

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JEDEDIAH CORPORATION FROM A) Docket No. **2013-08**
DECISION BY THE DEPARTMENT OF)
REVENUE (2009-2011 Sales Tax Audit))

IN THE MATTER OF THE APPEAL OF)
JEDEDIAH CORPORATION FROM A) Docket No. **2013-50**
DENIAL OF REFUND REQUEST BY THE)
EXCISE DIVISION OF THE DEPARTMENT)
OF REVENUE)

DECISION AND ORDER

APPEARANCES

Erika M. Nash, of Long Reimer Winegar Beppler, LLP, appeared as counsel for Petitioner, Jedediah Corporation, in Docket No. 2013-08, but withdrew before the contested case hearing. Jedediah Corporation was represented at the hearing by Michael (Mike) Gierau, its Chief Executive Officer, in Docket No. 2013-08. Erika M. Nash and Aaron J. Lyttle appeared as counsel for Petitioner, Jedediah Corporation (Jedediah) in Docket No. 2013-50.

Brenda S. Yamaji, Assistant Attorney General, appeared on behalf of Respondent, Wyoming Department of Revenue (Department).

DIGEST

Between January 1, 2009, and December 31, 2011, Jedediah, a restaurateur and food service vendor, underpaid sales taxes on various business purchases, but improperly over-collected taxes on food sales. The Department denied Jedediah's request to offset its underpaid sales tax liability with sales taxes incorrectly remitted on nontaxable food sales. The Department subsequently denied Jedediah's separate refund request. Jedediah appealed each departmental decision: the tax audit assessment denying an offsetting credit and denial of a subsequent sales tax refund request. The Wyoming State Board of

Equalization (State Board),¹ comprised of Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Member Robin Sessions Cooley, consolidated Jedediah's appeals for adjudicative purposes, both of which address claims for an offset/refund. The State Board concludes that the Department improperly denied Jedediah's claim for an offsetting credit. The State Board, therefore, need not address Jedediah's appeal of the refund denial. The State Board remands the audit assessment to the Department for further proceedings consistent with this Decision and Order.

ISSUES

Jedediah identified a single issue:

Jedediah Corporation (Jedediah) both over- and under-remitted sales tax to the Department of Revenue (the Department) during the audit period, but is presently unable to determine which taxpayers are entitled to refunds of erroneous sales tax payments. Does W.S. § 39-15-109 require the Department to give Jedediah a refund or credit for excess remitted sales tax?

(Docket No. 2013-50, Jedediah's Br. 1).

The Department identified the following issues in prehearing submissions:

1. Whether the alleged collected and remitted sales tax Jedediah collected from its customers on sales of non-taxable items may be used to offset Jedediah's sales and use tax liability on its sales to customers and purchases of tangible personal property?

2. If the alleged collection and remittance of sales tax Jedediah collected from its customers on sales of non-taxable items may be used to offset the underpayment of sales tax Jedediah failed to collect from its customers and the underpayment of sales and use tax Jedediah failed to remit on its purchases of tangible personal property, is Jedediah liable for the interest and penalties assessed on the underpayment, pursuant to Wyo. Stat. Ann. § 39-15-108(b)(i)?

(Docket No. 2013-08, Dep't's Issues of Fact & Law & Ex. Index 1).

¹ Paul Thomas Glause and Steven D. Olmstead were members of the State Board at the time of the hearing. Mr. Glause resigned from the State Board, effective January 2, 2015. Mr. Olmstead's term expired March 1, 2015. Governor Matthew H. Mead appointed Martin L. Hardsocg and Robin Sessions Cooley to the State Board effective March 16, 2015. Mr. Hardsocg and Ms. Cooley reviewed the hearing recordings, exhibits, record and briefing, and participated in the decision in this matter.

The Department identified related issues in Jedediah's appeal from the refund denial:

A. Issue of Fact

1. Whether Jedediah provided sufficient information within the refund request to establish an overpayment?

B. Issue of Law

1. Whether Jedediah is entitled to a refund on the sales tax it collected from its customers on non-taxable tangible food items?

(Docket No. 2013-50, Dep't's Issues of Fact & Law & Ex. Index 1).

