller coaster ride simulations . . . from February 2012 through June 2013, and from July 2013 through December 2016, respectively, at two locations in Washington [Taxpayer 1] and [Taxpayer 2] no longer operate [these] rides.²

[Taxpayer 1, under a separate tax account,] began operating [rides] in January 2011 and currently operates such . . . rides at three locations in the United States, including one Washington location

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

² [Taxpayer 1] closed account . . . on June 30, 2013, and [Taxpayer 2] closed account . . . on December 31, 2016.

During the relevant time, [Taxpayer 2] and [Taxpayer 1] (collectively, the “Taxpayers”) sold individual tickets and punch cards for the 4-D rides. Taxpayers both used the same website³ (“Website”) to advertise their 4-D rides.

On May 30, 2017, Taxpayers requested a binding written tax ruling from the Department’s Taxpayer Information and Education Division (“TI&E”), asking whether they were required to collect retail sales tax on the sales of ride tickets. On all previous returns, Taxpayers filed and paid retailing [business and occupation (“B&O”)] tax and retail sales tax.

TI&E responded to Taxpayers on June 7, 2017, that [a ticket sale for the ride simulator] was not a sale at retail as defined in RCW 82.04.050 and, therefore, Taxpayers were not required to collect retail sales tax and were subject to service and other activities [B&O] tax. [Taxpayer 1] began filing and paying service and other [activities] B&O tax (and no retail sales tax), beginning with its May 2017 excise tax return.

On July 5, 2017, Taxpayers attempted to file amended returns for the statutory period (January 1, 2013, through July 5, 2017) that reported income under the Service and Other B&O Tax Classification and paid service and other [activities] B&O tax (without retail sales tax). Taxpayers submitted spreadsheets demonstrating the estimated refund by month for each account. Taxpayers also included scanned copies of ticket receipts from 2014 – 2016 for each of the three accounts. The receipts show one individual charge for “General” and do not show an itemized charge for retail sales tax.

The Department’s Taxpayer Account Administration (“TAA”) denied Taxpayers’ requests for refunds, citing the Website as evidence that Taxpayers were collecting retail sales tax from customers. TAA submitted a screen shot of the Website’s “Pricing” page from July 6, 2017. It included the following language, all in the same print size:

Prices
General \$. . . – \$. . . / person,
include tax
5 – 7 yrs, Senior \$. . . / person,
include tax age 4 & under free

The page does not specify a ride location. TAA’s refund denial message for [Taxpayer 1’s] account stated that once the taxpayer deleted the tax language, it would no longer owe retail sales tax.

Taxpayers petition for review of TAA’s denial of a refund of retail sales tax paid before December 2016, because Taxpayers claim the Website was created on December 12, 2016. Taxpayers further claim the person that created the Website included the retail sales tax language and that Taxpayers’ accountant reported that Taxpayers collected retail sales tax, both without consulting Taxpayers. As relevant here, a version of the Website has existed since at least May 17, 2014.⁴ Taxpayers also submitted new spreadsheets demonstrating the estimated refund by month for each account and

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copies of what [they] state are the signs that appear at the physical locations. The signs do not include any mention of retail sales tax.

In response to Taxpayers' petitions, TAA states that when it viewed the Website on September 8, 2017, the Website no longer stated that retail sales tax was included in the cost of a ticket to the [Washington] location. The Website currently states "\$. . . / No tax" for the [Washington] location, "\$. . . / No tax" for the [Out-of-State 1] location, and "\$. . . / Include tax" for the [Out-of-State 2] location.⁵ The prices "No Tax" and "Include Tax" appear in the same print size.⁶

ANALYSIS

Persons making retail sales must collect and remit retail sales tax, unless a specific exclusion or exemption applies. RCW 82.08.020 and RCW 82.08.050. [RCW 82.08.050(9) generally requires that retail sales tax be stated separately from the sales price.] The statute presumes that the selling price stated on an invoice or other "sales document" between the buyer and seller does not include retail sales tax, but "if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price may not be considered selling price." RCW 82.08.050(9). A seller may advertise the price as including the tax by including the words "tax included" immediately following the advertised price in print size at least as half as large as the advertised price. RCW 82.08.055(1); WAC 458-20-107(3)(a)(i).

