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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. 22-0170
	)	
...	)	Registration No. . . .
	)	

RCW 82.04.070; RCW 82.08.010(1); ETA 3012.2009 – B&O TAX – RETAIL SALES TAX – GROSS PROCEEDS OF SALES – SELLING PRICE – CASH SHORTAGES AND CASH OVERAGES: The measure of a retailer’s business and occupation (B&O) tax and retail sales tax liability includes cash shortages and cash overages no matter its accounting methodology.

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.

Margolis, T.R.O. (successor to Farquhar, T.R.O.) – A . . . retailer petitions for correction of an assessment of retail sales tax and retailing business and occupation (B&O) tax on grounds that the measure incorrectly includes estimated over and short cash register receipts determined using a projection based on a sample of Daily Statistics Reports (DSTATs). We deny the petition.<sup>1</sup>

ISSUE

Whether, under RCW 82.04.070, RCW 82.08.010(1), and ETA 3012.2009, Taxpayer is liable for overage and shortage amounts based on DSTATs.<sup>2</sup>

FINDINGS OF FACT

. . . (Taxpayer) sells . . . products at retail stores in Washington. The Department’s Audit Division (Audit) examined Taxpayer’s account for the period January 1, 2012, through December 31, 2015, and on July 29, 2021, assessed Taxpayer \$. . . . The assessment is composed of \$. . . in retailing

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

<sup>2</sup> . . .

B&O tax, \$ . . . in retail sales tax, \$ . . . in use tax, and \$ . . . in interest. During the hearing on this matter, Taxpayer indicated that it only contests approximately \$ . . . of the assessment. That amount includes retail sales tax, retailing B&O tax, and interest assessed per Audit's conclusion that Taxpayer improperly reported sales and income related to register overages and shorts during the subject period.

Taxpayer recorded its sales using a point of sale (POS) system and, at the end of each day, used this system to generate DSTATs. Audit examined a six-month sample of DSTATs and found that Taxpayer had underreported sales by deducting cash shortages and excluding cash overages.<sup>3</sup> Audit determined percent error rates based on sample periods and assessed Taxpayer retailing B&O tax and retail sales tax by projecting the error rate over the reported sales for the audit period.

Taxpayer explains that the DSTAT reports were generated from entries by sales associates, who occasionally erred by entering amounts on the over/short line instead of the deposit line, resulting in a record of cash overages and cash shortages that never occurred. Further, Taxpayer explains that it did not use the DSTAT reports to account for overages/shortages, and instead reconciled its general ledger using the Trintech Total Reconciliation Program [(T-Recs System)<sup>4</sup>] as follows:

[According to Taxpayer, its employees count all cash received at the end of each day, while depositing nightly any excess over the established amount. Taxpayer's employees manually input the nightly deposit amounts into Taxpayer's POS system using the deposit line, but occasionally erred during the audit period by entering the deposit amount on the over/short line. While the incorrect over/short amounts were reflected in the DSTAT reports, Taxpayer maintains the T-Recs System identified any such discrepancies between the over/short amounts reflected in the DSTAT and actual bank deposit amounts, researched the discrepancies, and reconciled the amounts, recording the monthly reconciliation amount in Taxpayer's general ledger. Taxpayer asserts it does not rely on the DSTAT as a source document in recording POS activity or in preparing its general ledger.]

Taxpayer argues that Audit assessed Taxpayer for cash shortages and overages in error on grounds that Taxpayer reports on an accrual basis such that the DSTAT reports should not be used to reconcile Taxpayer's reporting, and further, the DSTAT reports are not a reliable indication of cash shortages and cash overages.

On October 19, 2022, Audit issued a written response to Taxpayer's petition. In the response, Audit notes that after the assessment was issued, Taxpayer provided additional records regarding the overages and shortages. However, Audit found that the additional records "did not provide the detail which is necessary to calculate gross income for the shortages and overages." Audit's Response to Taxpayer's Petition, page 3. The records "showed only one netted transaction each month and all months were then netted to obtain an annual number." *Id.* Audit "advised on multiple occasions that the shortages and overages cannot be netted." *Id.* Audit states that it required daily figures for the overages and shortages that occurred during the audit period in order to properly

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<sup>3</sup> Cash shortages are where, at the end of the day, less money is accounted for than what was recorded by the POS system. Cash overages are where, at the end of the day, more money is accounted for than what was recorded by the POS system.