The State Board restates the issues as follows:

1. Is Jedediah entitled to an offsetting credit (against its separate excise tax liability as a vendor) or refund of sales taxes incorrectly collected and remitted?

2. Was Jedediah first required to verify for the Department that it could identify customers entitled to a refund, or refund improperly collected taxes to customers, before seeking a refund or credit from the Department?

3. Did the Department properly deny Jedediah's request for an offsetting credit or refund on grounds that Jedediah failed to supply supporting information necessary to verify the improperly collected amount?

JURISDICTION

The State Board shall "review final decisions of the department upon application of any interested person adversely affected," Wyo. Stat. Ann. § 39-11-102.1(c) (2013),² and "[h]old hearings after due notice in the manner and form provided in the Wyoming Administrative Procedure Act and its own rules and regulations of practice and procedure." Wyo. Stat. Ann. § 39-11-102.1(c)(viii) (2013). An aggrieved taxpayer must file any appeal with the State Board within thirty days of the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

The Department assessed Jedediah on February 5, 2013, denying Jedediah's request for an offsetting credit. Jedediah filed its Notice of Appeal on February 28, 2013.

² Although the disputed tax years are 2009 through 2011, we will cite to the 2013 Wyoming statutory code because the applicable statutes did not substantively change between 2009 and 2013 and the parties cited the 2013 statutes.

(Docket No. 2013-08). Because the audit revealed an over-collection of taxes, Jedediah separately requested a refund of taxes incorrectly collected and remitted to the Department, which the Department denied on September 24, 2013. Jedediah filed a Case Notice for Review of Final Administrative Decision on October 24, 2013, challenging the Department's refund denial. (Docket No. 2013-50). Both appeals were timely. The State Board has jurisdiction to decide these matters and consolidated these appeals for decision.

FINDINGS OF FACT

The gravamen of Jedediah's appeals is the Department's refusal to apply an offsetting credit to the vendor's sales tax liability, or refund taxes mistakenly collected from customers and remitted to the Department.³ Because Jedediah presented its appeals in separate contested case hearings, the State Board will denote evidence by each appeal's docket number, the audit assessment appeal identified as "Docket No. 2013-08" and the refund denial appeal as "Docket No. 2013-50."

1. The Parties stipulated to the following facts:
 - a. Jedediah operates two small coffee shops and a restaurant/bar/gift shop within the Jackson Hole Airport in Jackson, Wyoming.
 - b. Jedediah also provides catering services for the airlines and charter operators providing food to private jets.
 - c. Jedediah offers prepared food, alcoholic beverages, bottled water and drinks, candy, snacks, and souvenirs.
 - d. The audit period was from January 1, 2009, through December 31, 2011.
 - e. Jedediah did not provide records for the 2009 tax year because it alleged that the records were destroyed in a flood.

³ An offsetting credit is, in effect, the same as a refund. They differ only in how the Department returns taxes to the taxpayer/vendor. The statutory language defining each taxpayer remedy is nearly identical, and remedies are typically discussed as interchangeable--i.e. "a refund or offsetting credit." See Wyo. Stat. Ann. §§ 39-15-107(a)(ix), 39-15-109(c)(i), (d)(i) (2013); Rules, Wyo. Dep't of Revenue, ch. 2 § 10 (2012); see also *infra* ¶¶ 22-24. However, because Jedediah requested each at a different time, and as the Department denied each in separate agency decisions, we will distinguish them to avoid confusion.

f. On February 1, 2013, the Department of Audit sent Jedediah its Audit Report which detailed the results of the audit it performed on Jedediah, and included a schedule of issues.

g. On February 5, 2013, the Department sent an Audit Assessment to Jedediah, in which it adopted the Department of Audit's findings, providing a detail of the taxes and interest owed for the audit period.

h. Jedediah collected and remitted sales tax on non-taxable items⁴ it sold to its customers resulting in an overpayment of sales tax, all of which was remitted to the Department, but there was no specific audit finding as to the amount of collection and remittance on non-taxable items.

i. Jedediah did not collect sales tax for tangible personal property sold, and catering services provided to its customers resulting in an underpayment of sales tax totaling \$5,661.62.

j. Jedediah under remitted sales and use tax on its purchases of tangible personal property resulting in an underpayment of sales and use tax totaling \$3,885.49.

k. The Department assessed Jedediah \$2,351.23 in interest for unpaid sales and use taxes.

l. Jedediah does not refute the Department of Audit's findings.

m. On or about February 28, 2013, Jedediah timely appealed the Department's Audit Assessment.

