

Cite as Det. No. 18-0246, 39 WTD 139 (2020)

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. 18-0248
)	
...)	Registration No. . . .
)	

[1] RULE 183; RCW 82.04.050: RETAIL SALES TAX – BOWLING TOURNAMENT FEES PRIOR TO JANUARY 1, 2016 – ALL COMPONENTS TAXABLE. Prior to law change effective January 1, 2016, all components of the Tournament Fee were subject to retail sales tax.

[2] RCW 82.08.050; RETAIL SALES TAX – RETAIL SALES TAX COLLECTED IN ERROR; REFUND. Retail sales tax collected in error can only be refunded to Taxpayer if it refunds the tax to its customers and provides evidence to the Department that it has done so.

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.

Lewis, T.R.O. – Taxpayer conducts bowling tournaments. The tournament fee consists of an entry fee, lineage fee, and prize money. Taxpayer challenges the Department’s issuance of Balance Due adjustments. We sustain the Balance Due adjustments.¹

ISSUES

1. Is the Taxpayer entitled to a refund of retail sales tax it collected in error from its customers under RCW 82.08.050?
2. Under the provisions of RCW 82.04.050 and WAC 458-20-183 (“Rule 183”), in effect prior to January 1, 2016, are the total tournament fees that Taxpayer receives subject to retail sales tax?

FINDINGS OF FACT

Taxpayer is in the business of conducting bowling tournaments. The tournaments are held at approved bowling facilities in accordance with each specific tournament’s franchise rules, system,

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

and trademarks. The tournament fee that bowlers pay to Taxpayer comprises: (1) approximately \$. . . for the privilege of entering the bowling tournaments; (2) a lineage fee (per game fee) charged by the bowling facility; and (3) a \$. . . contribution to a prize fund, all of which is paid to winning bowlers.

Taxpayer collects the tournament entry fee. From the tournament fee that Taxpayer collects, it pays a lineage fee to the bowling facility where the tournament is held.² Taxpayer also uses the tournament fee to pay prize money to the winning bowlers. Taxpayer keeps the tournament entry fee.

On August 29, 2012, the Department's Taxpayer Account Administration Division ("TAA") issued Taxpayer a written ruling that it would need to begin reporting its income under the retailing business and occupation ("B&O") tax classification and charging tournament entrants retail sales tax. Taxpayer was further informed that because it was deemed a reseller of the bowling facility lineage fee charges, it could either use a reseller permit or take a tax paid at source deduction for the lineage fees they pay to the bowling facilities for the use/rental of the bowling lanes. Taxpayer was advised the deadline for compliance was September 1, 2012.

Taxpayer disagreed with TAA's tax reporting instructions. On September 28, 2012, Taxpayer appealed TAA's tax reporting instructions. On October 1, 2013, the Appeals Division issued [a determination ("2013 Determination")], which sustained the reporting instructions given in the August 29, 2012 letter ruling, and read as follows:

. . . Under the Department's interpretation of RCW 82.04.050(3)(a), Rule 183(2)(f), Rule 183(2)(m), and ETA 3167 . . . , we conclude that such a tournament fee is correctly taxable under the retailing classification of the B&O tax and subject to retail sales tax

Taxpayer argues that it should be allowed to avoid charging retail sales tax on the majority of its tournament fees by breaking down the tournament fees on participants' invoices and in its books and records, and taxing each portion accordingly. Taxpayer thus asserts that the \$. . . entry fee would be taxable under the service classification of the B&O tax, the \$. . . for the prize money portion would be nontaxable because Taxpayer pays these amounts out directly to winners, and only the lineage fee (to be paid over to the bowling facility) would be taxable under the retailing classification of the B&O tax and subject to retail sales tax.

If Taxpayer wishes to bifurcate or otherwise alter the form in which it collects and/or accounts for tournament fees, Taxpayer will need to submit a written ruling request with the exact specifics of its proposal to Taxpayer Information and Education Division

[2013 Determination] at 4.

² Because bowling is a retail activity, the bowling area charges retail sales tax on the lineage fee.

On January 13, 2013, Taxpayer filed its Q4/12 excise tax return. TAA's review found that Q4/13 tax return appeared to be the first tax return filed that was consistent with the [2013 Determination].

October 28, 2014, Taxpayer filed its Q3/14 excise tax return. On that return, Taxpayer took a tax in gross deduction from both retailing B&O tax and retail sales tax. Taxpayer continued to report these deductions through the Q1/2017, which was filed on May 4, 2017.

