Cite as Det. No. 13-0237R, 33 WTD 349 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of . . .	)	D E T E R M I N A T I O N No. 13-0237R Registration No. . . .

[1] RULE 178, RULE 17802; ETA 3029.2009: USE TAX - VALUE OF THE ARTICLE USED - VALUE OF MOTOR VEHICLES – REVIEW OF DEPARTMENT OF LICENSING'S DETERMINATIONS OF VALUE: The Department of Revenue has 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 has accepted lower reported vehicle values and collected use tax on those lower values.

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.

Weaver, A.L.J. – A taxpayer petitions for reconsideration of a determination holding that the department can assess additional use tax on motor vehicles when 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. Taxpayer's petition for reconsideration is denied.[1]

ISSUE

Whether the Department erred, in Det. No. 13-0237, in holding that, under RCW 82.08.010, WAC 458-20-178 and WAC 458-20-17802, the Department of Revenue can use the value of acquired vehicles listed in a buyer's books and records to adjust the use tax paid on the value of acquired vehicles reported to the Department of Licensing by the buyer at the time of acquisition.

FINDINGS OF FACT

[Taxpayer] is a construction company that quarries and sells construction materials. Taxpayer is a wholesaler and retailer of construction materials, rock, and asphalt sold at its plant locations. On April 2, 2007, Taxpayer, and group of eleven companies, [Seller], entered into an "Asset

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

Purchase and Sale Agreement." Taxpayer purchased substantially all of the Seller's properties in the transaction. The lump sum purchase price included real and personal property, in the form of inventory, plant, and equipment.

On April 2, 2007, the same day as the asset purchase from Seller, Taxpayer transferred a portion of those assets, specifically certain plant and off-road construction equipment ("rolling stock"), to its sister company, [Affiliate]. Taxpayer and Affiliate are both wholly-owned subsidiaries of a common parent, [Parent].

Taxpayer also retained certain assets, including motor vehicles. Taxpayer paid use tax on those motor vehicles when it licensed the motor vehicles with the Washington Department of Licensing ("DOL"). Taxpayer hired a "certified agent," licensed with the DOL, to assist in transferring title and paying license fees, use tax, and motor vehicle taxes. During the acquisition of the vehicles from Seller, Taxpayer obtained an independent equipment appraisal form [Appraiser] and used the values in that appraisal as its basis for claiming the fair market value of the acquired vehicles and the amount of use taxes due when the vehicles were licensed with DOL.

The Department's Audit Division examined Taxpayer's books and records for the period of January 1, 2007 through December 31, 2009. On June 27, 2012, the Audit Division issued an assessment which included $. . . in wholesaling B&O tax, $. . . in use tax/deferred sales tax, $. . . in motor vehicle tax, and $. . . in interest, for a total of $. . . . Based on additional records subsequently provided by Taxpayer, the Audit Division issued a Post-Assessment Adjustment on September 18, 2012, which included credits of $. . . in retail sales tax, and $. . . in retailing B&O tax, along with assessments of $. . . in use tax/deferred sales tax, $. . . in petroleum tax, $. . . in hazardous substance tax, $. . . in motor vehicle tax, interest of $. . . and additional interest (from 7/31/2012 to 10/18/2012) of $. . . , for a total of $. . . . Taxpayer filed a timely appeal. Taxpayer's appeal was denied in Det. No. 13-0237.

Taxpayer petitions for reconsideration of Det. No. 13-0237 arguing that the determination erred in holding that the Audit Division properly assessed additional use tax on the difference between the value of the vehicles Taxpayer recorded in its own books, records, and federal depreciation schedules and the value of the vehicles [Taxpayer] reported to the Department of Licensing when the vehicles were licensed.

ANALYSIS

There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property acquired by the user in any manner. RCW 82.12.020. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased or otherwise acquired where the user has not paid retail sales tax under chapter 82.08 RCW with respect to the property used. *See* WAC 458-20-178(1) ("Rule 178").[2] Liability for the use tax arises at the time the property is first put to use in this state. Rule 178(3).

[2] [The Department promulgated an updated version of Rule 178, effective May 2014. The citations in this determination are to the prior version of the rule, effective from 1987 to May 2014.]

The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. Rule 178(13); [RCW 82.12.020(4).]

Taxpayer disputes that the Department properly calculated the value of the motor vehicles that Taxpayer retained and did not transfer to Affiliate. The value of tangible personal property subject to use tax, the "value of the article used," is defined, [by rule], in pertinent part as:

> [T]he total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of the article used. In case the article used was extracted or produced or manufactured by the person using the same or was acquired by gift or was sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character.

Rule 178(13) (interpreting RCW 82.12.010(7)(a) (definition of "value of the article used") and RCW 82.08.010(1) (definition of "selling price")).