(Docket No. 2013-08, Stip. Updated Summ. of Uncontroverted Facts; Docket No. 2013-50, Ex. 4 to Jedediah's Prelim. Statement).

2. In its findings, the Department of Audit noted that "Jedediah's [sic] is collecting and remitting tax on all sales, **including non-taxable items such as bottled water, candy, snacks, etc. They need to change their procedures and cease taxation of non-taxable items.**" (Docket No. 2013-08, Ex. 501 at 000009) (emphasis added).

3. Mr. Mike Gierau, Jedediah's CEO and author of Jedediah's Notice of Appeal, accepted responsibility for Jedediah's sales tax underpayment, explaining that it was "an inadvertent error and it was not meant to avoid any tax due to the State of Wyoming." (Docket No. 2013-08, Ex. 502 at 000022; Jedediah's Notice of Appeal).

⁴ Effective in 2007, the Legislature exempted from taxation sales of food purchased for "domestic home consumption" as defined by the Department. 2007 Wyo. Sess. Laws 321-23; see Wyo. Stat. Ann. § 39-15-105(a)(vi)(E) (2013).

4. Referring to Jedediah's collection of sales tax on non-taxable food, Mr. Gierau stated:

The only thing I can tell you in my defense is that during the same time and every day since (until late last year), we have been inadvertently collecting and paying sales tax that amounts to \$47,477.29 during the audit period, for food items that were not taxable. Since we came from a sit down food service background, we simply put sales tax on the end of every bill, just as we always had done since 1979.

In closing, I am asking the Board of Equalization, in the spirit of fairness and equity, to forgive the amount of sales and use tax owed of \$11,898.34 based on my over collection and overpayment of \$47,477.29 in sales tax on food items.

(Docket No. 2013-08, Ex. 502 at 000022; Jedediah's Notice of Appeal).

5. During the contested case hearing held to adjudicate Jedediah's audit assessment appeal, Jedediah offered marginal evidence in support of its offsetting credit claim of \$47,477.29.⁵ The auditor who performed the audit, according to Mr. Gierau, informed him that Jedediah might be entitled to an offsetting credit because of a "massive" over-collection of taxes. (Docket No. 2013-08, Hr'g recording, Gierau testimony). Mr. Gierau believed that the Department of Audit had calculated the over-collected taxes, but could point to no such calculation in the audit findings. *Id.* Over the Department's objection, Jedediah offered as evidence a calculation purportedly prepared by its staff and accountant, representing that Jedediah collected \$47,477.29 on "Non Taxable Sales" of \$791,288.22. (Docket No. 2013-08, Ex. 100). No witness specifically addressed the document's preparation or source information.

6. J.R. Sherman, the Department of Audit's Auditing Manager, testified that the Department of Audit could have identified or estimated Jedediah's over-collection of taxes. (Docket No. 2013-08, Hr'g recording, Sherman testimony). Mr. Sherman explained that because Jedediah collected taxes from its customers and had not itself paid the tax in question, the Department of Audit would allow no credit or offset against Jedediah's separate tax liability. Further, a vendor would not be eligible for an offset or credit of taxes collected and paid without verification that the vendor will refund those taxes to customers. Accordingly, the Department of Audit did not audit Jedediah's collection of taxes on non-taxable food purchases and merely informed Jedediah of the vendor's misapplication of tax laws. (Docket No. 2013-08, Hr'g recording, Sherman

⁵ Mr. Gierau explained that Jedediah only sought to zero out its positive tax liability of approximately \$11,898.34, but interchangeably discussed Jedediah's credit claim of approximately \$47,000. (Docket Nos. 2013-08 & 2013-50 Hr'g recording, Gierau testimony).

testimony). The Department of Audit will calculate tax offset or credit amounts only when the sum would apply against the auditee's unpaid tax liability. (Docket No. 2013-08, Hr'g recording, Sherman testimony).

