

Cite as Det. No. 18-0301, 40 WTD 052 (2021)

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. 18-0301
)	
...)	Registration No. . . .
)	

[1] RCW 82.32.070; RCW 82.32.100; WAC 458-20-254: RETAILING B&O TAX – RECORDKEEPING – REASONABLE ESTIMATES. The Department found a taxpayer’s invoices to be unsuitable records of its sales when the invoices were non-sequential and the taxpayer did not provide any suitable records to substantiate why the invoices were non-sequential. It was reasonable for the Department to estimate Taxpayer’s retailing B&O tax and retail sales tax liability by using taxpayer’s own sales averages.

[2] RCW 82.32.070; WAC 458-20-254: RETAIL SALES TAX – RECORDKEEPING. A Taxpayer failed to meet its burden of proof and did not provide adequate documentation that contested sales were wholesale sales rather than retail sales. The Department properly reclassified these sales as retail sales.

[3] RCW 82.32.070; WAC 458-20-193. RETAIL SALES TAX – RECORDKEEPING – SOURCING SALES OF TANGIBLE PERSONAL PROPERTY. A taxpayer’s invoices with “Bill To” addresses outside Washington were not acceptable proof the purchasers of the items received the items outside Washington because the address of the purchasers did not constitute instructions for delivery.

[4] RCW 82.08.0273: RETAIL SALES OF TANGIBLE PERSONAL PROPERTY TO QUALIFIED NONRESIDENTS. A taxpayer was not eligible for a retail sales tax deduction for sales of tangible personal property to qualified nonresidents because Taxpayer did not provide any of the records a seller is required to keep under RCW 82.08.0273(4)(a) or all of the relevant data elements as defined by SSUTA for the purposes of RCW 82.08.0273(4)(c).

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. – An auto parts seller (“Taxpayer”) seeks review of an assessment issued by the Department. Taxpayer objects to the Department’s use of estimated sales amounts in calculating

Taxpayer's tax liability. Taxpayer also objects to the Department's reclassification of income from the Wholesaling Business and Occupation ("B&O") Tax Classification to the Retailing B&O Tax Classification and retail sales tax, as well as the Department's denial of tax exemptions for sales outside of Washington. We grant the petition in part, deny in part, and remand for adjustment to the tax assessment.¹

ISSUES

1. Whether the Department reasonably estimated the amounts used to determine Taxpayer's retail sales tax and retailing B&O tax liabilities under RCW 82.32.070, RCW 82.32.100 and WAC 458-20-254 ("Rule 254").
2. Whether Taxpayer maintained adequate documentation to prove its sales were not subject to retail sales tax under RCW 82.04.070 and Rule 254.
3. Whether Taxpayer provided sufficient records under RCW 82.32.070 and WAC 458-20-193 ("Rule 193") to show that certain sales are sourced outside of Washington under RCW 82.32.730 and exempt from tax.
- ...
4. Whether Taxpayer provided sufficient records under RCW 82.08.0273 to qualify for a deduction for sales of tangible personal property to qualifying nonresidents for use outside the state.

FINDINGS OF FACT

Taxpayer is an automotive shop located in . . . Washington. The Department's Audit Division ("Audit") audited Taxpayer's business records for the period of January 1, 2013, through March 31, 2017. Taxpayer filed excise tax returns for all months of the audit period except for the period of December 1, 2016, through February 28, 2017.

Taxpayer provided Audit with paper invoices that numbered 306 to 1001. Audit reviewed all of the invoices provided but only retained scanned electronic copies of some of the invoices. The sales invoices numbering system, however, had large gaps with 200 missing invoices. Taxpayer also provided 13 invoices with four digit numbers that do not correspond to the main sequence of invoices. In addition to reviewing the paper invoices, Audit requested that Taxpayer provide a copy of its electronic records, specifically its QuickBooks backup file. However, there is disagreement between Audit and Taxpayer on the extent to which Taxpayer kept electronic records. Audit asserts Taxpayer used QuickBooks to at least some extent and told Audit that its QuickBooks files are not one hundred percent accurate because it does not apply all payments to QuickBooks. Taxpayer asserts it told Audit, "The records were manually created but the invoices were printed out using a computer and a program 'something like' QuickBooks, but that the official

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

business records of [Taxpayer] are all paper hard copy.” Reply to Audit’s Response to Petition at 1.

