Cite as Det. No. 16-0117, 36 WTD 384 (2017)

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. 16-0117
. . .	)	Registration No. . . .

[1] RCW 82.04.220; RCW 82.04.140: B&O TAX – RETAIL SALES TAX – MARIJUANA - COLLECTIVE GARDEN. A Marijuana Collective Garden is involved in a business activity and must pay B&O tax and collect retail sales tax on the income it receives from the sale of Marijuana.

[2] RCW 82.08.0281; WAC 458-20-18801: RETAIL SALES TAX – MARIJUANA – PRESCRIPTION DRUG EXEMPTION. The sale of Marijuana does not qualify for the retail sales tax exemption afforded prescription drugs.

[3] RCW 82.32.070; RCW 82.32.100; WAC 458-20-254: B&O TAX – RETAIL SALES TAX – LACK OF RECORDS – ESTIMATE TAX. The Department may estimate a taxpayer's tax liability when the taxpayer has failed to keep and maintain records to substantiate sales figures.

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, A.L.J. – Taxpayer, a medical marijuana business, protests an estimated assessment of retailing business and occupation ("B&O") tax and retail sales tax. Taxpayer maintains it was a collective garden that does not conduct taxable transactions. In the alternative, Taxpayer maintains the sales of marijuana qualify for the retail sales tax exemption afforded prescription drugs. The assessment is affirmed.[1]

ISSUES:

1. Under the provisions of RCW 82.04.220, is a collective garden engaged in business, which under the provisions of RCW 82.04.140, requires it to pay tax on its income?

2. Under WAC 458-20-18801 ("Rule 18801") and RCW 82.08.0281, may a collective garden sell medical marijuana without collecting sales tax from customers who present written

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

authorization from a health care professional that the patient may benefit from the medical use of cannabis?

3. Is a medical marijuana retailer liable for estimated tax, under RCW 82.32.100, when it did not maintain or provide records, under RCW 82.32.070 and WAC 458-20-254 ("Rule 254"), to substantiate its sales figures?

FINDINGS OF FACT:

[Taxpayer] operates as a sole proprietor d/b/a [Business]. Taxpayer operates two brick and mortar marijuana dispensaries and a website. Taxpayer refers to its business operation as a collective garden as defined in RCW 69.51A.085.

The Department's interaction with Taxpayer began on July 24, 2014, when Compliance discovered Taxpayer's website . . . using the d/b/a [Business] located at. . . Washington . . . . The website contained a "menu" section that listed different marijuana strains and prices depending on the quantity, marijuana edibles, marijuana drinks, various glass pipes, hats, and t-shirts. Compliance mailed Taxpayer a medical marijuana inquiry letter and questionnaire. On September 19, 2014, Taxpayer's representative responded, stating Taxpayer was not a business. Further investigation by Compliance discovered that Taxpayer may be the owner of [Business]. Compliance mailed Taxpayer a commencement of audit letter, sales data sheet, and business license application, and requested that Taxpayer provide the information by October 17, 2014.

On September 24, 2014, Compliance received a letter from Taxpayer's lawyer stating: "[Business] is not a business; it has no gross income of any kind, and is not providing products to consumers for sale or donation." Compliance telephoned Taxpayer's lawyer and left a message requesting the Confidential Tax Information Authorization form ("CTIA") be completed and returned.

On November 5, 2014, Compliance received a letter from Taxpayer's lawyer stating: [Business] is not a business and there is no requirement that it be registered in the State of Washington. Compliance telephoned Taxpayer's lawyer and left a message with the receptionist requesting return of the CTIA.

On November 25, 2014, Compliance telephoned Taxpayer's lawyer and left a voice mail message requesting return of the CTIA. Compliance reviewed Taxpayer's website, which had been modified and now referenced [LLC]. Investigation disclosed that [LLC] registered with the Department on February 1, 2013, and Taxpayer was a member.

On December 8, 2014 Compliance referred to Taxpayer's website, which listed under products: shirts, hats, and stickers for sale that appeared to be available for purchase by consumers. It also stated:

. . .

