

Cite as Det. No. 18-0187, 39 WTD 126 (2020)

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. 18-0187
)	
... )	Registration No. . . .
)	

RULE 193; RULE 254; RCW 82.32.730 – SOURCING OF SALES TO WHERE GOODS ARE RECEIVED – RECORDKEEPING REQUIREMENTS. When tangible personal property is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs. A taxpayer must retain records to determine the location to which a particular sale must be sourced.

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. – An in-state seller of vehicle repair machines and equipment protests the Department of Revenue’s (Department) assessment of retailing and wholesaling business and occupation (B&O) tax and retail sales tax. Taxpayer argues that the Department incorrectly [assessed tax on sales of tangible personal property that was received by the purchaser outside the state.] We deny Taxpayer’s petition.<sup>1</sup>

ISSUE

Under RCW 82.32.730 and WAC 458-20-193 (Rule 193), did the Department erroneously [assess tax on sales of tangible personal property the Taxpayer asserts was received by the purchaser outside the state]?

FINDINGS OF FACT

. . . [Taxpayer], a Washington limited liability company, operates a wholesaling and retailing business, selling automotive repair equipment to the collision repair industry from its location in . . . Washington.

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

In 2017, the Department's Audit Division (Audit) commenced a review of Taxpayer's books and records for the period of January 1, 2013, through December 31, 2016. The Department met with Taxpayer in 2017 and reviewed documentation Taxpayer provided regarding its sales.

Audit reviewed Taxpayer's QuickBooks and determined that some of the sales . . . Taxpayer [had reported as exempt out-of-state sales] were Washington sales. . . . [Specifically, Audit disallowed Taxpayer's claim of exemption where Taxpayer's sales records did not state a shipping address or otherwise include sufficient information to conclude the goods were received by the purchaser outside the state.] . . . Finally, Audit found that Taxpayer had misreported some sales as wholesale sales and Audit reclassified those to retail.

On September 26, 2017, as a result of the Audit's review, the Department issued a tax assessment [to] Taxpayer for a total of \$ . . . .<sup>2</sup>

Taxpayer timely sought administrative review. In its petition, Taxpayer asserts that the . . . [Department improperly assessed tax on sales received by purchasers outside of Washington]. Taxpayer further asserts in its petition that the auditor refused to review the list of interstate sales provided to auditor by Taxpayer in a document titled "Addendum 3."<sup>3</sup> After the hearing, Taxpayer provided additional invoices for review. After reviewing the invoices, Audit determined that the invoices did not substantiate additional interstate deductions. The invoices had either already been reviewed by Audit and credit was already given to Taxpayer, or the invoices did not substantiate an out-of-state ship-to address.

## ANALYSIS

Washington imposes a B&O tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220(1). The B&O tax measure and rate are determined by the type or nature of the business activity in which a person is engaged. *See generally* Chapter 82.04 RCW. The measure of the B&O tax is the application of rates against the "value of products, gross proceeds of sales, or gross income of the business, as the case may be." RCW 82.04.220(1).

All Washington sales of tangible personal property to consumers are subject to retail sales tax unless the sales are otherwise exempt from taxation. RCW 82.08.020(1); RCW 82.04.050(1). 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 unless the seller maintains proper records of exempt transactions and provides them to the Department when requested. RCW 82.08.050(3), (4).

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<sup>2</sup> The assessment in Document No. . . . is comprised of \$ . . . in retail sales tax, \$ . . . in retailing B&O tax, a credit of \$ . . . in wholesaling B&O tax for the reclassified sales, \$ . . . in use/deferred sales tax, \$ . . . in interest, and a \$ . . . substantial underpayment penalty.

<sup>3</sup> Addendum 3 was provided to the Auditor and consists of a list of sales Taxpayer believes [should have been] treated as interstate sales. Addendum 3 is a summary of the QuickBooks information reviewed by the Auditor and does not contain detailed shipping information.

Rule 193 explains the B&O tax and retail sales tax liability of sellers of goods like Taxpayer, who makes sales of such goods to customers outside of Washington.<sup>4</sup> Rule 193(2) provides that, . . . “[i]n general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington.” [Whether a sale occurs in Washington is determined by the “sourcing” provisions set out in RCW 82.32.730. *See* Rule 193(201) (“RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on ‘sourcing rules’ established under the streamlined sales and use tax agreement.”)]. . . .

RCW 82.32.730(1) provides two general rules for “sourcing” sales. First, [in accordance with] RCW 82.32.730(1)(a), when tangible personal property “is received by the purchaser at a business location of the seller, the sale is sourced to that business location.” RCW 82.32.730(1)(a). Second, when tangible personal property “is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser . . . occurs.” RCW 82.32.730(1)(b). . . .

RCW 82.32.730(9)(f) defines “receive” or “receipt” as “taking possession of tangible personal property.” Rule 193(202)(a) defines those terms further as meaning “the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.” RCW 82.32.730(9)(f) specifically states that receipt does not include “possession by a shipping company on behalf of the purchaser.” *See also* Rule 193(202)(b)(i) (the term “receipt” does not include “possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.”). According to Rule 193(202)(b)(ii) a shipping company is defined as a “separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated . . . or unaffiliated . . . with the seller or purchaser.”

. . .

Rule 193(203)(b)(iv) describes the types of records a taxpayer must retain in order to determine the location to which a particular sale must be sourced:

The seller must retain in its records documents used in the ordinary course of the seller’s business to show how the seller knows the location of where the purchaser or purchaser’s donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

- (A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller’s ordinary course of business showing the instructions for delivery;

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<sup>4</sup> [Rule] 193 was amended effective August 7, 2015. While the review period at issue in this case covers periods prior to and after that effective date, . . . [Taxpayer does not assert that there is any substantive difference in the Rule language as applied here.] As such, all references to WAC 458-29-193 in this determination refer to the current version of that rule.

- (B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or
- (C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:
- The seller's name and address;
  - The purchaser's name and address;
  - The place of delivery, if different from the purchaser's address; and
  - The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

This is consistent with the long standing statutory requirement contained in RCW 82.32.070 that Taxpayers maintain “. . . records as may be necessary to determine the amount of any tax for which [the taxpayer] may be liable . . .” The Department’s administrative rule on recordkeeping, WAC 458-20-254 (Rule 254), states that for deductions, exemption, or credits claimed, Taxpayer must demonstrate “supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.” Rule 254(3)(b)(ii).

It is undisputed that Taxpayer has nexus, as it is a Washington based business. Although Taxpayer has sales that it contends are eligible for the interstate sale deduction in Addendum 3, it is a conclusory document. Audit [reviewed] Addendum 3 and, in looking at the actual data in Taxpayer’s QuickBooks, found discrepancies between Addendum 3 and Taxpayer’s QuickBooks. Taxpayer provided invoices after the hearing, but the documents submitted do not prove that the contested sales are eligible for the interstate sales deduction because they did not indicate where delivery occurs, as is required by Rule 193(203)(b)(iv). Absent reliable evidence of shipping information, the Department is required to disallow the interstate sales deduction. Accordingly, . . . [because Taxpayer has not provided reliable evidence from which to determine the place where purchasers received the goods, it has failed to meet its burden under Rule 193(203)(b)(iv) and Rule 254 to establish that the sales at issue occurred outside the state].

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 29th day of June 2018.