Audit determined it did not have sufficient records to determine if the missing invoices between 306 and 1001 were estimates, payments not received, or invoice numbers not being used. As a result, Audit estimated Taxpayer’s income on the missing invoices. It did so by assigning an average amount to each missing invoice based on the total retailing income of the invoices Taxpayer provided, divided by the total number of invoices.

During the audit period, Taxpayer reported sales under the Wholesaling B&O Tax Classification. Audit added all wholesaling invoices for which there were valid reseller permits to calculate Taxpayer’s total allowable wholesale sales for the audit period. Audit subtracted these amounts from the amounts Taxpayer reported on its combined excise tax returns. Audit then reclassified the differences by year under the Retailing B&O Tax Classification and assessed retail sales tax.

From this group of invoices reclassified as retail sales, Audit reviewed Taxpayer’s eligibility for interstate and foreign sales exemptions but determined that Taxpayer did not qualify due to lack of shipping documentation. Forty-eight invoices list “Bill To” addresses in other states and one invoice lists a “Bill To” address [outside of the USA]. Of the invoices with “Bill To” addresses outside of Washington that Audit retained copies of, one had no “Ship To” address and the other had a Washington “Ship To” address. Taxpayer provided one shipping document with its review petition but Audit could not match it to one of the invoices it reviewed during the audit period. The shipping document is dated February 1, 2015, and lists an item valued at \$. . . and Remote Area Charge of \$

The retail sales tax rate for Taxpayer’s address was 8.8 percent for the entire audit period but on the majority of the invoices, Taxpayer charged 9.4 percent and in some instances also charged 9.3 percent and 8.6 percent. For all of the invoices for which Taxpayer charged retail sales tax, Taxpayer remitted 8.8 percent retail sales tax to the Department. Audit assessed Taxpayer for the excess retail sales tax it collected but did not remit.

For the period Taxpayer did not file excise tax returns, December 1, 2016, through February 2017, Audit assessed Taxpayer for unreported retailing and retail sales income based on a review of Taxpayer’s invoices and reseller permits.

Audit issued tax assessment . . . (“Assessment”) on October 19, 2017, totaling \$ The Assessment consisted of \$. . . in retail sales tax, \$. . . in retailing B&O tax, a \$. . . credit for wholesaling B&O tax, a \$. . . delinquent payment penalty, \$. . . in interest, and a \$. . . assessment penalty.

Taxpayer timely petitioned for review of the Assessment. Taxpayer makes several arguments. First, Taxpayer argues Audit should not have estimated unreported income based solely on its non-sequential invoices numbers. Taxpayer states that the retail sales tax and retailing B&O tax based on this estimation form the lion’s share of the Assessment. Taxpayer claims Audit is inventing taxable sales transactions and this puts an undue burden on Taxpayer to counter a non-existent

official methodology. Taxpayer states that there are gaps in the invoice numbering due to several reasons, including:

- Customer’s insurance companies requiring temporary invoices;
- Consolidating several projects for one customer into one invoice;
- Collecting an initial deposit on one invoice and later incorporating that into a final invoice; and
- Taxpayer’s employee made mistakes in the sequencing.

Next, Taxpayer argues that Audit did not justify the reclassification of its sales from wholesale to retail sales in the Assessment and associated audit papers. Taxpayer argues this lack of justification violates RCW 82.32A.020(1) and (5). Taxpayer speculates Audit’s reason for the reclassification was that Taxpayer failed to produce reseller permits on the reclassified sales. However, Taxpayer claims it has a valid reseller permit for every reported wholesales sale. Taxpayer submitted 11 Washington reseller permits, one [out-of-state] exemption certificate, and one [out-of-state] sales and use tax resale certificate with its Petition. Audit reviewed these reseller permits against the limited number of invoices it retained copies of. All of the reseller permits matched invoices Taxpayer already substantiated as wholesale sales, could not be matched to invoices, or were from other states. The Department requested that Taxpayer provide the corresponding invoices. Taxpayer provided additional invoices of which Audit reviewed. Only two invoices, 657 and 705, had corresponding reseller permits and were not previously reviewed by Audit. Invoice 657 showed 0 payment.

