

Cite as Det. No. 17-0050, 36 WTD 439 (2017)

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

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 17-0050
	)	
...	)	Registration No. . . .
	)	

RCW 82.08.0273 – RETAIL SALES OF TANGIBLE PERSONAL PROPERTY TO QUALIFIED NONRESIDENTS – To substantiate the retail sales of tangible personal property to qualified nonresident exemption, a taxpayer may either (1) record the proof they accepted for proof of the purchaser’s nonresidence and the expiration date thereof or (2) capture and record the relevant data elements under the streamlined sales and use tax agreement. The relevant data elements under the streamlined sales and use tax agreement are: the purchaser’s name, address, type of business, the reason for exemption from retail sales tax, the ID number required by the state to which the sale is sourced, state and county issuing ID number, and a signature of the purchaser (if a paper form is used).

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.

Fisher, T.R.O. – A Washington retailer protests the imposition of retail sales tax on sales the retailer alleges were made to non-Washington residents for use outside Washington, arguing it properly documented sales of tangible personal property made to nonresidents for use outside of Washington. We deny the petition.<sup>1</sup>

ISSUES

1. Whether, under RCW 82.08.0273, Taxpayer provided sufficient records to be entitled to the retail sales tax exemption for sales of tangible personal property to nonresidents for use outside the state?
2. Whether, under RCW 82.32.105, Taxpayer is entitled to waiver of interest?

FINDINGS OF FACT

Taxpayer is based in . . . Washington where it sells indoor growing equipment and supplies, including lights, fertilizers, soil, nutrients, and other indoor gardening supplies.

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

The Department of Revenue (“Department”) audited Taxpayer to ensure Taxpayer was complying with its Washington tax obligations. The Department discovered that for sales of gardening equipment and supplies to purported non-Washington residents for use outside of Washington, Taxpayer did not record expiration dates on the identification cards presented by the purported non-Washington residents. The Department ultimately assessed Taxpayer \$ . . . in retail sales tax, \$ . . . in retailing business and occupation tax, and \$ . . . in interest for the tax periods 2012 through 2014.

Taxpayer timely sought administrative review of the imposition of retail sales tax and the interest. In its petition, Taxpayer explained that when it began its business, it searched online for a form from the Department that would indicate what information it needed to record to substantiate sales to non-Washington residents. Taxpayer found the Certificate of Exemption on the Department’s website labeled “SSTGB Form F0003 Exemption Certificate.” Petition, Exhibit A. The form includes fields for the name of the purchaser, the purchaser’s business address, identification number (either for a business tax ID number or a state issued identification number), the name of the seller, a reseller’s address, the type of business the purchaser is engaged in, the reason for exemption, and a signature. Petition, Exhibit A, at 1. The form also contains a section entitled “Certificate of Exemption Instructions for Washington State.” SSTGB Form F0003 Exemption Certificate (4/22/16), *Streamlined Sales and Use Tax Agreement Certificate of Exemption*, available at <http://dor.wa.gov/docs/forms/excstx/exmptfrm/streamlindsalstxexempcert.pdf> (“SSTGB Form”). Under “Seller responsibilities,” the form states the following:

You are relieved of the responsibility for collecting and remitting retail sales tax on the sale or sales described in the Certificate, provided all of the following conditions are met:

1. The purchaser fully completes all fields on the Certificate;
2. The purchaser provides the fully completed Certificate to you at the time of sale;
3. If the purchaser claims an entity-based exemption on a purchase made at your location, the state in which your business is located allows that exemption;
4. You do not fraudulently fail to collect the tax due; and
5. You do not solicit customers to unlawfully claim an exemption.

*Id.*

Taxpayer decided that the form provided by the Department was too comprehensive for its business, and simplified the process. Taxpayer created a notebook that recorded the date of sale, the signature of the purchaser, the amount of sale, the purchaser’s driver license number, and the state that issued that driver’s license number. Taxpayer does not record the expiration date of the identification card presented or the address of the purchaser.

During the hearing, Taxpayer asserted that its employees confirm the address on the identification cards as being a non-Washington address, and make sure the photograph on the identification card

matches the purchaser presenting the card. Taxpayer argues that its system of recording this information is enough to claim an exemption from retail sales tax.

At the hearing, Taxpayer produced several records Taxpayer claimed justify an adjustment of the assessment. Taxpayer produced a copy of the Auditor's Workbook with Taxpayer's edits listing additional expiration dates of purchasers' driver licenses for several transactions listed in the workbook. Taxpayer provided these documents to the auditor previously, and they have already been incorporated into a post audit adjustment. Taxpayer also produced a reseller's permit for an entity named ". . . LLC," which Taxpayer explained was for the transaction with ". . . ." The Auditor's Workbook does not show any transaction with either a "[LLC]" or a ". . . ," which means Taxpayer was not taxed with retail sales tax on that transaction, so the reseller's permit provided is irrelevant.

### ANALYSIS

Generally, retail sales tax is imposed upon all retail sales. RCW 82.08.020. When a seller makes a retail sale, it must collect retail sales tax. RCW 82.08.050. If a seller fails to collect retail sales tax on a retail sale, and no exemption applies, the seller becomes liable for the tax. RCW 82.08.050.

