

Cite as Det. No. 19-0011, 40 WTD 109 (2021)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. 19-0011 |
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| ...) | Registration No. . . . |
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Rule 102; RCW 82.04.470: WHOLESALE TRANSACTION – REQUIRED DOCUMENTATION – FACTS AND CIRCUMSTANCES. The burden of proving that a sale is a wholesale rather than a retail sale is on the seller. If a seller does not take from the buyer a reseller permit or other authorized documentation under RCW 82.04.470 and WAC 458-20-102 (Rule 102), the seller can meet its burden by providing evidence of facts and circumstances that support the classification of the sale as wholesale.

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.

Orwick, T.R.O. – A distributor of giftware, restaurant supplies, and other goods protests the assessment of retail sales tax on certain transactions where the customer did not have a reseller permit. The distributor argues, based on facts and circumstances, that the transactions were properly classified as wholesale sales. We grant the petition.¹

ISSUE

Whether a distributor met the burden of proving a sale is a wholesale sale based on facts and circumstances identified under RCW 82.04.470(5) and WAC 458-20-102(7)(h) (“Rule 102(7)(h)”).

FINDINGS OF FACT

. . . (“Taxpayer”) is a distributor of giftware and restaurant supplies and other goods. In 2018, the Department’s Audit Division (“Audit”) audited Taxpayer’s records for the time period of January 1, 2014, through December 31, 2017. During the examination, Audit discovered several transactions with one customer (“Customer”) [in 2017 that] Taxpayer classified as wholesale sales. Taxpayer sold a variety of items to Customer including, but not limited to, pots and pans, dishware, kitchen utensils, toiletry products, candies, and teas. Customer operates a retail store offering

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

Chinese medicine, foods and other imported products. Customer did not provide Taxpayer with a reseller permit or any other type of [accepted alternative documentation]. As Taxpayer did not obtain a reseller permit or other type of resale certificate, Audit reclassified these wholesale sales as retail sales and assessed retail sales tax. The Department issued an assessment against Taxpayer on August 8, 2018, assessing \$. . . in retail sales tax and local sales tax and \$. . . in interest.

Taxpayer argues that these transactions were properly classified as wholesale sales, based on facts and circumstances as allowed under RCW 82.04.470(5). To support this claim, Taxpayer provided the following information:

- 1) Copies of seven purchase invoices during the audit period which cover every transaction between Taxpayer and Customer;
- 2) Pictures of Customer's store front, cash register, and shelves showing inventory;
- 3) A copy of Customer's MyDOR page, showing it is classified as an "All Other Miscellaneous Retailer" based on its NAICS code;
- 4) A copy of Customer's business license; and
- 5) A copy of Customer's reseller permit, which Customer obtained in August 2018.

The purchase invoices detail a variety of items sold by Taxpayer to Customer. [The types of items, bulk quantities, and frequency of orders are similar to sales Taxpayer made to other retailers who provided reseller permits.] These items include but are not limited to pots and pans, dishware, kitchen utensils, toiletry products, candies, and teas. The purchase invoices show that Customer purchased \$. . . worth of merchandise from Taxpayer.

ANALYSIS

Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. Generally, sales of tangible personal property and certain specified services to consumers are retail sales. RCW 82.04.050(2). Purchases for the purpose of resale are wholesale sales not subject to retail sales tax. RCW 82.04.050; RCW 82.04.060. A sale is presumed to be a retail sale unless the seller can prove the wholesale nature of the sale. RCW 82.04.470(1); Rule 102(5). The burden of proving that a sale is wholesale rather than retail is on the seller. RCW 82.04.470. The seller may meet this burden by taking from the buyer, at the time of sale or within 120 days after the sale, a copy of a reseller permit issued to the buyer by the Department under RCW 82.04.470(1) and Rule 102(7). Here, Taxpayer acquired a reseller permit, but the Department did not accept it because Taxpayer received it more than 120 days after the sale.

In lieu of a copy of a reseller permit issued by the Department, a seller may accept alternative documentation from a buyer as follows:

- A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement ("SSUTA")² governing board. RCW 82.04.470(2)(a)(i) and RCW 82.04.470(3)(a)(ii).

² The Legislature adopted the Streamlined Sales Tax Act in 2003. Laws of 2003, ch. 168. *See, e.g.*, Det. No. 09-0280, 29 WTD 80 (2010).

- In the case of a buyer that is not required to be registered with the Department under RCW 82.32.030, a properly-completed uniform sales and use tax exemption certificate developed by the Multistate Tax Commission. RCW 82.04.470(3)(a)(i).
- Any other exemption certificate as may be authorized by the Department and properly completed by the buyer. RCW 82.04.470(2)(a)(ii) and RCW 82.04.470(3)(a)(iii).
- The relevant data elements as allowed under SSUTA, which include a business' name, address, type of business, reason for exemption, identification number required by the state to which the sale is sourced, state and country issuing identification number, and, if a paper form is used, a signature of the buyer. RCW 82.04.470(4); Rule 102(7)(f).

If the seller has not obtained any of the acceptable documentation described above, the seller may meet its burden of proof through facts and circumstances that show the sale was properly made at wholesale. RCW 82.04.470(5); Rule 102(7)(h). The Department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. Rule 102(7)(h). Facts and circumstances that should be considered include, but are not necessarily limited to: (i) The nature of the buyer's business – the items being purchased at wholesale must be consistent with the buyer's business activity; (ii) The nature of the items sold – the items sold must be of a type that would normally be purchased at wholesale by the buyer; and (iii) Other available documents, such as purchase orders and shipping instructions. *Id.*; Det. No. 14-0170, 34 WTD 030 (2015).

Taxpayer concedes that it did not timely obtain a reseller permit, or any of the accepted alternative documentation listed, from Customer. However, on [review], Taxpayer provided copies of every purchase invoice involving Customer during the audit period, pictures of Customer's storefront, cash register and shelves showing inventory, and copies of Customer's business license and reseller permit.

The sales invoices Taxpayer provided show substantial purchases made by Customer. Customer purchased over \$. . . of merchandise from Taxpayer. Customer operates a retail store selling Chinese foods, medicines and other imported products. The items Customer purchased from Taxpayer are the type of items typically expected to be purchased and resold by the type of business Customer is engaged in. Additionally, the items were purchased in [bulk] quantities that would indicate that Customer intended to resell the items.

The picture provided by Taxpayer showing Customer's storefront indicates that it is located in a strip mall. Customer's storefront is similar in appearance to other typical retail stores found in strip malls. Two other photos show Customer's store shelves stocked with similar items for sale that Taxpayer sold to Customer. A final photo shows a point-of-sale system and credit card reader indicating that retail sales are made in Customer's store. Customer's MyDOR business lookup page shows a NAICS classification as "All Other Miscellaneous Store Retailers." Finally, Customer applied for, and received, a reseller permit in August 2018. Taking all of this information into consideration, Taxpayer has shown, based on these facts and circumstances, that the transactions were properly classified as wholesale sales.

DECISION AND DISPOSITION

We grant Taxpayer's petition. We remand this case to Audit for adjustment consistent with this determination. Audit will issue an adjusted assessment with a new due date.

Dated this 16th day of January 2019.