Taxpayer also argues that Audit wrongfully denied a sales tax exemption for nonresident sales under RCW 82.08.0273(1). Taxpayer argues Audit mistakenly required Taxpayer to produce shipping documents under Rule 193, instead of relying on RCW 82.08.0273. . . . Taxpayer states no law requires a vendor to establish nonresident sales by providing the Department with shipping instructions, a waybill, bill of lading, other contract of carriage, or trip-sheet for interstate sales. Taxpayer states, “The reclassified sale income on this issue of \$. . . , per Workpaper B1, and the associated assessment amounts should be stricken.” Attachment to Petition at 5.

Finally, Taxpayer argues the Department erred when it assessed Taxpayer for all funds received by Taxpayer equal to the difference between the correct retail sales tax rate and the overstated tax rates collected on its invoices. Taxpayer argues the sales tax rate is set by “RCW 82.08.020(1) and other applicable rates statutes.” Attachment to Petition at 5. Taxpayer argues that the Department is not entitled to the sales tax amounts collected in excess of the correct rate.²

² Taxpayer also disputes the Assessment for the period of December 1, 2016, through February 28, 2017, on the grounds that Taxpayer filed and paid combined excess tax returns for those periods after the audit in different amounts than the Assessment. We interpret this to be a dispute of Audit’s methodology for calculating Taxpayer’s revenue for those time periods, but Taxpayer has presented no argument for why we should adjust the Assessment for these time periods.

ANALYSIS

1. Estimated Tax Liability

RCW 82.32.070 requires every person liable for payment of excise taxes to keep and preserve, for a period of five years, suitable records as may be necessary to determine the person's tax liability. The law also requires the person to make those records open for examination at any time by the Department of Revenue. *Id.* Rule 254, the administrative rule regarding recordkeeping, states in pertinent part:

It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

Rule 254(3)(b)(i).

Here, Taxpayer asserts that its invoices were not in sequential order because Taxpayer issued temporary invoices required by a customer's insurance, multiple invoices later consolidated into one, and Taxpayer's employee mistakenly numbered the invoices incorrectly. Taxpayer and Audit disagree as to the extent to which Taxpayer used electronic record keeping. However, the fact remains that Taxpayer has not provided any evidence of its assertions. It has not kept its records in a systematic manner necessary for the Department to substantiate its gross receipts and sales. *See* Rule 254.

In general, where a taxpayer fails to make available for examination the records required by RCW 82.32.070 and Rule 254, the Department is authorized to estimate a taxpayer's tax liability based on available facts and information. RCW 82.32.100 provides, in part, that "[i]f any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax" RCW 82.32.100(1). *See also* Det. No. 16-0218, 36 WTD 063 (2017). Once the Department obtains the facts and information needed, the Department "shall proceed to determine and assess against such person the tax and any applicable penalties or interest due." RCW 82.32.100(2).

RCW 82.32.100 affords the Department wide discretion in the methodology employed to calculate a reasonable estimate of tax. *See* Det. No. 15-0350, 35 WTD 291 (2015) (affirming the Department's authority to assess taxes based on a reasonable estimate and citing Det. No. 14-0106, 33 WTD 402 (2014); Det. No. 13-0302R, 33 WTD 572 (2014); Det. No. 03-0279, 23 WTD (2004); and Det. No. 97-134R, 18 WTD 163 (1999)).

Here, because Taxpayer did not provide *any* suitable records to substantiate its claims for why the invoices were non-sequential, Audit estimated sale amounts for missing invoices to arrive at Taxpayer's tax liability. Audit used Taxpayer's average sales amounts to determine its retailing B&O tax and retail sales tax liability for the unsubstantiated wholesale sales that were reclassified to retail sales. Under RCW 82.32.100(1), the Department may base its estimate of tax in the manner it deems best. In this case, Audit determined it would be reasonable to estimate Taxpayer's retailing B&O tax and retail sales tax liability by using Taxpayer's own sales averages. Given the Department's wide discretion coupled with the lack of suitable records, Audit's method is reasonable. As discussed above, we find that Audit reasonably determined that Taxpayer's records were not suitable for verifying Taxpayer's tax liability. Accordingly, Audit was authorized to estimate Taxpayer's tax liability as it deemed appropriate and reasonable. We deny Taxpayer's petition on this issue.