RCW 82.32.060(1) authorizes the Department to issue refunds upon application by the taxpayer where the Department determines that taxes have been paid in excess of that properly due within the statutory period. Generally, "no refund of credit shall be made for taxes, penalties, or interest paid more than *four years* prior to the beginning of the calendar year in which the refund application is made" (emphasis added). RCW 82.32.060(1), (2). Here, Taxpayers' requests for refunds are within the statutory period. If we determine that Taxpayer has paid retail sales tax in excess of that properly due, then Taxpayer will be entitled to a refund.

When a seller collects retail sales tax from customers, the amounts of such tax are held in trust before the seller remits them to the Department. In *Kitsap-Mason Dairymen's Ass'n v. Wash. Tax Comm'n*, 77 Wn.2d 812, 817, 467 P.2d 312 (1970), the Washington Supreme Court explained the unique nature of the retail sales tax scheme: "Inherent in RCW 82.08 is the fact that taxes collected in the name of the state are not property of the seller The integrity of the entire taxing system demands that funds collected as taxes be remitted to the state." Retail sales taxes collected from customers are "paid" by those customers for purposes of RCW 82.32.060. Thus, where a seller has erroneously collected retail sales tax from customers, the seller must, first, refund the retail sales tax collected in error to its customers and then seek a refund or credit from the Department. Det. No. 87-110, 3 WTD 21 (1987); WAC 458-20-229(4)(a).

However, in the case where a seller does not collect retail sales tax from customers but erroneously remitted retail sales tax to the Department, a seller is considered to have "paid" the retail sales tax under RCW 82.32.060. 3 WTD 21 (Taxpayer entitled to a refund of retail sales tax because it "absorbed" the retail sales tax, i.e., it did not collect the retail sales tax from its customers but still

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remitted the retail sales tax to the Department). Thus, a seller may seek a refund from the Department of such amounts of retail sales tax paid in excess of that properly due. RCW 82.32.060.

The issue before us is whether Taxpayers are entitled to a refund of the retail sales tax remitted to the Department during the statutory period. It is undisputed that Taxpayers *remitted* retail sales tax, but the question remains whether Taxpayers *collected* retail sales tax from customers, erroneously or not, within the statutory period.

In support of Taxpayers' position that it did not collect retail sales tax from customers, Taxpayers submitted copies of receipts for its 4-D rides. Each receipt includes items labeled "General" and does not mention retail sales tax. Likewise, the signs Taxpayers submitted do not mention retail sales tax. In contrast, Taxpayers advertised on the Website that the ticket prices included tax, in a print size at least as half as large as the advertised price as required by RCW 82.08.055(1) and WAC 458-20-107(3)(a)(i). Taxpayers claim the Website was created on December 12, 2016; however, historical website archives show the Website existed well before then.⁷ [Granted], the limited cached versions of the Website available⁸ do not allow us to determine when this language originated on the Website.

Taxpayers claim that they were not aware of either the representation on the Website that Taxpayers collected retail sales tax as part of the ticket price or that its accountant was remitting retail sales tax to the Department. Taxpayers have not provided any documents or records in support of these claims. In Washington, Taxpayers are responsible to know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the Department, as they did in this instance. RCW 82.32A.030(2); Det. No. 01-165R, 22 WTD 11 (2003).

Here, the Website advertised ticket prices as including tax; therefore, [we find that] Taxpayers were collecting retail sales tax on each ticket sold. RCW 82.08.055(1). Although Taxpayers' receipts and signs do not state that tax is included in the sale price, these instances are insufficient to overcome Taxpayers representations on the Website that tax is included in the ticket. We reach this conclusion after weighing these conflicting pieces of evidence and considering the standard set forth in *Kitsap-Mason Dairymen's Ass'n* (stated above). Simply put, taxes collected in the name of the State are not the property of the seller and the integrity of the taxing system demands that funds collected as taxes be remitted to the state. *Id.* [On the Website,] Taxpayers represented to customers that they were collecting retail sales tax as part of the ticket price It is possible that the receipts or signs could have created some customer confusion as to whether Taxpayers had collected retail sales tax, but this potential confusion is insufficient to overcome the Website's representation. Accordingly, we find that Taxpayers were collecting retail sales tax during the statutory period. Taxpayers must first refund the retail sales tax collected in error to their customers before they can seek refunds from the Department. WAC 458-20-229(4)(a).

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DECISION AND DISPOSITION

Taxpayers' petitions for refund are denied.

Dated this 2nd day of August 2018.