Taxpayer claims that Det. No. 13-0237 erred "by asserting that the Department of Revenue has the power to review and overturn determinations of the DOL, another cabinet-level executive department, as to the value of Taxpayer's motor vehicles, which is clearly under the purview of the DOL." Administration of use tax under chapter 82.12 RCW is "vested in the department of revenue which shall prescribe forms and rules of procedure…for the ascertainment, assessment and collection of taxes and penalties imposed thereunder." RCW 82.32.300. To collect use tax on vehicles, the Department "may designate the county auditors of the several counties of the state as its collecting agents." RCW 82.12.045(1). The statute further provides that these collection duties "may be performed by the director of licensing" as well. RCW 82.12.045. Accordingly, WAC 458-20-17802 ("Rule 17802") states that "The department of revenue has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of ownership of a motor vehicle acquired without the payment of sales tax." This language indicates final authority remains with the Department, which has delegated only collection of the tax to DOL. Therefore, although collection of the tax has been delegated to DOL in some circumstances, the statutory authority for assessment and collection was explicitly granted to the Department and the Department is not bound in its assessment of use tax by the valuation accepted by DOL.

The DOL lacks independent statutory authority to assess or collect use tax on motor vehicles; its powers and duties in regard to use tax stem from rules promulgated by the Department of Revenue, and it collects use tax according to those rules. By statute, taxpayers may request refunds from the Department of Revenue for any use tax paid to DOL that they believe was not due or owing. RCW 82.12.045(5). Rule 17802(5) specifically addresses situations in which taxpayers may appeal determinations by DOL in regards to use tax, and situations in which the Department may review determinations by DOL. This specific grant of reviewing authority by statute and the retention of such authority in Rule 17802 support the holding in Det. No. 13-0237 that the Department has the ability to review a vehicle valuation accepted by DOL for purposes of assessing use tax.

Taxpayer next argues that Det. No. 13-0237 erred in its application of Rule 178 and Rule 17802 by relying on Rule 178 when Rule 17802 outlined procedures specific to vehicles and prohibited the Department from reviewing determinations by DOL on the value of a vehicle. Rule 17802 reads, in relevant part, as follows:

> The department of revenue may review an appraisal and assess additional tax, interest, and penalties.

Rule 17802(5)(d). In this case, Taxpayer provided the DOL an appraisal report of the valuation of the vehicles for calculating use tax.[3] According to Rule 17802(5)(d), when a taxpayer provides a written appraisal to substantiate the true value of a vehicle, the Department may review the appraisal and assess additional tax, interest, and penalties. *Id*. The Audit Division reviewed Taxpayer's appraisal, and assessed additional tax, based on Taxpayer's own books, records, and federal depreciation schedules.

Taxpayer next argues that Det. No. 13-0237 erred in its reliance on Excise Tax Advisory 3029.2009 *Determination of Minimum Value of Tangible Personal Property*, which states:

> Where there is a conflict over the value of tangible personal property, can the minimum value of tangible personal property be determined from the taxpayer's record entries on his books of account?
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> RCW 82.12.010(2)(a) defines "value of the article used" as the purchase price for the article including any tariff or duty paid in respect to the importation of the article used. *A taxpayer's own records are an admission of the minimum value of tangible personal property set up as a capital asset.* The Department is entitled to use, but is not necessarily bound by the taxpayer's records. However, if the entry does not reflect the true purchase price or does not fairly represent the asset's value, the Department may obtain additional evidence for use in determining value.
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> For example, assume a taxpayer purchased inventory, furniture, fixtures, and good will as a part of the acquisition of an on-going business. The total purchase price for the business is $175,000. The taxpayer reported the value of the tangible personal property acquired as $10,000, and paid Use Tax on that amount. However, the taxpayer's books showed the value of tangible personal property acquired to be $80,000. The Department may use the $80,000 value as shown on the taxpayer's books as the basis for an additional assessment of use tax.

[3] Taxpayer takes the position that the Department cannot review the values accepted by the DOL, because those values were based on "blue book values." This assertion mischaracterizes the facts. We note that Taxpayer did not use an "industry-accepted pricing guide" to determine the value of its vehicles. *See* Rule 17802(a). Taxpayer used a written appraisal. *See* Rule 17802(c). Under Rule 17802(c), the Department is specifically authorized to review an appraisal and assess additional tax, interest, and penalties. *Id*.

ETA 3029.2009 (emphasis added). Taxpayer argues that the books, records, and federal depreciation schedules used by the Audit Division to assess additional use tax on vehicles may include certain costs over and above the purchase price of the vehicles. Namely, Taxpayer states that its books and records may include additional costs related to 1) federal, state, and local taxes, fees and licenses, 2) insurance and transportation costs, and 3) repair costs, including parts and labor, as necessary to place the asset into service.

In this case, however, Taxpayer has failed to specifically identify any such costs that were actually included in the vehicle values it included in its books, records, and to the Internal Revenue Service in its federal depreciation schedules. Taxpayer just generally alleges that such costs were added to the book value of its acquired vehicles . . . ..[4] Taxpayer has not specifically identified or documented any such costs. Instead, Taxpayer takes the blanket position that the Department does not have the authority to use books and records to determine the fair market value of the vehicles Taxpayer purchased. For all the reasons stated above, we conclude that Det. No. 13-0237 properly relied on ETA 3029.2009 in holding that the Department does have that authority to use a taxpayer's books and records to determine the value of tangible personal property set up as a capital asset. Det. No. 13-0237 is affirmed.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 25th day of March 2014.

[4] RCW 82.32.070 and WAC 458-20-254 require a Taxpayer to retain and make available those records necessary to verify that the correct tax liability has been reported and paid. It is insufficient to generally allege that the book value of acquired vehicles includes taxes, insurance costs, and repair costs, without making the records available to document those alleged costs.