However, Taxpayer submitted two invoices on review, 657 and 705, which Audit previously did not review during the audit. Because the invoices were missing, Audit assigned the invoices average amounts. We find that invoices 657 and 705 are suitable records for determining Taxpayer's tax liability on those two invoices only and should be used in place of the estimated invoice amount. Because invoice 657 showed a payment amount of 0, this invoice should be treated as 0 income. We discuss the appropriate treatment of invoice 705 below.

2. Reclassification of Unsubstantiated Wholesale Sales to Retail Sales

Washington imposes B&O tax on the privilege of engaging in business in this state. RCW 82.04.220. The rate of the tax is determined by the classification of the business activity. *Id.* See generally Chapter 82.04 RCW.

Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. Generally, sales of tangible personal property and certain specified services to consumers are retail sales. RCW 82.04.050. Persons "engaged within this state in the business of making sales at retail" are also subject to a retailing B&O tax. RCW 82.04.250. "Sales at retail," for B&O tax purposes, follows the same definition of "retail sale" in RCW 82.04.050.

Purchases for the purpose of resale are wholesale sales not subject to retail sales tax. RCW 82.04.050; RCW 82.04.060. A sale is presumed to be a retail sale unless the seller can prove the wholesale nature of the sale. RCW 82.04.470(1); WAC 458-20-102(5) (Rule 102(5)). The burden of proving that a sale is wholesale rather than retail is on the seller. RCW 82.04.470. The seller may meet this burden by taking from the buyer, at the time of sale or within 120 days after the sale, a copy of a reseller permit issued to the buyer by the Department under RCW 82.04.470(1) and Rule 102(7).

In lieu of a copy of a reseller permit issued by the Department, a seller may accept alternative documentation from a buyer as follows:

- A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement (SSUTA)³ governing board. RCW 82.04.470(2)(a)(i) and RCW 82.04.470(3)(a)(ii).
- In the case of a buyer that is not required to be registered with the Department under RCW 82.32.030, a properly-completed uniform sales and use tax exemption certificate developed by the Multistate Tax Commission (MTC). RCW 82.04.470(3)(a)(i).
- Any other exemption certificate as may be authorized by the Department and properly completed by the buyer. RCW 82.04.470(2)(a)(ii) and RCW 82.04.470(3)(a)(iii).
- The relevant data elements as allowed under SSUTA, which include a business' name, address, type of business, reason for exemption, identification number required by the state to which the sale is sourced, state and country issuing identification number, and, if a paper form is used, a signature of the buyer. RCW 82.04.470(4); Rule 102(7)(f).

If the seller has not obtained any of the acceptable documentation described above, the seller may meet its burden of proof through facts and circumstances that show the sale was properly made at wholesale. RCW 82.04.470(5); Rule 102(7)(h). The Department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. Rule 102(7)(h). Facts and circumstances that should be considered include, but are not necessarily limited to: (i) the nature of the buyer's business – the items being purchased at wholesale must be consistent with the buyer's business activity; (ii) the nature of the items sold – the items sold must be of a type that would normally be purchased at wholesale by the buyer; and (iii) other available documents, such as purchase orders and shipping instructions. *Id.*; Det. No. 14-0170, 34 WTD 030 (2015).

Here, the Department accepted Taxpayer's reporting of wholesale sales for those sales that were substantiated by a reseller permit during the audit. Taxpayer provided us copies of reseller permits and invoices but we were unable to match them to invoices that Audit reclassified from wholesaling to retailing. Because the Taxpayer did not provide evidence that the contested sales were wholesale sales rather than retail sales, it failed to meet its burden of proof and the Department properly reclassified the income to retail sales. However, Taxpayer submitted invoice 705, an invoice that it not did submit during the audit, with a valid reseller permit from the purchaser. Accordingly, we find Taxpayer met its burden of proving that this sale was a wholesale sale rather than retail.

3. Sales to Customers Outside of Washington

Taxpayer argues that it is not required to produce shipping documentation to be eligible for a nonresident sales exemption of retail sales tax under RCW 82.08.0273(1) and that the Department mistakenly relied on Rule 193 to disallow Taxpayer's exemption. However, Taxpayer conflates the exemption from B&O and retail sales tax for sales sourced outside of Washington, the

³ The Legislature adopted the Streamlined Sales Tax Act in 2003. Laws of 2003, ch. 168. *See, e.g.*, Det. No. 09-0280, 29 WTD 80 (2010).

exemption from B&O and retail sales tax for goods in import or export commerce, and the exemption from retail sales tax of retail sales of tangible personal property to qualified nonresidents. We address Taxpayer's eligibility for all three, below.

a. Interstate Sales Deduction

RCW 82.04.040(1) defines "sale" as "any transfer of the ownership of, title to, or possession of property for a valuable consideration" This definition, while contained in the B&O tax provisions, also applies to Chapter 82.08 RCW, applicable to the retail sales tax. RCW 82.08.010(6).