The website's menu section still listed several marijuana strains, marijuana edibles, marijuana drinks, and various glass pipes for sale. The website also had an "extraction" page where Taxpayer

offers to use his [machine] to process "medical grade hash" and in return, Taxpayer receives half of the product manufactured. The "news" section states [Business] is managed by a consulting company, and that Taxpayer's business location in . . . , Washington has been open for ". . . years," has "provided medications to . . . patients since opening," and has ". . . garden members." The website also stated that Taxpayer had opened a new location at . . . , Washington.

On December 30, 2014, Taxpayer's representative provided the Department with [LLC] business records, a separate company that provides business and financial management services to Taxpayer. During the course of the meeting, Compliance once again explained that Taxpayer must register and pay tax. Taxpayer's representative stated that Taxpayer is a collective garden, does not conduct business, and has no obligation to register with the Department.

During a meeting between Compliance and Taxpayer on February 13, 2015, Taxpayer stated he provides a location for patients to get their medicine, and that he does not receive any profit, and is not conducting a business. Taxpayer stated that the members contribute only what it costs to grow the product and the contributions are not taxable. Taxpayer also stated the funds they receive are donations. Taxpayer explained that it lists prices for marijuana products on his website to inform members of products available and an attempt to "brand" the name [LLC]. Once again, Taxpayer refused to provide actual sales figures.

On February 18, 2015, Compliance involuntarily registered Taxpayer.

On February 19, 2015, Taxpayer stated that medical cannabis is prescribed, and therefore, retail exempt. All funds are donated and patient receives the product for the cost it takes to grow. Compliance requested sales figures by February 27, 2015.

On March 17, 2015, the Department issued a $ . . . [assessment] covering the period May 26, 2012, through December 31, 2014.[2] The retailing B&O tax and retail sales tax assessed was calculated using industry standards because Taxpayer had refused to provide actual records. On April 3, 2015, Taxpayer filed an appeal requesting Correction of the Assessment with the Department's Appeals Division. The petition asserted that Taxpayer does not operate a business, there is no taxable income, and that even if Taxpayer conducted business, no retail sales tax would be due because it is a retail sales tax exempt prescription drug.

ANALYSIS:

In 1998, Washington voters adopted Initiative 692, Laws of 1999, ch. 2, to provide an affirmative defense against what would otherwise be criminal offenses for medical marijuana production, possession, and use.

On April 29, 2011, Governor Gregoire signed Engrossed Second Substitute Senate Bill 5073. Section 403, later codified as RCW 69.51A.085, created collective gardens. Taxpayer maintains it is a qualifying collective garden. A "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use. RCW 69.51A.085. The legislature intended, in allowing collective gardens under

[2] The $ . . . assessment consisted of $ . . . tax, $ . . . interest, $ . . . late-payment penalty, and $ . . . assessment penalty.

RCW 69.51A, that "persons who act as designated providers to such patients shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of cannabis." RCW 69.51A.005(2)(b). The provisions creating collective gardens address the criminal and civil sanctions that might otherwise be imposed on collective gardens based solely on their assisting with the use of medical marijuana. The medical cannabis provisions do not address the taxability of the activities of collective gardens.

Thus, while the Department does not concede that Taxpayer is a qualifying collective garden under RCW 69.51A.085, for purposes of applying Washington B&O and retail sales taxes, it does not matter since RCW 69.51A.085 addresses criminal law concerns and not tax concerns. Thus, during the audit period, there was no special tax exemption to shield Taxpayer from taxation.

Washington imposes a B&O tax on various business classifications in Chapter 82.04 RCW. "There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities." RCW 82.04.220. The B&O tax is not a tax on profit or net gain, but a tax on the total amount of money or value received in the course of doing business. *Budget Rent-A-Car of Wash.-Oregon v. Dep't of Revenue*, 81 Wn.2d 171, 173, 500 P.2d 764 (1972).

RCW 82.04.140 broadly defines "business" for B&O tax purposes as "all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly." The measure of the B&O tax is the application of rates against the "value of products, gross proceeds of sales, or gross income of the business, as the case may be." RCW 82.04.220(1).

The legislature "intended to impose the business and occupation tax upon virtually all business activities carried on within the state." *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000) (quoting *Time Oil Co. v. State*, 79 Wn.2d 143, 146, 483 P.2d 628 (1971)). As a result, unless an exception or deduction applies, a taxpayer owes B&O tax on all income received without a deduction for any cost of doing business. Here, Taxpayer argues it is not conducting business. We disagree.

