

Cite as Det. No. 13-0031, 33 WTD 336 (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. 13-0031
)	
... )	
)	Registration No. . . .
)	

[1] RULE 102; RCW 82.04.470: BUSINESS AND OCCUPATION (B&O) TAX – RETAIL SALES TAX – WHOLESALING – RETAILING – SUBSTANTIATION – RESELLER PERMIT – RESALE CERTIFICATE – FACTS AND CIRCUMSTANCES. Taxpayers objected to the reclassification of sales from wholesaling to retailing. Taxpayers did not provide required documentation to substantiate sales at wholesale. The Department denied Taxpayers’ petition, finding that Audit properly reclassified the sales at issue to retailing.

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.

Valentine, A.L.J. – [Taxpayers] petition for correction of an assessment in which the Department of Revenue (Department) reclassified sales from the Wholesaling Business & Occupation (B&O) tax classification to the Retailing B&O tax classification and assessed retail sales tax. Taxpayers’ petition is denied.<sup>1</sup>

ISSUE

Did the Department’s Audit Division properly reclassify certain of Taxpayers’ sales from wholesaling to retailing, when Taxpayers did not have documentation to substantiate the sales as wholesale sales as required under RCW 82.04.470(1)?

FINDINGS OF FACT

Taxpayers operate a lumber yard that sells lumber products and miscellaneous building supplies at wholesale and retail. The Department’s Audit Division (Audit) audited Taxpayers’ business

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

records for the period of January 1, 2008, through September 30, 2011, and issued an assessment for \$ . . . .<sup>2</sup>

During the audit period, Taxpayers sold products to several customers who did not have proper resale documentation. Taxpayers did not collect or remit retail sales tax for these sales. Audit reclassified these sales from wholesale to retail, adjusted the B&O tax due, and assessed applicable retail sales tax and interest. Taxpayers contend that two of these customers intentionally misled them to believe that the customers were qualified to make wholesale purchases.

One customer made purchases totaling \$ . . . during 2008 and 2009 and \$ . . . in 2010 and 2011. The second customer made purchases totaling \$ . . . in 2008. The first customer's primary business was fencing; the other was engaged in residential construction. Taxpayer describes these customers' purchases as "lumber products." Taxpayers had a blanket resale certificate provided by the fence company, but it expired in 2006. Taxpayers did not provide a resale certificate from the home builder. Neither company had a reseller permit.

#### ANALYSIS

RCW 82.04.220 imposes a tax for the privilege of engaging in "business activities" in Washington State. The tax is based on the "value of products, gross proceeds of sales, or gross income of the business." The gross proceeds of persons selling tangible personal property are subject to either the Wholesaling or Retailing B&O tax classification.<sup>3</sup>

In addition, Washington imposes retail sales tax on "each retail sale in this state."<sup>4</sup> RCW 82.04.050(1) defines "retail sale" as "every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business. . . ." "Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person" are not retail sales.<sup>5</sup> If a taxpayer pays less tax than is properly due, the Department is required to assess against the taxpayer the amount due, including interest on the tax due.<sup>6</sup>

The seller has the burden of proving that a sale is a wholesale sale rather than a retail sale.<sup>7</sup> Prior to January 1, 2010, a seller could meet the burden of substantiating a sale as wholesale rather than retail by obtaining a copy of the buyer's resale certificate.<sup>8</sup> Effective January 1, 2010,

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<sup>2</sup> The assessment of \$ . . . encompasses \$ . . . for sales tax, net \$ . . . for the change in B&O classification, and interest of \$ . . .

<sup>3</sup> RCW 82.04.270 and .250.

<sup>4</sup> RCW 82.08.020(1).

<sup>5</sup> RCW 82.04.050(1)(a)(i).

<sup>6</sup> RCW 82.32.050(1).

<sup>7</sup> RCW 82.04.470(1); WAC 458-20-102(7).

<sup>8</sup> WAC 458-20-102A(1).

reseller permits issued by the Department replaced resale certificates as substantiation for the wholesale nature of a sale.<sup>9</sup>

If a seller does not obtain the appropriate resale documentation, the seller is personally liable for the sales tax due unless the seller can show that the facts and circumstances of the sale prove the sale is a sale at wholesale rather than a retail sale.<sup>10</sup> The facts and circumstances that should be considered include, but are not limited to, 1) the nature of the buyer's business, 2) the nature of the items sold, and 3) additional documentation such as purchase orders and shipping instructions.<sup>11</sup>

After a review of the facts and applicable statutes and rules, we conclude that Audit properly reclassified certain of Taxpayers' sales from the Wholesaling B&O classification to the Retailing B&O classification. Taxpayers did not provide the necessary resale documentation for these sales and did not provide sufficient evidence that the facts and circumstances of the sales prove that the sales were sales at wholesale. Taxpayers provided information about the buyers' business activities and the products purchased, generally, but did not provide any additional documentary evidence to support the contention that these specific sales were sales at wholesale.

Thus, Audit properly credited Taxpayers for Wholesaling B&O tax paid on the sales and assessed Taxpayers the difference after reclassifying the sales under the Retailing B&O classification. Further, because the sales were properly reclassified as retail sales, the Department was authorized to assess applicable sales tax as required by RCW 82.08.020(1) and interest as required by RCW 82.32.050(1).

WAC 458-20-102A(1)(c) explains that the Washington State Legislature passed legislation in 2007 eliminating the provision [in RCW 82.04.470] that resale certificates were valid for only four years from the date issued to the seller if there was a recurring business relationship between the buyer and the seller. The change became effective on July 1, 2008. [Laws of 2007, ch. 6, §§ 1201, 1704] We conclude that this [former statutory provision] does not apply to Taxpayers' situation with the fence company purchases because the fence company's resale certificate expired in 2006. The fence company had no current resale certificate in force at the time the legislation took effect.

#### DECISION AND DISPOSITION

Taxpayers' petition is denied.

Dated this 7<sup>th</sup> day of March 2013.

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<sup>9</sup> WAC 458-20-102(1).

<sup>10</sup> RCW 82.08.050(4); WAC 458-20-102A(5)(a); WAC 458-20-102(7)(h).

<sup>11</sup> WAC 458-20-102A(5)(a); WAC 458-20-102(7)(h).