RCW 82.32.730 provides sourcing rules that determine where a sale of tangible personal property occurs. 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) (emphasis added). *See also* Rule 193(203)(a). 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) (emphasis added). *See also* Rule 193(203)(b). RCW 82.32.730(9)(f) defines "receive" or "receipt" as "taking possession of tangible personal property." Rule 193(202)(a) explains that "receipt" occurs when the purchaser takes such possession of the tangible personal property or has dominion and control over the property. "[R]eceipt" does not include "possession by a shipping company on behalf of the purchaser." RCW 82.32.730(9)(f); *See also* Rule 193(202)(b)(i).

Rule 193 explains the application of the B&O and retail sales taxes to interstate sales of tangible personal property.⁴ "In general, Washington imposes its B&O and retail sales taxes on the sales of tangible personal property if the seller has nexus in Washington and the sale occurs in Washington." Rule 193(1)(a). Thus, Rule 193 makes clear that for a particular seller of goods to be liable for B&O tax and retail sales tax, (1) the seller must have nexus in Washington, and (2) the sale must occur in, or is sourced to, Washington. In the present case, Taxpayer, located in . . . Washington, does not dispute its nexus with Washington. Instead, Taxpayer submitted sales invoices that purport to show that its goods are not received by its customers in Washington but in other states.

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 is sourced and states, in relevant part:

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:

⁴ Rule 193 was amended on August 7, 2015. While a portion of the audit period took place prior to that date, most Department rules are treated as interpretive statements that may apply retroactively, unless the interpreted statutory language has changed or there has been reliance on the prior rule. *See Association of Washington Businesses v. Dep't of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005). As such, all references to Rule 193 in this determination refer to the new version of that rule.

(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;

(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.

Here, Taxpayer seeks to show that that for some of its disallowed wholesale sales, the purchasers received the goods in states other than Washington. Because Taxpayer argues these sales are exempt from tax, it is Taxpayer's burden to show it qualifies for the exemption. *See Budget Rent-A-Car, Inc.*, 81 Wn.2d 171, 174-175, 500 P.2d 764, 767 (1972). In support of its argument, Taxpayer provided a single shipping document but we were unable to match the shipping document to any of Taxpayer's invoices. The dollar amount does not match any of the invoices for the same seller. We find that Audit was correct to not accept this document as proof that the purchaser received their goods outside of Washington for any of the reclassified invoices.

We also find that the out of state "Bill To" addresses on Taxpayer's invoices are not acceptable proof that the purchaser of its automotive items received those items outside of Washington. The address of the purchaser on a sales invoice does not constitute "Instructions for delivery to the seller indicating where the purchaser wants the goods delivered" as they only show the address of the person that purchased the items, not where the items were received. Rule 193(203)(b)(iv)(A). We acknowledge Rule 193(203)(b)(iv) is not an exhaustive list, but Taxpayer has provided no other "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." *Id.*

...

b. Retail Sales of Tangible Personal Property to Qualified Nonresidents

Generally, retail sales tax is imposed upon all retail sales. RCW 82.08.020. When a seller makes a retail sale, it must collect retail sales tax. RCW 82.08.050(1). If a seller fails to collect retail sales tax on a retail sale, and no exemption applies, the seller becomes liable for the tax. RCW 82.08.050(3).

RCW 82.08.0273 provides an exemption from retail sales tax for sales of tangible personal property to [qualifying] nonresidents for use outside the state. RCW 82.08.0273(3)(b) indicates what constitutes acceptable proof of nonresident status:

Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

RCW 82.08.0273(4)(a) specifically lists the documents sellers must keep to substantiate a sale is qualified for this exemption:

Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which must show the type of proof accepted, including any identification numbers where appropriate, **and the expiration date, if any.**

(Emphasis added.)

