

Cite as Det. No. 20-0277, 40 WTD 165 (2021)

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

In the Matter of the Petition for Refund)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 20-0277
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...)	Registration No. . . .
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Rule 229(4)(a); RCW 82.32.060 – REFUND REQUEST – TRUST FUNDS: Where a seller has erroneously collected retail sales tax from customers, the seller must first refund the retail sales tax collected from its customers in error and then seek a refund or credit from the Department.

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.

Roberts, T.R.O. – A business protests the denial of a request for a refund of retail sales tax. The business collected the retail sales tax from clients on sales of personal training services, and remitted said taxes to the Department. The business later discovered that such services are not subject to retail sales tax. We find that the business is not entitled to a refund of the retail sales tax because it was the client, not the business, that paid the tax, and the business has not provided any evidence that it has refunded the taxes to the client. The petition is denied.¹

ISSUE

Whether, under RCW 82.32.060, a business is entitled to a refund of retail sales tax collected in error from clients and remitted to the Department, where the business has failed to provide documentation showing that the collected tax was refunded to its clients.

FINDINGS OF FACT

... (“Taxpayer”) is engaged in the business of providing personal training services for clients. For the tax period of January 1, 2016, through June 30, 2019 (“Tax Period”), Taxpayer reported personal training income under the retailing business and occupation (“B&O”) tax classification and remitted the corresponding retail sales tax collected from clients on those transactions.

On October 18, 2019, Taxpayer obtained a tax letter ruling which stated that, beginning January 1, 2016, a personal trainer who does not own or operate an athletic or fitness facility is subject the

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

services and other activities B&O tax classification. The letter ruling indicated that Taxpayer could amend its excise tax returns to report the correct classification and seek a refund of retail sales tax, provided that Taxpayer submit documentation showing that Taxpayer actually refunded the retail sales tax to its clients.

Consequently, Taxpayer submitted amended quarterly excise tax returns for the Tax Period to reclassify income from the retailing B&O tax classification to the service and other activities B&O tax classification.

On February 5, 2020, the Department's Taxpayer Account Administration Division ("TAA") rejected the amended returns because Taxpayer had not submitted the corresponding documentation establishing that the retail sales tax had been refunded to its clients. TAA noted that, under RCW 82.08.050(3) and WAC 458-20-229 ("Rule 229"), retail sales tax collected in error must nevertheless be remitted to the Department, and the taxpayer is only entitled to a refund of such amounts where the taxpayer can show that the customer had been refunded those amounts.

On March 2, 2020, Taxpayer submitted a petition for administrative review, protesting TAA's rejection of the amended returns and requesting a refund of \$. . . in retail sales tax remitted during the Tax Period. Taxpayer asserts that, under RCW 82.32.060(1), the Department is obligated to refund any taxes that have been paid in excess of what was properly due. Taxpayer further argues that it is not subject to RCW 82.08.050(3) and Rule 229 because it is not engaged in retailing activity.

ANALYSIS

RCW 82.32.060(1) authorizes the Department to issue a refund upon an application by a taxpayer where the Department determines that the taxpayer paid taxes in excess of what was properly due within the statutory period. Generally, "no refund or credit may 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" RCW 82.32.060(1), (2).

Here, Taxpayer's retail sales tax refund requests is within the statutory period. Therefore, if we determine that Taxpayer has paid the tax in excess of what was properly due, Taxpayer may be entitled to a refund.

Washington imposes retail sales tax on each retail sale in this state unless an exemption or exclusion applies. The seller is required to collect retail sales tax from the buyer and remit it to the department. RCW 82.08.050(1). When a seller collects retail sales tax from customers, the amount "is deemed to be held in trust by the seller until paid to the department." RCW 82.08.050(2). Sellers are specifically prohibited from appropriating or converting the tax collected to the seller's own use or to any other use other than remitting the tax to the Department. *Id.* . . . [T]he Washington Supreme Court has explained the unique nature of the retail sales tax scheme and stated, "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." *Kitsap-Mason Dairymen's Ass'n v. Wash. Tax Comm'n*, 77 Wn.2d 812, 817, 467 P.2d 312 (1970).