Here, Taxpayer operated two regular places of business plus an internet site where it advertised and sold a variety of goods, including medical cannabis, medical cannabis edibles, medical cannabis drinks, shirts, hats, stickers, and glass pipes. Taxpayer also provides a process to extract marijuana from marijuana trims into marijuana butter or hash in exchange for some of the product. Selling products or providing products in exchange for consideration is a business activity. Thus, we find that the Department correctly required Taxpayer to register with the Department.

"Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration. RCW 82.04.040(1). Since medical marijuana is tangible personal property, the transfer of ownership or possession of marijuana for valuable consideration is a sale under RCW 82.04.040(1).[3] The term "retail sale" includes every sale of tangible personal property, subject to

[3] Under RCW 82.08.010(7), "tangible personal property" means "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses."

certain exclusions, none which apply here. RCW 82.04.050(1)(a).[4] Retail sales are subject to retailing B&O tax under RCW 82.04.250, and subject to retail sales tax under RCW 82.08.020(1)(a). Sellers must collect the full amount of the retail sales tax payable from buyers. RCW 82.08.050(1). If the seller fails to collect retail sales tax from the buyer and remit it to the Department, the seller becomes personally liable for the amount of the tax. RCW 82.08.050(3).

Taxpayer argues that, as a collective garden, it was not making sales. We disagree. Here, Taxpayer's clients would enter Taxpayer's location, provide their authorization, review and sign a membership application, and exchange payment for medical marijuana. This is a sale because Taxpayer transferred ownership or possession of tangible personal property, medical marijuana, for consideration. RCW 82.04.040(1)(a).

Legislation passed in 2015 supports the conclusion that sales by collective gardens are subject to retail sales tax. RCW 82.08.9998(2) provides a temporary retail sales tax exemption for sales of marijuana and marijuana products by collective gardens in compliance with RCW 69.51A, from July 1, 2015, until June 30, 2016.[5] If collective gardens in compliance with RCW 69.51A were not making retail sales, the legislature would not have needed to pass these exemptions. *See* Det. No. 07-0168, 27 WTD 19 (2008). *City of Seattle v. State*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998) (Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. (citing *Stone v. Chelan County Sheriff's Dep't,* 110 Wn.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Board of County Comm'rs,* 97 Wn.2d 385, 391, 645 P.2d 697 (1982)).

In conclusion, Taxpayer is a "person" engaged in "business activities" whose sales are subject to retailing B&O tax and collection of retail sales tax.

Taxpayer further argues that even if Taxpayer operated a business and was making sales, the sales of marijuana are exempt from retail sales tax as prescription drugs. RCW 82.08.0281(1) exempts from retail sales tax, ". . . sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription." WAC 458-20-18801 ("Rule 18801") explains that a seller may obtain an exemption certificate for this exemption: "A seller is not required to collect sales tax when it obtains a properly completed exemption certificate indicating prescription drugs, intended for human use sold to medical practitioners, nursing homes, and hospitals, will be put to an exempt use under the authority of a prescription." Rule 18801(403)(b). Otherwise, the retail sales tax must be collected. *Id.*

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[4] RCW 82.04.050(1)(a) excludes from the definition of "retail sale" the following:

> . . . a sale to a person who:
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> (i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, . . . ; or
>
> . . .
>
> (iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component . . .

Such sales are "wholesale sales." *See* RCW 82.04.060(1)(a).

[5] Chapter 4, Laws of 2015, 2nd Spec. Sess. (2ESSHB 2136).