On June 1, 2017, TAA spoke with Taxpayer's tax preparer regarding the tax in gross deductions taken on the Q3/14 through Q1/17 returns. The tax preparer stated the deduction was for lane fees they paid for and then charged their customers. TAA explained to the tax preparer to report a tax paid at source deduction only from retail sales tax based on the previous ruling issued by the Department. TAA disallowed the tax in gross deduction from retailing B&O and reclassified the tax in gross deduction on the retail sales tax portion to tax paid at source deduction.

On June 1, 2017, the delinquent return penalty assessed on the Q1/17 return was waived based on 24-month criterion. *See generally* WAC 458-20-228(9)(b)(i)(B).

On June 2, 2017 invoices were issued for the Q3/14 through Q3/15 periods for the additional tax owed after disallowing the tax in gross deduction from the retailing B&O tax. The Q4/15 through Q1/17 periods had additional tax owed as well but were paid in full after the credit from the Q1/17 penalty waiver was applied.

Taxpayer disagreed with the actions taken by TAA and petitioned for review of the assessments. On August 5, 2017, TAA responded to Taxpayer's petition. TAA's response concluded:

Retailing B&O and retail sales tax are due on the gross amount received for the lineage fees for all periods prior to January 1, 2016. A taxable amount for tax paid at source deduction is allowed under the retail sales tax classification for this period. The invoices are correct as issued for the periods prior to January 1, 2016.

However, following HB 1550, [Taxpayer's] business activities are now subject to service and other [activities] B&O for all periods after January 1, 2016. Income for these periods should be reclassified, over-collected sales tax remains with the state, and the tax paid at source deduction needs review.

On September 5, 2017, Taxpayer [replied] to TAA's response to Taxpayer's petition:

The Taxpayer agrees with the Department that the entry fees and prize fund contribution are not retail sales under RCW 82.04.050(15)(a)(vi) and Rule 183, and are not subject to retail sales tax.

Since the fourth quarter of 2013, the Taxpayer followed the Department's prior Determination mandating that the Taxpayer collect retail sales tax. The Taxpayer was not aware of the statutory clarification and addition of RCW 82.04.050(15)(vi), and the Department's reversed position. As such, from at least January 1, 2016, the Taxpayer over-collected retail sales tax from its customers. Pursuant to WAC 458-

20-229 and Excise Tax Advisory 3106.2009, the Taxpayer intends to issue to its customers a credit in the amount of the over-collected tax, plus applicable interest, if any, seek refund from the Department, and amend its returns if necessary. The Taxpayer estimates the amount of the over-collected tax to be more than \$. . .

...

ANALYSIS

Taxpayer's petition raised two issues: 1) whether its tournament fees are subject to retail sales tax under the version of RCW 82.04.050 in effect prior to January 1, 2016 and 2) [whether it is entitled to] a refund of retail sales tax collected in error from customers after January 1, 2016.

Taxpayer first claims that it correctly reported its taxes prior to the January 1, 2016 law change to RCW 82.04.050 identified below. This issue was addressed in the Department's [2013 Determination], which constituted reporting instructions. RCW 82.32A.020(2) provides that taxpayers of Washington state have "[t]he right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer"

. . . The [2013 Determination] contained reporting instructions. The determination also contained the statement:

This determination is binding on the taxpayer and the department under the facts stated. It will remain binding until the facts change, the law by statute or court decision changes, the department publicly announces a change in the policy upon which the decision is based, or the taxpayer is notified in writing that the decision is no longer valid.

Thus, Taxpayer was given future reporting instructions in the [2013 Determination]. Taxpayer was required to report as instructed in the determination. The law changed as of January 1, 2016. As of January 1, 2016, Taxpayer was required to report in conformity with the new law. Taxpayer appears to either claim that the amounts it reported prior to the law change should have been reported under the service and other activities B&O tax classification or that it correctly reported those amounts by taking tax in gross deductions. Either position is incorrect. Taxpayer was required to report its tournament fees consistently with the instructions in the 2013 Determination and these amounts were indeed subject to retail sales tax and retailing B&O tax as explained in that determination.

Taxpayer next argues that it is entitled to a refund of retail sales taxes collected after the law change in 2016. RCW 82.04.050 was amended by Laws of 2015, ch. 169, § 1. The Legislation stated:

AN ACT Relating to the simplifying the taxation of amusement, recreation, and physical fitness services; amending RCW 82.04.050 . . . ; reenacting and amending RCW 82.12.010; creating a new section; repealing RCW 82.12.02917; and providing an effective date.

