

Cite as Det. No. 16-0015, 35 WTD 512 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	DETERMINATION
Assessment of )	
)	No. 16-0015
)	
... )	Registration No. . . .
)	

RCW 82.04.062. RULE 248: B&O TAX – SALES TAX – PRECIOUS METAL BULLION – EXEMPTION. Precious metal bullion is exempt from B&O and retail sales taxes per RCW 82.04.062.

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.

Gabriella Herkert, A.L.J. – Owner of a firearms store and gun range petitions for correction of an assessment of retail sales tax on replica silver bullets, contending they are exempt sales of precious metal bullion.<sup>1</sup> Petition is granted.<sup>2</sup>

ISSUES

Are the replica silver bullets sold by Taxpayer eligible for an exemption under RCW 82.04.062 and WAC 458-20-248?

FINDINGS OF FACT

Taxpayer runs a firearms store and gun range. Within the retail space, taxpayer sells firearms and ammunition, as well as bullion, coins<sup>3</sup>, and replica silver bullets. Taxpayer purchases and sells the bullets from a mint for the silver spot price plus a premium. Taxpayer also purchases and sells other forms of bullion, including bars and rounds, which, like the bullets, it both purchases and sells for spot price plus a premium. The premium charged by Taxpayer for bullets falls within a range of premiums he charges for other types of bullion, including bars and rounds, with different imprinted designs<sup>4</sup>. The prices charged by taxpayer for bars, rounds, and replica

<sup>1</sup> Petition also asserted that \$ . . . of the \$ . . . assessed retail sales were silver rounds, which, like bars, were exempt precious metal bullion. During appeal, Audit agreed. The remaining retail sales (all bullets) of \$ . . . is the sole issue still in dispute.

<sup>2</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

<sup>3</sup>Coins and other forms of money manufactured in metal and used as a medium of exchange (except for those sold or manufactured into jewelry or works of art) are monetized bullion under WAC 458-20-248. There were no coins at issue in this appeal so monetized bullion is not addressed.

<sup>4</sup> *Id.*

silver bullets are tied to the spot price of silver and, therefore, regularly fluctuate with the market. . . .

### ANALYSIS

Retail sales tax is imposed on each retail sale of tangible personal property in this state “unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale.” RCW 82.08.020(1)(a). The term “sale at retail” or “retail sale” is defined in RCW 82.04.050 to include every sale of tangible personal property to all persons irrespective of the nature of their business, unless an exclusion applies. RCW 82.04.050. Retail sales are subject to retailing business and occupations tax measured by gross proceeds of sales. RCW 82.04.220(1). Retail sales are also subject to retail sales tax measured by the selling price. RCW 82.08.020.

The sale of precious metal bullion is excluded from the definitions of “sale at retail” and “retail sale” pursuant to RCW 82.04.062(1).

RCW 82.04.062(3) states:

For purposes of this section, “precious metal bullion” means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.”

The replica bullets were smelted at and purchased from various mints. There is no question that the bullets were put through a process of smelting. Precious metals expressly include silver, and the bullets were made of silver. The exemption further requires that the metal be in such state or condition that its value depends upon its contents. Pricing for the silver bullets was based on the spot price of silver, the underlying precious metal, plus a premium. The value of the bullets did, therefore, depend on content. It is the final words of the statute – “and not upon its form” that leave the only factual consideration.

WAC 458-20-248 states:

The sales of processed or refined precious metal valued *solely upon the content thereof*, whatever its form, are not subject to tax in this state. This includes processed nuggets, bars, sticks, dust, and other processed forms of precious metal. For example, sales of gold or silver in raw, refined forms to dentists, laboratories, jewelers, and other persons, for their own consumption or for resale are not taxable... [Emphasis added].

Rule 248 states that the form of the precious metal does not matter if the value is based solely on the contents. “Gross proceeds of sales” means value. RCW 82.04.070. The gross proceeds of sales for the bullets have two components: spot price and premium. The spot price is the price of silver on the open market. Therefore, spot price is determined solely by the underlying content . . . Taxpayer asserts that the proceeds of sale of the bullets fluctuated with the spot price of silver, and that the premium regularly charged for silver bullets fell within the range of premiums

charged for other types of silver bullion where form was not a factor.<sup>5</sup> Taxpayer contends that the premium, therefore, is demonstrably determined solely by the value of the underlying precious metal. We agree.

As typical in the industry, the bullets were priced at spot price plus a premium<sup>6</sup>. The premiums were pre-established. The bullets cannot be fired and although function does not always follow form, these bullets do not have an increased value due to the function generally connected to this particular form. Taxpayer's marketing materials regularly highlighted the fact that the silver was replicated into bullets, but its pricing, tied as it was to the price of silver, did not reflect any particular value placed on the intrinsic appeal of bullet shapes to gun owners. On the contrary, it charged higher premiums for other bullion types including bars and rounds which had no natural connection to its firearms range customers. Furthermore, when the bullets did not sell within a broader market, taxpayer received only melt value for returning the bullets to the mint. Since the value of the bullets was not dependent on form beyond the value of the underlying precious metal, we conclude that the silver bullet bullion is exempt precious metal bullion.

Even if the form of the bullets had a nominal impact on the value of the property, in this instance, the bullets would still be precious metal bullion exempt under RCW 82.04.062(3). An exception to the exclusion exists for "sales of precious metal which has been *manufactured or further processed* into any form which determines or adds to the value thereof" WAC 458-20-248 [emphasis added]. The bullets at issue were not processed beyond their original smelting at the mint [and contain only "processed or refined precious metal" as required by Rule 248]. . . . Having determined that the replica silver bullets are exempt precious metal bullion under RCW 82.04.062(3), we grant taxpayer's petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 11th day of January, 2016.

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<sup>5</sup> Premiums typically are based on the mint of origin, as well as the complexity and uniqueness of a product. Government-minted coins typically carry the highest premiums; they feature intricate designs, have specific mintages each year, and offer a face value. Privately minted products typically carry lower premiums as they offer no face value and are produced by a plethora of companies. Smaller products also typically carry higher premiums per ounce than larger products. For instance, a 1 oz silver bar typically carries a higher premium per ounce than a 100 oz silver bar. Silver.com, Frequently Asked Questions, <http://www.silver.com/faq/> (last visited Jan. 6, 2016)

<sup>6</sup> *Id.*