Retail sales taxes will not be refunded to a seller, even when erroneously collected, unless the seller first refunds those taxes to the buyer who paid them. This is because RCW 82.32.060 limits refunds only to those who “paid” the tax. Retail sales taxes collected from customers are “paid” by those customers for purposes of RCW 82.32.060. *See Kitsap-Mason Dairyman’s Ass’n*, 77 Wn.2d at 816. Thus, where a seller has erroneously collected retail sales tax from customers, the seller must first refund the retail sales tax collected from its customers in error and then seek a refund or credit from the Department. *See* Det. No. 87-110, 3 WTD 21 (1987) (“If the taxpayer establishes that it has made refunds to [its customers], it will be entitled to a corresponding refund.”); WAC 458-20-229(4)(a).

There is no dispute that Taxpayer collected retail sales tax from its clients. Taxpayer remitted the amounts it collected to the Department. Pursuant to RCW 82.08.050(1), the client, as the buyer, was the party that paid the subject taxes. Taxpayer has not alleged that it has provided a refund to any client of any amount of the taxes it collected, much less provided any documentation that it has done so. The law on this issue is clear: because the funds that are the subject of Taxpayer’s refund request represent retail sales tax, Taxpayer is not entitled to a refund unless and until it first refunds the money to its clients. RCW 82.32.060; WAC 458-20-229(4)(a). To allow Taxpayer to obtain a refund of taxes paid by the clients would violate the prohibition against sellers appropriating or converting sales taxes for their own use. RCW 82.08.050(2).

Our ruling here is consistent with prior determinations that dealt with similar issues. For example, we addressed a refund request for over-collected sales tax in Det. No. 00-092, 24 WTD 47 (2001) as follows:

If sales tax was erroneously collected from the taxpayers’ customers, then the over-reported sales tax comes from customers’ funds. These are trust funds collected from customers for the benefit of the state. The money does not belong to the taxpayers and cannot be returned to the taxpayers until the taxpayers have refunded the over-collected sales tax to their customers.

24 WTD at 51; *see also* Det. No. 14-0108, 33 WTD 444 (2014).

The Washington Supreme Court also addressed this issue in *Kitsap-Mason Dairyman’s Ass’n*. In that case, a seller over-collected retail sales tax and failed to remit the excess taxes to the state. The Court held that the seller could not retain the over-collected sales tax for its own use. 77 Wn.2d at 816. The case at hand is similar, except that Taxpayer has already remitted the over-collected taxes. To refund the funds to Taxpayer and allow Taxpayer to retain them would violate RCW 82.08.050(2) and the holding in *Kitsap-Mason*.

Taxpayer cites to a string of court decisions to establish that the Department has a duty to refund the overpayment of tax, regardless of the type of tax involved. *See Paccar, Inc. v. Dep’t of Revenue*, 135 Wn.2d 301, 957 P.2d 669 (1998); *Port of Seattle v. Dep’t of Revenue*, 101 Wn. App. 106, 1 P.3d 607 (2000); *Guy F. Atkinson Co. v. State*, 66 Wn.2d 570, 403 P.2d 880 (1965). Significantly, in each of those cases, the taxpayer was the party who had paid the tax. Here, Taxpayer is seeking a refund of the retail sales tax that it had remitted on behalf of its client, who is the actual party who had paid the tax.

Taxpayer asserts that RCW 82.08.050(3) should instead be interpreted to mean that “a seller is responsible to the state for the tax due on his account, regardless of if or how it was collected,” because the Department should have no legal entitlement to collect excess taxes. *Petition*, p. 4. Thus, since no retail sales tax was legally due on its services, Taxpayer asserts that RCW 82.08.050(3) cannot operate against Taxpayer to require the remittance of retail sales tax collected in error.

Taxes collected in the name of the state must be remitted to the Department or refunded to the party that paid them, where appropriate.² *Kitsap-Mason*, 77 Wn.2d 812, 467 P.2d 312. Therefore, because the client, not Taxpayer, paid the taxes at issue here and Taxpayer has not submitted any evidence that it has refunded to any client the taxes it collected, Taxpayer is not entitled to a refund of the retail sales tax under RCW 82.32.060 and Rule 229.

Accordingly, we deny Taxpayer’s request for a refund of retail sales tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 19th day of October 2020.

² Taxpayer additionally argues that the Department’s interpretation of RCW 82.08.050(3) renders an absurd result because it would require a taxpayer to remit retail sales tax collected in error to the Department even in those circumstances where the taxpayer had already refunded those monies to its customers. The Department does not interpret RCW 82.08.050(3) to impose such a requirement. Regardless, these are not the circumstances here, as Taxpayer has not alleged that it has provided any refund to its clients.