RCW 82.08.0281(4)(a) defines the term "prescription" as: "[A]n order, formula, or recipe[6] issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe." The legislature added the words, "to prescribe" to RCW 82.02.0821 in 2003 when it explained, "A prescription for items or drugs that are exempt must be prescribed by a person whose license authorizes him or her to prescribe the item or drugs." Final Bill Report (SB 6515), *available at* http://lawfilesext.leg.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/Senate/6515.FBR.pdf (last viewed Nov. 25, 2014). However, no licensed practitioner may prescribe medical marijuana in Washington.[7]

Under 21 U.S.C. § 812 and RCW 69.50.204, marijuana is a Schedule 1 controlled substance, which cannot be prescribed under federal and state law. *Seeley v. State*, 132 Wn.2d 776, 940 P.2d 604 (1997) (holding "[m]arijuana cannot be legally prescribed, nor can a prescription for marijuana be filled by a pharmacist in Washington . . . ."; *State v. Hanson*, 138 Wn. App. 322, 328-32, 157 P.3d 438 (2007) (holding Washington's Medical Use of Marijuana Act did not implicitly repeal marijuana's classification as a Schedule 1 controlled substance); *see also* Dep't of Revenue Special Notice dated May 31, 2011, entitled "Sales of Medical Cannabis Remain Subject to Sales Tax." Accordingly, medical marijuana is not covered by the exemption for prescription drugs.

We recognize that medical professionals can issue documentation authorizing the use of marijuana, but this does not change the outcome. The legislature enacted Chapter 69.51A RCW, which addresses medical marijuana. RCW 69.51A.030(2)(a) allows health care professionals, including naturopaths, to provide a patient with a valid documentation authorizing the medical use of marijuana,[8] provided certain requirements are met:

> (2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in **section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

[6] [Taxpayer does not argue that its medical marijuana is an exempt sale of prescription drugs because it is an "order, formula, or recipe." *See* RCW 82.08.0281. Because Taxpayer does not make this argument, we do not address it in this determination.]

[7] The website for Washington's Department of Health provides, "Healthcare providers cannot write prescriptions for medical marijuana. They may only write recommendations that a patient has a medical condition that may benefit from the medical use of marijuana." *See* http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuanaCannabis/GeneralFrequentlyAskedQuestions#10 (last visited Nov. 24, 2014).

[8] RCW 69.51A.010(7) defines "valid documentation" as:

> (a) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of marijuana; and
> (b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

(Emphasis added.)

> (i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;
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> (ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;
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> (iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and
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> (iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(Emphasis added).[9]

Taxpayer argues that a valid documentation (defined in RCW 69.51A.010 (7)) that a health care professional is permitted to provide a patient under RCW 69.51A.030 (2)(a), equates to a prescription for purposes of RCW 82.08.0281. Taxpayer contends that a document authorizing use of medical marijuana is a prescription. We disagree. Had the legislature intended such a result, it would not have added the words "to prescribe" to RCW 82.08.0281 in 2003. Chapter 69.51A RCW does not authorize medical professionals "to prescribe" medical marijuana.

Generally, a person claiming a tax exemption, exception, or deduction has the burden of proving he or she qualifies for the tax benefit. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967). Taxation is the rule; exemption is the exception. *Spokane County v. City of Spokane*, 169 Wash. 355, 358, 13 P.2d 1084 (1932). Exemptions from a taxing statute must be narrowly construed. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972); *Evergreen-Washelli Memorial Park Co. v. Dep't of Revenue*, 89 Wn.2d 660, 663, 574 P.2d 735 (1978).

The legislature used the language of "valid documentation," instead of "prescription," when addressing medical marijuana in Chapter 69.51A RCW. The legislature's use of the concept of valid documentation, as opposed to prescription, was not the result of a relaxed use of language by the legislature. The legislature intended to limit the exemption in RCW 82.08.0281 to prescribed drugs. Where the legislature uses certain statutory language in one instance, and different language in another, there is a difference of legislative intent. *United Parcel Service, Inc. v. Dep't of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984); *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 397, 103 P.3d 1226 (2005).

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[9] RCW 69.51A.010(4) defines a "qualifying patient" as a person who:

(a) Is a patient of a health care professional;
(b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
(c) Is a resident of the state of Washington at the time of such diagnosis;
(d) Has been advised by that health care professional about the risks and benefits of the medical use of marijuana; and
(e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

Because of the use of different language, "prescription" and "to prescribe" in RCW 82.04.0281 and "valid documentation" in RCW 69.51A.010(7), we conclude that medical marijuana is not prescribed to patients, but rather patients receive a valid documentation from a health care professional that allows them to purchase medical marijuana. Therefore, Taxpayer's sales of medical marijuana to consumers do not qualify for the prescription drug exemption under RCW 82.08.0281(1).