7. During the Docket No. 2013-08 hearing, the Department's counsel and State Board asked Mr. Gierau if Jedediah had separately requested a refund for the improperly collected and remitted sales taxes. (Docket No. 2013-08, Hr'g recording, Gierau testimony). Jedediah had not, but submitted a written refund request approximately two months later on September 18, 2013. (Docket No. 2013-08, Hr'g recording, Gierau testimony; Docket No. 2013-50, Ex. 501). The Department denied Jedediah's refund request on September 24, 2013, citing Wyoming Statutes section 39-15-107(b)(vii) (2013) and Chapter 2, § 7(l) of its rules. (Docket No. 2013-50, Ex. 500); *see infra* ¶¶ 26, 28.

8. In its refund denial, the Department explained “[Jedediah] is not allowed to gain from excess sales tax collection as provided in Chapter 2, § 7(l) of the Wyoming Department of Revenue's Excise Tax Rules and Regulations, ‘Excess tax collected shall be returned to the purchaser or, if the purchaser is unknown or cannot be ascertained, remitted to the Department. Vendors shall not be entitled to retain excess taxes collected.’ ” (Docket No. 2013-50, Ex. 500). The Department reasoned that because Jedediah had not identified customers from whom taxes were improperly collected, nor refunded taxes to customers, Jedediah was not entitled to a refund. *Id.*

9. The parties primarily disagree as to how the sales tax statutes governing offsetting credits and refunds apply. *See* Wyo. Stat. Ann. §§ 39-15-107(b)(vii) (2013), 39-15-109(c), (d) (2013); *infra* ¶¶ 22-24, 26, 28. Mr. Gierau initially asserted that because the State received more sales tax than it was due, Jedediah's separate sales tax liability tied to business purchases should thereby be reduced. (Docket Nos. 2013-08 & 2013-50, Hr'g recordings, Gierau testimony).

10. Ms. Kim Lovett, Administrator of the Department's Excise Tax Division, and her superior, Department Director Dan Noble, disagreed with Mr. Gierau, responding that the Department distinguishes between “excess” taxes and “erroneous” taxes.⁶ (Docket 2013-08 & 2013-50, Hr'g recordings, Lovett testimony, Noble testimony). They explained that “excess” taxes occur when a vendor mistakenly applies the law or collects more taxes than are owed, while improper tax collections are “erroneous” when a vendor's misapplication of the law stems from departmental guidance. The Department, they explained, may refund erroneous taxes to the vendor, but not “excess” taxes, unless the vendor first refunds incorrectly collected taxes to customers. *Id.*

⁶ We more thoroughly review each party's statutory interpretations and legal theories of the case in the legal analysis below. *See infra* ¶¶ 25-30.

CONCLUSIONS OF LAW

11. Jedediah appears before the State Board as both taxpayer and vendor, a distinction the Department cites in refusing to grant a refund or offsetting credit. The Department urges that while consuming taxpayers themselves may claim a refund of taxes improperly paid, vendors who incorrectly **collect** and remit taxes from customer taxpayers, **due to the vendor's negligence**, are not entitled to a refund of taxes collected and remitted unless they can identify their customers who are owed a refund or first refund improperly collected taxes to their customers. *Supra* ¶¶ 8, 10; *infra* ¶¶ 26-28. Jedediah counters that Wyoming's tax statutes make no such distinction and the Department's statutory interpretations are incorrect. *Infra* ¶¶ 25, 29.

A. Burdens of proof and State Board review

12. Jedediah filed appeals in this matter pursuant to Wyoming Statutes section 39-11-102.1(c) (2013) and Chapter 2 of the State Board's Rules of Practice and Procedure. The statute provides, in pertinent part, that:

(c) The state board of equalization shall perform the duties specified in article 15, section 10 of the Wyoming constitution and shall hear appeals from county boards of equalization and review final decisions of the department [of revenue] upon application of any interested person adversely affected, including boards of county commissioners for the purposes of this subsection, under the contested case procedures of the Wyoming Administrative Procedure Act.

Wyo. Stat. Ann. § 39-11-102.1(c) (2013).

