

Cite as Det. No. 13-0276, 33 WTD 153 (2014)

BEFORE THE APPEALS 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. 13-0276
)	
...)	
)	Registration No. . . .
)	

[1] RCW 82.08.925: RETAIL SALES TAX – EXEMPTION – DIETARY SUPPLEMENTS – PRESCRIPTION – CHIROPRACTOR. RCW 82.08.925 provides a retail sales tax exemption for “sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription.” A chiropractor’s sales of dietary supplements to patients do not qualify for the exemption in RCW 82.08.925 because chiropractors are not authorized under Washington law to prescribe or dispense drugs.

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.

Chartoff, A.L.J. – A chiropractor protests the assessment of retail sales tax on sales of dietary supplements to patients, contending the sales are exempt from retail sales tax under RCW 82.08.925. Because chiropractors are not authorized under Washington law to prescribe drugs, we conclude the exemption does not apply and deny the petition.¹

ISSUE

Whether a chiropractor’s sales of dietary supplements to patients are exempt from retail sales tax under RCW 82.08.925.

FINDINGS OF FACT

The taxpayer operates a chiropractic clinic in Washington. The taxpayer is owned and operated by . . . , a chiropractor licensed under the laws of Washington State. In the course of treating patients, [The taxpayer] recommends and sells dietary supplements to patients.

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

The Audit Division (Audit) of the Department of Revenue (Department) conducted a partial audit of the taxpayer's records for the period of January 1, 2008, through December 31, 2011. The audit resulted in an assessment of \$. . ., consisting of \$. . . in retail sales tax, \$. . . in business and occupation (B&O) tax, \$. . . in interest, and \$. . . in penalties.

The taxpayer petitioned the Appeals Division of the Department for correction of the assessment. The taxpayer protests Audit's assessment of retail sales tax on its sales of dietary supplements to patients, which the taxpayer argues are exempt from retail sales tax under RCW 82.08.925.

Audit argues the exemption applies only to sales of dietary supplements dispensed pursuant to a prescription. Because chiropractors are not authorized to write prescriptions under Washington law, Audit concluded the exemption was not applicable.

The taxpayer admits chiropractors are not authorized to prescribe under Washington law. But, the taxpayer notes that naturopaths sell dietary supplements in the same manner, yet their sales are exempt. The taxpayer argues that chiropractors and naturopaths should be taxed the same.

ANALYSIS

The taxpayer argues that its sales of dietary supplements to patients are exempt from retail sales tax under RCW 82.08.925. RCW 82.08.925 provides a retail sales tax exemption for certain sales of dietary supplements, as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, *pursuant to a prescription*. "Dietary supplement" has the same meaning as in RCW 82.08.0293.

RCW 82.08.925 (italics ours). The exemption is limited to dietary supplements dispensed "pursuant to a prescription." The term "prescription" is defined as: "an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe." RCW 82.08.0281(4); Det. No. 07-0206, 27 WTD 36 (2008).

27 WTD 36 held that an advanced registered nurse practitioner's (ARNP) sales of prescribed dietary supplements to patients were exempt under RCW 82.08.925, finding the ARNP was a duly licensed practitioner authorized by Washington law to prescribe and dispense drugs.

In the present case, it is undisputed that chiropractors are not authorized under Washington law to prescribe or dispense drugs. RCW 18.25.005 defines "chiropractic" for purposes of licensing and states, in relevant part: "Chiropractic care shall not include the prescription or dispensing of any medicine or drug..." RCW 18.25.005(4).² Because chiropractors are not authorized to issue prescriptions under Washington law, we conclude the exemption is not applicable.

² We note that chiropractors are authorized to provide "dietary advice and recommendation of nutritional supplementation." RCW 18.25.005(2).

We also note that there is a separate retail sales tax exemption for sales of certain medicines by naturopaths. RCW 82.08.0283(1) provides a retail sales tax exemption for sales of:

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual *by a person licensed under chapter 18.36A RCW*;

RCW 82.08.0283(1) (italics ours). Chapter 18.36A RCW governs the licensing of naturopaths. Since the taxpayer is not a licensed naturopath, the exemption is not applicable.

In conclusion, because chiropractors are not authorized under Washington law to prescribe drugs, the exemption in RCW 82.08.925 does not apply. We sustain the Audit assessment.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 5th day of September.