

Cite as Det. No. 21-0147, 41 WTD 426 (2022)

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. 21-0147
)	
... )	Registration No. . . .
)	

[1] WAC 458-20-254; RCW 82.32.070: RETAIL SALES TAX – RETAILING B&O TAX – SUITABLE RECORDS. Washington law requires taxpayers to provide all records maintained by an ordinary prudent business person, that must be kept in a systematic manner that conforms to accepted accounting methods and procedures. The records must also show gross receipts and sales from all sources and must be supported by original source documents or records.

[2] WAC 458-20-254; RCW 82.32.100: RETAIL SALES TAX – RETAILING B&O TAX – DEPARTMENT’S REASONABLE ESTIMATES. When taxpayer failed to provide bookkeeping records, the Department reasonably estimated taxpayer’s gross sales using industry averages of landscaping businesses that were similar to taxpayer’s based on number of employees and region of operation.

Willette, T.R.O. – A landscaping business (Taxpayer) protests an assessment by the Department of Revenue (Department). The Department estimated sales to arrive at Taxpayer’s gross income using Taxpayer information and industry averages. Taxpayer asserts that the estimates do not take into consideration the circumstances of his business but did not provide source documents to verify income. We deny the petition.<sup>1</sup>

ISSUES

1. Whether Taxpayer met his obligation, under RCW 82.32.070 and WAC 458-20-254, to maintain suitable records to establish tax liability.
2. Whether the Department reasonably estimated Taxpayer’s sales under RCW 82.32.100.

FINDINGS OF FACT

Taxpayer operates a landscaping business in the state. Taxpayer’s business specializes in tree removal, tree pruning, and related landscaping tasks. The Department’s Audit Division (Audit)

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

initially contacted Taxpayer on January 23, 2019, to notify him of the intent to audit his business. The parties had an initial appointment on March 14, 2019. At that time, Taxpayer provided some 2018 bank statements for review. The bank records provided by Taxpayer indicate that deposits at the bank were counter credits which demonstrates the deposit of cash or checks. An online review of Taxpayer’s business indicated that the business only accepts cash.

Following the initial appointment, Audit requested federal income tax filings and additional information on multiple occasions: April 24, 2019; April 29, 2019; May 29, 2019. The May 2019 email indicated that if Taxpayer did not provide the requested documents by June 10, 2019, Audit would make its assessments based on estimates. On July 3, 2019, Audit again set a deadline, July 10, 2019, to provide all requested records. Taxpayer did not send records by the deadline, and Audit sent the preliminary estimates to Taxpayer on July 24, 2019. Audit based its estimates of the retail sales of landscaping services using the Washington industry averages of gross retail income for businesses with the North American Industry Classification System (NAICS) code 561730 – the code for landscaping services.

On August 5, 2019, an Audit manager sent a follow-up email to inform Taxpayer that the estimated amounts would be submitted . . . unless additional documents were provided. Taxpayer did not provide additional documents. Audit issued its assessment on September 3, 2019. On a phone call on September 9, 2019, Audit explained to Taxpayer what documents were needed for any amendments; Taxpayer asserted that there was a period of time in which he did little to no business for personal reasons related to caring for his sick girlfriend. Taxpayer followed up by delivering to the Department his 2015-18 federal income tax returns and a couple of months’ bank statements. Having reviewed the additional materials, Audit requested additional records, including bank statements from January 2015 to December 2018 (Audit Period), copies of all checks deposited during the Audit Period, and copies of invoices or billings provided to customers. On December 14, 2019, after not receiving any additional documentation as requested, Audit issued its revised assessment which used the average from incomes of landscaping businesses with fewer than 4 employees located in [certain] Counties [where Taxpayer did business].