RCW 82.08.0273 provides an exemption from retail sales tax for sales of tangible personal property to [qualifying] nonresidents for use outside the state. RCW 82.08.0273(3)(b) indicates what constitutes acceptable proof of nonresident status:

Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

RCW 82.08.0273(4)(a) specifically lists the documents sellers must keep to substantiate a sale is qualified for this exemption:

Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which must show the type of proof accepted, including any identification numbers where appropriate, **and the expiration date, if any.**

(Emphasis added.) Here, because Taxpayer did not collect the expiration dates of the identification cards provided by alleged nonresidents, i.e., their driver's licenses, Taxpayer did not meet the

documentation requirements of RCW 82.08.0273(4)(a). The Department assessed the retail sales tax on this basis.

Taxpayer concedes that it did not record the expiration dates of all of nonresident's identification cards for every alleged sale of tangible personal property to alleged nonresidents. Nonetheless, Taxpayer argues that recording the expiration dates is not necessary for the exemption. Taxpayer points to RCW 82.08.0273(4)(c), which provides “[i]n lieu of using the methods provided in [RCW 82.08.0273(4)(a)] to document an exempt sale to a nonresident, a seller may capture **the relevant data elements as allowed under the streamlined sales and use tax agreement.**” RCW 82.08.0273(4)(c) (emphasis added). Taxpayer argues the information it did collect constitutes all of the relevant data elements as allowed under the streamlined sales and use tax agreement.

The streamlined sales and use tax agreement (“SSUTA”) is a multi-state agreement to simplify sales and use tax collection and administration by retailers and states. *What is the Streamlined Sales and Use Tax Agreement*, Streamlined Sales Tax Governing Board, Inc., available at <http://www.streamlinedsalestax.org/index.php?page=gen1> (last accessed January 12, 2017). SSUTA attempts to create, among other things, uniformity among tax exemption administration through its governing rules. *See How Does the Agreement Simplify Sales Tax Administration*, Streamlined Sales Tax Governing Board, Inc., available at <http://www.streamlinedsalestax.org/index.php?page=gen4> (last accessed January 12, 2017). SSUTA Governing Rule 317.1(A)(1) indicates what SSUTA requires for sellers [who sell] to nonresidents [who claim the exemption for sales] for use outside of the state.

Under SSUTA Governing Rule 317.1(A)(1), “relevant data elements as defined by [SSUTA]” for the purposes of RCW 82.08.0273(4)(c) include (1) the purchaser's name, (2) the purchaser's address, (3) the purchaser's type of business,<sup>2</sup> (4) reason for the exemption from retail sales tax, (5) the ID number required by the state to which the sale is sourced, (6) state and county issuing ID number, and (6) a signature of the purchaser if a paper form is used. We note that these data elements are the same as the blank fields on the form Taxpayer obtained when researching what information it needed to collect to claim the nonresident retail sales tax exemption. *See SSTGB Form*.

Here, Taxpayer did not record the nonresident purchaser's addresses [or the purchaser's type of business]. Accordingly, Taxpayer did not capture the relevant data elements as allowed under SSUTA.<sup>3</sup> Because Taxpayer failed to comply with RCW 82.08.0273(4)(a) and RCW 82.08.0273(4)(c),<sup>4</sup> Taxpayer has not maintained required documentation establishing sales to nonresidents, and Taxpayer is responsible for the retail sales tax. RCW 82.08.0273(6)(a).

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<sup>2</sup> Under SSUTA, “not a business” is a type of business for the purposes of complying with SSUTA Governing Rule 317.1(A)(1). *See* SSUTA Governing Rule 317.1(A)(2)(s).

<sup>3</sup> Taxpayer asserts that its staff checked identification cards to ensure the address on the card was an out-of-state address. RCW 82.08.0273(4)(c) required Taxpayer to *capture* the data elements, not just observe them. Furthermore, RCW 82.08.0273(6)(a) required Taxpayer to maintain records of the relevant data elements, including the nonresident purchasers' addresses.

<sup>4</sup> RCW 82.08.0273(4)(b) allows the use of a completed uniform exemption certificate to satisfy the proof requirements for nonresidency status. Because Taxpayer did not produce any completed uniform exemption certificates, this section cannot provide Taxpayer with relief.

We next turn to Taxpayer's request to waive interest. The Department is required by law to add interest to assessments for tax deficiencies. RCW 82.32.050(1); WAC 458-20-228(7); *see also* Det. No. 01-193, 21 WTD 264, 268 (2002); Det. No. 99-279, 20 WTD 149, 152 (2001). Interest is calculated from the last day of the month following the final period assessed. WAC 458-20-228(7).

The Department must waive interest in two circumstances: when the failure to timely pay the tax was the direct result of written instructions given to the Taxpayer by the Department, or where the extension of a due date for payment of an assessment of deficiency was not at the request of Taxpayer and was for the sole convenience of the Department. RCW 82.32.105(3). Here, neither circumstance applies; Taxpayer has not produced any written instructions provided by the Department, nor was there any extension of the due date for payment. Accordingly, the interest cannot be waived.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 2nd day of March 2016.