13. The petitioner, in this case Jedediah, has “the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence.” Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006). If petitioner submits sufficient evidence to “suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.” *Id.* A preponderance of the evidence is “proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.” *Kenyon v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011) (quoting *Judd v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2010 WY 85, ¶ 31, 233 P.3d 956, 968 (Wyo. 2010)).

14. As the adjudicating body, the State Board “[d]ecide[s] all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2013).

15. However, the State Board's role is strictly adjudicatory:

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department.

Amoco Prod. Co. v. Dep't of Revenue, 2004 WY 89, ¶ 22, 94 P.3d 430, 440 (Wyo. 2004) (quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo. 2000)).

16. The State Board's main task in this matter is to interpret various statutory provisions and determine if the Department correctly applied those provisions to the facts. Statutory interpretation is a question of law that is reviewed de novo. *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002) (citation omitted).

17. In interpreting statutes, the State Board defers to the statutory interpretation of an agency charged with the administration of those statutes, unless that interpretation is clearly erroneous. *Buehner Block Co., Inc. v. Wyo. Dep't of Revenue*, 2006 WY 90, ¶ 11, 139 P.3d 1150, 1153 (Wyo. 2006) (citation omitted).

B. Sales tax credit offsets/refunds under Wyoming law

Vendors and taxpayers within Wyoming's self-reporting sales tax system

18. Wyoming's sales tax code, referred to as the "Selective Sales Tax Act of 1937" (Act), is a self-reporting system which requires vendors to "file a true return showing the preceding month's gross sales and remit all taxes to the department." Wyo. Stat. Ann. §§ 39-15-102(a); 39-15-107(a)(i) (2013). Vendors and others liable for sales taxes must preserve suitable records to allow verification of tax liability for at least three years. Wyo. Stat. Ann. § 39-15-107(a)(ii) (2013).

19. The Act distinguishes between "taxpayer" and "vendor." See Wyo. Stat. Ann. § 39-15-101 through 111 (2013). A "[t]axpayer" is "the purchaser of tangible personal property, admissions or services which are subject to taxation under this article[.]" Wyo. Stat. Ann. § 39-15-101(a)(x) (2013). "Vendor" refers to "any person engaged in the business of selling at retail or wholesale tangible personal property, admissions or services which are subject to taxation under this article." Wyo. Stat. Ann. § 39-15-101(a)(xv) (2013). As such, a vendor acts as a "taxpayer" when purchasing taxable items or services, and a "vendor" when engaging in taxable sales with customers.

20. In any event, both taxpayers and vendors are equally liable for sales taxes due. Wyo. Stat. Ann. § 39-15-103(c) (2013); *see also Travelocity.com LP v. Wyo. Dep't of Revenue*, 2014 WY 43, ¶ 23, 329 P.3d 131, 139 (Wyo. 2014) (Sales tax not imposed upon vendors, but vendors are liable for failure to collect tax).

21. The Department's initial role in the State's self-reporting tax system includes processing tax returns and receipt of tax payments. *See* Wyo. Stat. Ann. § 39-15-107 (2013) (setting forth "compliance" and "collection procedures"). The Department must examine all returns. Wyo. Stat. Ann. § 39-15-107(a)(ix) (2013). If the Department identifies improperly computed or remitted taxes, "excess [taxes] shall be refunded to the vendor or person who submitted the return or [be] credited against any subsequent liability of the vendor or person who submitted the return[.]" *Id.*

Refunds and offsetting credits

22. "[T]ax refunds are a matter of legislative grace, and the right to such a refund does not exist in the absence of statutory authorization." *In re Black*, 775 P.2d 484, 487 (Wyo. 1989) (citing *Atlantic Richfield Co. v. Bd. of Cty. Commr's*, 569 P.2d 1267, 1271 (Wyo. 1977)). Among various "taxpayer remedies," the Wyoming Legislature granted taxpayers and vendors the right to claim refunds or credits of erroneously paid taxes, penalty or interest:

(c) Refunds. The following shall apply:

(i) Any tax, penalty or interest which has been erroneously paid, collected or computed shall either be credited against any subsequent tax liability of the vendor or refunded. No credit or refund shall be allowed after three (3) years from the date of overpayment. The receipt of a claim for a refund by the department shall toll the statute of limitations. All refund requests received by the department shall be approved or denied within ninety (90) days of receipt. Any refund or credit erroneously made or allowed may be recovered in an action brought by the attorney general in any court of competent jurisdiction;

(ii) Any tax erroneously paid by a taxpayer shall be refunded by the vendor who originally collected the tax. No cause of action shall lie against the vendor by the taxpayer until not less than sixty (60) days elapse following a request by the taxpayer for a refund from the vendor.

