

Cite as Det. No. 13-0342, 33 WTD 89 (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. 13-0342
...)	
)	Registration No. . . .
)	

RULE 254; RCW 82.32.070: RECORDS – RETAIL SALES TAX - RECORDKEEPING. Taxpayer must maintain and provide adequate records to demonstrate that he is entitled to an adjustment of a tax assessment.

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.

Yonker, A.L.J. – The owner of a car dealership (Taxpayer) challenges a tax assessment for additional tax liability due to Taxpayer’s failure to accurately report its income and remit retail sales tax. Taxpayer argued that it is unable to provide records to support an adjustment to the tax assessment because his bookkeeper has refused to allow him access to his own records. We deny Taxpayer’s petition.¹

ISSUE

Under RCW 82.32.070 and WAC 458-20-254, has Taxpayer kept, preserved, and made available to the Department sufficient documentation to support an adjustment to the tax assessment?

FINDINGS OF FACT

Taxpayer is the sole proprietor of a car dealership in . . . Washington. In 2012, the Department’s audit division conducted an audit of Taxpayer’s books and records from January 1, 2008 through December 31, 2011 (audit period). During the audit process, the auditor met with Taxpayer briefly, but primarily worked with Taxpayer’s former bookkeeper. The auditor reviewed Taxpayer’s records, which were housed at the bookkeeper’s office. During the course of the audit, the auditor found that Taxpayer’s records indicated a number of accounting errors that led to Taxpayer underreporting its income and failing to remit all collected retail sales tax to the Department.

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

On October 9, 2012, as a result of the audit, the Department issued a tax assessment for \$. . . , which included \$. . . in additional tax liability, a \$. . . five percent assessment penalty, and \$. . . in interest. The Department granted Taxpayer extensions of the due date on the tax assessment until April 8, 2013. On that date, Taxpayer appealed the full amount of the tax assessment.

On appeal, Taxpayer made no specific argument that any portion of the tax assessment was incorrect. Instead, Taxpayer argued that he did not have access to relevant records because those records were in the possession of his former bookkeeper, and the bookkeeper had refused to return the records to Taxpayer. Yet, Taxpayer has not pursued any legal action against the former bookkeeper. Taxpayer was unable to provide any additional documentation on appeal, and was unable to articulate how any additional records might support an adjustment of the tax assessment. Taxpayer stated throughout the appeal process that he did not have the financial resources to pay the tax assessment in full.

ANALYSIS

The taxpayer has the burden of proof when contesting a tax assessment. *See* RCW 82.32.160; RCW 82.32.18; *Budget Rent-A-Car of Washington-Oregon, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 500 P.2d 764 (1972). The burden of proof is on the taxpayer to prove that a tax assessment should be modified or cancelled. *See Group Health Coop. of Puget Sound, Inc. v. Dep't of Revenue*, 106 Wn.2d 391, 401-02, 722 P.2d 787 (1986); Det. No. 00-099, 20 WTD 53 (2000). Mere subjective and self-serving statements without more are insufficient to meet this burden. Det. No. 04-0017, 23 WTD 331 (2004).

Further, RCW 82.32.070 requires taxpayers to maintain records adequate for the Department to determine the tax liability of such taxpayer. *See* Det. No. 08-0116, 27 WTD 228 (2008). WAC 458-20-254 (Rule 254) defines the requirements for the maintenance and retention of books, records, and other sources of information. Rule 254(3) states, in relevant part:

- (a) Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility . . . must keep complete and adequate records from which the department may determine any tax liability for such taxpayer.
- (b) It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:
 - (i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

- (ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.
 - (iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.
 - (iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 for information on the refund process.
- (c) The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

The Audit Division conducted its review based on the documentation Taxpayer provided to the Department through his bookkeeper. Indeed, on appeal, Taxpayer stated that he believed the records he provided through his bookkeeper were accurate. While Taxpayer maintains that he no longer has access to those records, he has provided no explanation as to how the same accurate records the audit division used as the basis for its findings might also now support an adjustment to the tax assessment. Taxpayer has had over a year since the Department issued the tax assessment to recover his records from his former bookkeeper, but has failed to do so, even through legal action. In the absence of any evidence contradicting the audit division's findings, we must conclude that Taxpayer has not met his burden of proving that he is entitled to any adjustment of the tax assessment. Accordingly, we affirm the tax liability as assessed in the tax assessment.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 14th day of November.