

Cite as Det. No. 16-0330, 36 WTD 296 (2017)

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. 16-0330
)	
... )	Registration No. . . .
)	

RCW 82.32A.030; RCW 82.32.105; WAC 458-20-228: USE TAX - PURCHASE OF BUSINESS – OVERVALUED PERSONAL PROPERTY – ADJUSTMENT IN TAX. The Revenue Act does not authorize a reduction in use tax and penalties when an arms-length purchaser of a business paid more for the personal property than its actual value, but used that value for depreciation purposes.

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.

Bauer, T.R.O. – A dentist objects to the assessment of use tax paid on equipment he purchased from the prior occupant of his dental office, contending that the amount paid exceeded its value. We deny the petition.<sup>1</sup>

ISSUE

1. Can use tax and penalties thereon be excused or reduced, under RCW 82.32A.030, when a dentist did not know of the use tax liability on his purchase of personal property when he purchased a dental practice, and so, did not plan for its payment when he applied for his business loan?
2. Under RCW 82.12.010(7)(a) and WAC 458-20-178, must the Department adjust the measure of use tax when purchaser asserts that the purchase price exceeded its value?

FINDINGS OF FACT

The Department of Revenue’s (Department’s) Audit Division (Audit) examined the records of [Taxpayer] for the period February 1, 2012, through December 31, 2015. On March 29, 2016, Audit issued an assessment for the following amounts:

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

\$ . . .	Business and Occupation (B&O) Tax -- Service and Other Activities <sup>2</sup>
. . .	Use Tax or Deferred Sales Tax
. . .	Total Tax
. . .	Interest <sup>3</sup>
. . .	5% Assessment Penalty for Substantial Underpayment
\$ . . .	Total Due

Taxpayer did not pay the assessment, but instead has appealed the entire \$ . . . to this office.

Taxpayer, a dentist, purchased a small practice in February 2012 that consisted of three operatories, for \$ . . . , from another dentist. Of the purchase price, the Buy Sell Agreement allocated \$ . . . towards equipment to be used in the treatment of patients. The seller did not charge or collect retail sales tax on this purchase. Taxpayer was not aware that, in the absence of the payment of retail sales tax, use taxes would be due on this property. He states that, had he known, he would have taken additional loans to cover the taxes.

Taxpayer asserts that the office equipment was misrepresented at the time of its purchase. Of the 44 “major assets” on the equipment list, Taxpayer asserts that 21 were missing, and the dental chairs were 12 years old. Taxpayer does not address how such a discrepancy could have escaped notice at the time of the sale, since the majority of the practice’s selling price was for the equipment.

. . . County valued Taxpayer’s personal property at \$ . . . in its October 17, 2015, mailing. On December 14, 2015, Taxpayer petitioned the . . . County Board of Equalization (Board) to lower its valuation for 2015. In his petition to the Board, Taxpayer stated, “original equipment on list of assets at point of sale does not reflect what is actually in the office.” Taxpayer provided the original list of major assets with some assets crossed off. It does not appear, however, that Taxpayer argued that it never acquired all of the property on the list. Taxpayer later submitted an appraisal dated March 21, 2016, to the Board valuing the personal property at \$ . . . .<sup>4</sup> The appraiser (Appraiser) stated that it estimated the probable retail value of the equipment based on the manufacturer, model, age, and condition of the equipment, assuming an arms’ length transaction, noting that there is no established market for used dental equipment. Taxpayer’s 2016 personal property tax was based on a January 1, 2015, value of \$ . . . . Because the appraiser valued Taxpayer’s personal property in 2015, it is not probative of its 2012 value.

Taxpayer used the \$ . . . equipment cost as a basis for depreciation on his 2012 Federal Tax Return.

## DISCUSSION

1. RCW 82.32A.030, which discusses taxpayers’ responsibilities, provides:

To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility

<sup>2</sup> Taxpayer’s petition does not address the B&O tax under the service and other activities classification.

<sup>3</sup> Interest has continued to accrue since the issuance of the assessment.

<sup>4</sup> It is not clear whether any equipment had been added or subtracted.

to: . . . (2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue; . . .

WAC 458-20-228(9)(a)(iii), which concerns the waiver of penalties, states:

The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

- (A) Financial hardship;
- (B) A misunderstanding or lack of knowledge of a tax liability;

Thus, RCW 82.32A.030(a) places upon taxpayers the responsibility to “[k]now their tax reporting obligations, and when they are uncertain about their obligations, to seek instructions from the department of revenue.” The Department has a Taxpayer Information and Education Division and field offices throughout the state to answer any questions pertaining to tax liabilities. It would be inconsistent with this statutory scheme to waive taxes or penalties on taxes properly due when Taxpayer misunderstood the law and failed to seek instruction from the Department.<sup>5</sup> Det. No. 14-0165, 33 WTD 545 (2014); Det. No. 01-165R, 22 WTD 11 (2003).

Although Taxpayer may have been unaware of his use tax liability, RCW 82.32A.030 required Taxpayer to seek information as to any tax obligations from the Department. He did not do so, and we are, accordingly, unable to waive any of his use tax obligation or penalties thereon.

2. RCW 82.12.020(1) imposes the use tax “for the privilege of using within this state as a consumer any: (a) article of tangible personal property acquired by the user in any manner . . . .” Generally, “the tax is levied . . . in an amount equal to the value of the article used . . . multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.” RCW 82.12.020(4).

RCW 82.12.010(7)(a) defines the “value of the article used” as follows:

“Value of the article used” is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. . . . In case the article used is . . . sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

WAC 458-020-178(4) (Rule 178(4)) concerns the measure for use tax purposes. It states, in pertinent part:

**Measure of tax – Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

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<sup>5</sup> See also WAC 458-20-228 for the waiver of penalties.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. . . .

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

The sale in question was an arm's length transaction between educated parties, and these parties agreed in the contract on the allocation of the purchase price to tangible personal property. And, the taxpayer used this agreed value in its account records for purposes of federal depreciation.

In Det. No. 13-0237R, 33 WTD 349 (2014), we held that the Department had the authority to rely on a taxpayer's books and records to adjust the taxable value of motor vehicles, even after the Department of Licensing had accepted lower reported vehicle values and collected use tax on those lower values. In that case, the value of the vehicles recorded in the taxpayer's books, records, and federal depreciation schedules was higher than the value reported to the Department of Licensing when the vehicles were licensed. In Det. No. 99-132, 19 WTD 255 (2000), we noted that personal property tax rolls may not be an appropriate evidence of fair market value for use tax. In both cases, the Department was not, for use tax purposes, bound by values placed on personal property for the application of other taxes.

In this case, there was an arm's length, negotiated purchase price for dental equipment; both seller and Taxpayer agreed upon on the price. And, the taxpayer used the negotiated purchase price in its accounting records as the value of capitalized property for depreciation purposes. This is persuasive evidence of the value. Taxpayer argues that the sale turned out to be a bad bargain. Taxpayer has asserted that almost one-half of the equipment in the sale was missing, but this has not been substantiated. Even though . . . County may have adjusted the taxable measure for its property tax, the Department is not held to another agency's valuation under 33 WTD 349 and 19 WTD 255, particularly when the appraisal leading to the lower valuation is from a subsequent year.

In light of these factors, we decline to adjust the taxable measure of the use tax on Taxpayer's equipment.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 12th day of October 2016.