The law became effective January 1, 2016. The change in law was not retroactive.

Under the new version of RCW 82.04.050, some recreational business activities were moved out of the definition of retail sale and into the service and other activities B&O tax classification.

RCW 82.04.050(15)(a) still includes bowling as a retail activity. However, charges for competitive bowling events are no longer retail sales and are now subject to the service and other activities B&O tax classification . . . :

Bowling, but not including competitive events, except that amounts paid by the event participants to the bowling alley operator are retail sales under this subsection (15)(a)(vi). Likewise, amounts paid by the event organizer to the operator of the bowling alley are retail sales under this subsection (15)(a)(vi), if such amounts vary based on the number of event participants. . . .

RCW 82.04.050(15) (a) (vi).

Following the changes enacted by Laws of 2015, ch. 169, § 1, Taxpayer owed service and other activities B&O tax on tournament fees, lineage fees,³ and prize contributions, as “competitive events” are specifically excluded from the definition of “sales at retail.” RCW 82.04.050(15)(a)(vi). Amounts paid by tournament participants are not subject to retail sales tax except for amounts paid to the operator of the bowling alley. Taxpayer is not required to collect retail sales tax on these amounts. Instead, the individual bowling alleys are to charge Taxpayer sales tax on the lineage fees.⁴ Amounts paid by Taxpayer to the bowling alley are also subject to the retail sales tax if the amounts vary based on the number of event participants. *Id.* Taxpayer, however, maintains the lineage fee payment is not affected by the number of participants. Therefore, Taxpayer’s total tournament revenues, meaning its tournament fees, lineage fees, and prize contributions, are all taxable under the service and other . . . activities B&O tax classification.

Taxpayer argues that it is entitled to a refund of the retail sales taxes it erroneously collected after January 1, 2016. If Taxpayer had erroneously charged retail sales tax from its customers after that date, it must remit the retail sales tax trust funds it collected from its customers, unless it can verify that it refunded the retail sales tax collected in error to its customers.

Retail sales taxes collected by a seller are “deemed to be held in trust by the seller until paid to the department.” RCW 82.08.050(2). Although this statute does not specifically provide that over-collected retail sales taxes must be remitted to the Department, “[i]nherent in RCW 82.08 is the fact that taxes collected in the name of the state are not [the] property of the seller.” *Kitsap-Mason*

³ Prior to the law change, when Taxpayer’s competitions were considered retail sales, Taxpayer could either “resell” the lineage fees it collected from event participants to individual bowling alleys or Taxpayer could take a “tax paid at source” deduction for retail sales tax it paid to the bowling alleys. *See* Det. No. 13-0300. Now, under the new law, because Taxpayer is no longer providing a retail-taxable service, it is no longer permitted to “resell” the lineage fees and is not entitled to a tax paid at source deduction. Taxpayer is now required to pay sales tax on the lineage fees charged by bowling facilities, because the Taxpayer, in putting on its competitive bowling events, is the consumer of the bowling alley’s retail taxable bowling services. *See* RCW 82.04.050(15)(a)(vi) (stating that amounts paid by event participants to bowling alley operators are subject to retail sales tax).

⁴ *See* fn. 3.

Dairymen's Association v. Tax Commission, 77 Wn.2d 812, 817, 467 P.2d 312, 316 (1970) (en banc). In *Kitsap*, the Washington State Supreme Court considered this issue and held that a taxpayer that collects more than he is required to remit is not entitled to keep the overage. *Id.* The taxpayer in *Kitsap* improperly over-collected retail sales tax from its customers and failed to remit the over-collected tax to the state. The Washington State Supreme Court rejected the taxpayer's argument that "the amount of money collected in taxes is unimportant because it is liable to remit only the tax found due . . ." *Id.* at 816. The *Kitsap* court goes on to say that "[t]he integrity of the entire taxing system demands that funds collected as taxes be remitted to the state." 77 Wn.2d at 817, 467 P.2d at 316 (Emphasis added).

Retail sales tax collected in error can only be refunded to Taxpayer if it refunds the tax to its customers and provides evidence to the Department that it has done so. WAC 458-20-229 and Excise Tax Advisory 2025.08.229. This is because the seller is not just a trustee to the state for collection of the tax, but also "a trustee of the refund as well." *GTE v. Dep't of Revenue*, 49 Wash. App. 532, 535, 744 P.2d 638, 640 (1987). Because Taxpayer has not refunded the tax to its customers it is likewise not entitled to a refund of improperly collected retail sales tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 13th day of September 2018.