Taxpayer filed a timely petition for administrative review but opted to proceed without a hearing. Because Taxpayer’s petition did not include any new information, Audit limited its response to a statement that it stood by its assessment, which contained the following adjustments:

Tax Year	2015	2016	2017	2018	TOTALS
Estimated Gross Income	\$..	\$..	\$..	\$..	\$..
Credit for Incorrectly Reported Service (B&O)	$\$.. \times .015 = (\$..)$	$\$.. \times .015 = (\$..)$	-	-	$(\$..)$
Retailing (B&O)	\$..	\$..	\$..	\$..	\$..
Retail Sales Tax	\$..	\$..	\$..	\$..	\$..

Small Business Credit	(\$...)	(\$...)	(\$...)	(\$...)	(\$...)
Tax Adjustment	\$...	\$...	\$...	\$...	\$...
Penalties					\$...
Interest					\$...

### ANALYSIS

For the privilege of conducting business in the state of Washington, there is levied and collected from every person a business and occupation (B&O) tax that is measured by applying the rate of tax against the gross income of the business. RCW 82.04.220(1); *see also* WAC 458-20-226(4)(a) (requiring the retailing B&O tax to be applied to the gross income of landscape and horticultural services). The legislature has defined “gross income of the business,” and it includes in relevant part, the “gross proceeds of sales . . . without any deduction on the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.” RCW 82.04.080(1).

Retail sales tax is imposed upon all retail sales in Washington. RCW 82.08.020. The charges, generally, for “[l]andscape maintenance and horticultural services” are considered retail sales for Washington tax purposes. RCW 82.04.050(3)(d); RCW 82.08.020(1)(c). Thus, a seller of landscape maintenance must collect retail sales tax from buyers and remit the tax collected to the state. RCW 82.08.050(1). If the seller fails to collect the retail sales tax, the seller becomes liable for the tax. RCW 82.08.050(3).

During the Audit Period, Taxpayer’s excise tax returns showed income under the service B&O tax classification. Taxpayer performs landscape maintenance and horticultural services; as such, Audit correctly reclassified Taxpayer’s reported income under retailing, RCW 82.04.050(3)(d) and RCW 82.04.250, which requires taxpayer to collect and remit retail sales tax.<sup>2</sup> RCW 82.08.050(1). Because of the obligation to collect and remit retail sales tax, regardless of whether the tax is collected, the seller is responsible for the remittance of the tax. RCW 82.08.050(3).

Washington State requires taxable businesses to keep accurate and complete business records. RCW 82.32A.030(3); RCW 82.32.070; WAC 458-20-254(3). Businesses should keep records that are as “suitable as may be necessary to determine the amount of tax for which the taxpayer may be liable.” RCW 82.32.070(1). This includes “the amounts of gross receipts and sales from all sources” which “must be supported by original source documents[.]” WAC 458-20-254(3)(a)(i). Here, Taxpayer failed to provide original source documents of sales or contracts for landscaping services. Audit repeatedly asked Taxpayer for any documentation that might aid it in determining Taxpayer’s sales amounts. Taxpayer failed to provide any source documents or other documents detailing its income.

<sup>2</sup> Taxpayer does not contest that his income must be classified as retailing.

When a taxpayer fails to provide suitable records, “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). 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). We have consistently found that RCW 82.32.100 furnishes the Department with broad discretion in reasonably estimating tax. *See, e.g.*, Det. No. 17-0173, 38 WTD 38, 42-43 (2019). When a taxpayer’s records are unreliable or incomplete, Audit’s use of industry averages to estimate unreported sales is reasonable. *See* Det. No. 18-0180, 38 WTD 253, 258 (2019).

Audit estimated Taxpayer’s revenues because of Taxpayer’s failure to produce suitable records. Audit has broad discretion in estimating tax. Here, Audit proceeded in a manner it deemed best on which to estimate the tax by using industry averages for like businesses – those that provide landscaping, have less than four employees, and are located in Snohomish or King Counties – to estimate the sales of Taxpayer’s business. Because Taxpayer had incomplete records, Audit’s use of industry averages to estimate the sales was a reasonable method to determine the amount of tax due. Accordingly, we deny Taxpayer’s petition for a correction of the Department’s assessment.

#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 1st day of September 2021.