<sup>4</sup> The T-Recs System is Taxpayer's automated reconciliation process. *See* . . . .

calculate the related sales and income, but Taxpayer did not provide that information. *Id.* As a result, Audit asserts that the assessment should be upheld.

### ANALYSIS

Washington levies a B&O tax for the “act or privilege of engaging in business in Washington.” RCW 82.04.220(1). Persons making retail sales are subject to retailing B&O tax measured by the gross proceeds of sales under RCW 82.04.250. RCW 82.08.020 imposes retail sales tax on each retail sale in Washington. The seller must collect retail sales tax from the buyer, and then remit the collected tax to the Department. RCW 82.08.050. If the seller fails to do so, the seller is personally liable for the tax. *Id.*

“Gross proceeds of sales” is defined in RCW 82.04.070 as follows:

[T]he value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, and/or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The term “value proceeding or accruing” is defined in RCW 82.04.090, in pertinent part, as follows:

[T]he consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. . . .

ETA 3012.2009 addresses cash shortages and cash overages as follows:

Many businesses reporting on a cash basis use the sales as recorded by the cash registers to determine the gross sales. On occasion, these businesses find that they have a cash shortage or overage when reconciling their actual cash on hand with the cash registers. What, if any, effect do cash shortages and overages have on a business’s measure of tax liability?

The Department has uniformly held that cash shortages generally may not be deducted from the gross proceeds of sales. The cash register reading raises the presumption that sales were made in the amounts recorded. While part of the shortage could represent uncorrected “over-rings,” other factors may be the cause of the apparent discrepancy. For example, the taxpayer may have made payments in cash to a supplier or carrier and failed to record the “cash paid-out.” Unless the business can show that the cash shortage is the result of an error in recording sales, the best evidence of the minimum gross proceeds of sales is deemed to be the cash register reading.

Conversely, cash overages are presumed to be sales income not included in the cash register reading. This is because cash on hand generally comes only as the result of sales. This can include an accumulation of small sales which may not have been rung through the cash register. Unless the business can show otherwise, cash overages must be added to the sales figures provided by the cash register reading.

In this matter, Taxpayer provided Audit with DSTAT reports as the source document from the POS system that represented sales within each of the stores. Audit used a six-month sample of reports to verify gross income and that additional sales from overages and shortages were being reported to the Department. Pursuant to RCW 82.32.100, Audit has the authority to estimate tax in the manner it deems best, as long as it does so reasonably. *See also* Det. No. 99-341, 20 WTD 343 (2001) (where we found that Audit did the best it could with what records were available and denied the petition on the issue).

Taxpayer argues that Audit erred in assessing tax based on overages and shortages because Taxpayer does not report on a cash basis, and ETA 3012.2009 does not apply to accrual basis taxpayers. While we recognize that “value proceeding or accruing” shall be applied “on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer,” and ETA 3012.2009 references businesses reporting on a cash basis, we find no basis for ignoring cash shortages and overages reflected in the DSTAT reports. At issue here is the measure of retailing B&O tax and retail sales tax, which, because it is measured by the “gross proceeds of sales,” would include cash shortages and cash overages no matter the taxpayer’s accounting methodology. There is no statutory basis to ignore these receipts, which are presumed included in the measure of taxes in accord with ETA 3012.2009. Taxpayer’s assertion that the reports are inaccurate is insufficient to rebut the presumption where Taxpayer has provided no proof that a projection based on the sample reports is incorrect and should be ignored, particularly when the available alternative measure is based on net figures from which taxable overages and shortages cannot be discerned. As such, we uphold the assessment and deny Taxpayer’s petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 20<sup>th</sup> day of September 2022.