RCW 82.08.0273(4)(c) provides “[i]n lieu of using the methods provided in [RCW 82.08.0273(4)(a)] to document an exempt sale to a nonresident, a seller may capture **the relevant data elements as allowed under the streamlined sales and use tax agreement [SSUTA].**” RCW 82.08.0273(4)(c) (emphasis added). As noted above, SSUTA is a multi-state agreement to simplify sales and use tax collection and administration by retailers and states.⁵ SSUTA attempts to create, among other things, uniformity among tax exemption administration through its governing rules.⁶ SSUTA Governing Rule 317.1(A)(1) indicates the requirements for sellers who sell product to nonresidents who claim the sales tax exemption for use outside of the state.

Under SSUTA Governing Rule 317.1(A)(1), “relevant data elements as defined by [SSUTA]” for the purposes of RCW 82.08.0273(4)(c) include (1) the purchaser’s name, (2) the purchaser’s address, (3) the purchaser’s type of business,⁷ (4) reason for the exemption from retail sales tax, (5) the ID number required by the state to which the sale is sourced, (6) state and county issuing ID number, and (6) a signature of the purchaser if a paper form is used. We note that these data

⁵ *What is the Streamlined Sales and Use Tax Agreement*, Streamlined Sales Tax Governing Board, Inc., available at <http://www.streamlinedsalestax.org/index.php?page=gen1> (last accessed October 23, 2018).

⁶ See *How Does the Agreement Simplify Sales Tax Administration*, Streamlined Sales Tax Governing Board, Inc., available at <http://www.streamlinedsalestax.org/index.php?page=gen4> (last accessed October 23, 2018).

⁷ Under SSUTA, “not a business” is a type of business for the purposes of complying with SSUTA Governing Rule 317.1(A)(1). See SSUTA Governing Rule 317.1(A)(2)(s).

elements are the same as the blank fields on the form Taxpayer obtained when researching the information it needed to collect to claim the nonresident retail sales tax exemption. *See* SSTGB Form.

Here, Taxpayer argues that Audit mistakenly analyzed its eligibility for the nonresident sales deduction under Rule 193 instead of RCW 82.08.0273. Because Taxpayer argues these sales are exempt from tax under RCW 82.08.073, it is Taxpayer's burden to show it qualifies for the exemption. *See Budget Rent-A-Car, Inc.*, 81 Wn.2d at 174-175, 500 P.2d at 767. However, Taxpayer did not provide any of the records a seller is required to keep under RCW 82.08.0273(4)(a) to substantiate an exemption from retail sales tax for sales of tangible personal property to qualifying nonresidents for use outside the state. Taxpayer also did not provide all of the relevant data elements as defined by SSUTA for the purposes of RCW 82.08.0273(4)(c). The paper invoices with out-of-state addresses that Audit obtained from Taxpayer do not include the purchaser's type of business, the reason for the exemption from retail sales tax, the ID number required by the state to which the sale is sourced, state and county issuing ID number, or a signature of the purchaser. Because Taxpayer failed to comply with RCW 82.08.0273(4)(a) and RCW 82.08.0273(4)(c),⁸ Taxpayer has not maintained required documentation establishing exempt sales to nonresidents, and Taxpayer is responsible for the retail sales tax. RCW 82.08.0273(6)(a).

4. Retail Sales Tax

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 82.32.060(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.

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: “[i]nherent 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).

Here, Taxpayer over collected retail sales tax by collecting tax at a higher rate but only remitted amounts to the Department based on the lower, correct rate. Taxpayer argues that the Department is not entitled to the sales tax amounts collected in excess of the correct rate. We disagree. 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. *Kitsap-Mason Dairymen's Ass'n*, 77 Wn.2d at 817. Taxpayer erroneously collected excess retail sales tax from

⁸ RCW 82.08.0273(4)(b) allows the use of a completed uniform exemption certificate to satisfy the proof requirements for nonresidency status. Because Taxpayer did not produce any completed uniform exemption certificates, this section cannot provide Taxpayer with relief.

customers but, by its own admission, has not refunded the excess retail sales tax to those customers. Accordingly, Taxpayer is not entitled to the retail sales tax it collected in excess of the local rate under RCW 82.32.060(1) and WAC 458-20-229(4)(a).

DECISION AND DISPOSITION

We grant Taxpayer's petition in part and deny in part. We grant Taxpayer's petition with respect to invoice 657 and invoice 705, consistent with this determination. We deny Taxpayer's petition on all other issues.

Dated this 9th day of November 2018.