Recent legislation supports this conclusion. On March 28, 2014, the Governor signed SB 6505, which amended the definition of "drug" in RCW 82.08.0281(4)(b) to specifically exclude marijuana.[10] Laws of 2014, ch. 140, Section 19.

In 2015, the Governor signed 2SSB 5052, which replaced the words "valid documentation" in RCW 69.51A.010 with "authorization." Laws of 2015, ch. 70, Section 17(7)(a). After July 1, 2016, naturopaths and other qualifying health care professionals will have to use an authorization form issued by the Department of Health when authorizing medical marijuana. Laws of 2015, ch. 70, Section 17(7)(b). Section 17(7)(c) makes it clear that medical marijuana is not prescribed: "[a]n authorization is not a prescription as defined in RCW 69.50.101." Also, medical marijuana remains a Schedule 1 drug under the state's Controlled Substances Act after the Governor's veto of Sections 42 and 43. *See* Governor's veto message, Laws of 2015, ch. 70, p. 71-72.

Also in 2015, the Governor signed 2E2SHB 2136, which specifically gives collective gardens an exemption from retail sales tax and use tax for sales of medical marijuana from July 1, 2015, until June 30, 2016. Laws of 2015, 2d Spec. Sess. ch 4, Sections 207 and 208. The intent section states that "[i]t is also imperative to distinguish that the authorization for medical use of marijuana is different from a valid prescription provided by a doctor to a patient." *Id*., Section 101(1)(b). The legislature added these exemptions as new sections of Chapters 82.08 and 82.12 RCW, respectively. If collective garden sales of medical marijuana had been exempt under RCW 82.08.0281, the legislature would not have needed to add these sections further showing that there was no intent to previously exempt medical marijuana sales under RCW 82.08.0281. *See John H. Sellen Constr. Co. v. Dep't of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976)

Finally, Taxpayer argues the validity of the estimated assessment. RCW 82.32.070 requires taxpayers to maintain suitable records as may be necessary for the Department to determine a person's tax liability. RCW 82.32.070(1) states:

> Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue . . . .

[10] "'Drug' means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, marijuana, useable marijuana, or marijuana-infused products . . . ." RCW 82.08.0281(4)(b).

The Department adopted WAC 458-20-254 (Rule 254) to administer RCW 82.32.070. Rule 254 defines taxpayers' 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.
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> (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:
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> (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.
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> . . .
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> (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.

If a taxpayer fails to provide suitable records from which the Department can determine the taxpayer's tax liability, the Department is authorized to estimate their tax liability under RCW 82.32.100, which states:

> (1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.
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> (2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter.

Here, Compliance only used an industry average to estimate sales after Taxpayer repeatedly failed to provide sales records. Compliance computed the industry average by totaling all monthly tax payments that the Department received from registered Washington taxpayers selling medical marijuana for the time period 2012 through 2014. The tax payments, 150 in all, totaled $ . . . . [Compliance] then divided the total of the payments by the highest combined retail sales tax and B&O tax rate in the state, .09971, to arrive at a total estimated gross income for the industry of $ . . . . [Compliance] then divided the total industry estimated gross income by the total number of tax payments ($ . . . . /150) to arrive at estimated gross sales of $ . . . per month per taxpayer. [Compliance] then applied this estimate to Taxpayer's entire audit period.

In Det. No. 12-0201, 32 WTD 151 (2013), the Department affirmed [Compliance's] use of an industry average to estimate the amount of cash sales a restaurant was expected to report in the absence of complete sales records. We concluded "[b]ased on Taxpayer's failure to maintain adequate records of its gross receipts and cash sales during the [a]udit [p]eriod, we find no error in [Compliance's] choice of using an industry standard to determine gross receipts and cash sales, and assess retailing B&O tax and retail sales tax." 32 WTD at 154.

Here, [Compliance] prepared the estimate of gross sales for medical marijuana businesses based on the facts and information available to it. Taxpayer has presented nothing that persuades us that [Compliance's] methodology was unreasonable or was not an acceptable method for estimating tax due under RCW 82.32.100. Accordingly, we sustain [Compliance's] estimate under the circumstances of this case.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 24th day of March 2016.