Wyo. Stat. Ann. § 39-15-109(c)(i), (ii) (2013) (emphasis added).

23. In a nearly identical statutory provision, taxpayers may seek an offsetting credit:

(d) Credits. The following shall apply:

(i) **Any tax, penalty or interest which has been erroneously paid, collected or computed shall either be credited against any subsequent tax liability of the vendor or refunded.** No credit or refund shall be allowed after three (3) years from the date of overpayment. The receipt of a claim for a refund by the department shall toll the statute of limitations. Any refund or credit erroneously made or allowed may be recovered in an action brought by the attorney general in any court of competent jurisdiction;

(ii) Repealed by Laws 2001, ch. 147, § 3.

(iii) As soon as practicable after the return is filed the department shall examine it and if it appears the tax to be remitted is incorrect it shall be recomputed. If the amount paid exceeds that which is due the excess shall be refunded to the vendor or credited against any subsequent liability of the vendor;

(iv) The taxpayer is entitled to receive an offsetting credit for any overpaid excise tax identified by an audit that is within the scope of the audit period, without regard to the limitation period for requesting refunds.

Wyo. Stat. Ann. § 39-15-109(d)(i)-(iv) (2013) (emphasis added). It is worth noting that the Legislature refers specifically to “vendor” or “taxpayer” where the distinction is meaningful, and these remedies apply on their face to vendors and taxpayers alike. *Id.*

24. Refunds and credits under the Department’s Rules generally align with the aforementioned statutes:

Section 10. Refunds and Credits.

(a) **General.** The Department shall issue refunds or credits to the vendor (seller) or taxpayer (purchaser) from whom the original tax payment was received by the department. Vendors are entitled to claim a refund or credit.

(b) **Credit.** The Department shall credit accounts for any overpayment of fees, tax, penalty or interest. Credits shall automatically be applied against the next appropriate liability on the account.

- (c) Refunds. Refund claims shall be initiated by the vendor or taxpayer that made the overpayment to the department. The refund request shall be made in writing to the Department and shall explain the basis of the refund request. Supporting documentation evidencing the overpayment must be retained by the vendor. Postmarks shall serve as the date of refund request and shall begin tolling the statute of limitations. The Department shall refund or deny all refund claims within ninety (90) days of the date adequate supporting documentation is received. A taxpayer seeking refund of taxes overpaid to a vendor must seek a refund from the vendor. A cause of action against the vendor for over-collected sales or use tax shall not accrue until the taxpayer has provided written notice to the vendor and the vendor has had sixty (60) days to respond. Such notice to the vendor must contain the information necessary to determine the validity of the request.

Rules, Wyo. Dep't of Revenue, ch. 2 § 10 (2012).

C. Jedediah's and the Department's statutory interpretation

25. The bolded language in paragraphs 22 and 23, according to Jedediah, requires the Department to refund taxes improperly **collected** and remitted. (Docket No. 2013-50, Jedediah's Br. 6-8). Jedediah further claims it is due an offsetting credit or refund regardless of whether it has located customers who paid the taxes. (Docket No. 2013-50, Jedediah's Br. 10-13; Docket No. 2013-50, Hr'g recording, arguments of counsel). Jedediah contends the Department's authority and responsibility ceases after it issues a refund; taxpayers may then pursue any remedies directly against the vendor should they so choose. (Docket No. 2013-50, Jedediah's Br. 8-12).

26. The Department disagrees, claiming that taxes fall into one of two categories: "excess" taxes or "erroneous" taxes. (Docket No. 2013-50, Dep't's Br. 4-8; Docket Nos. 2013-08 & 2013-50, Hr'g recordings, Lovett testimony, Noble testimony). The Department relies primarily on Wyoming Statutes section 39-15-107(b)(vii) (2013), a procedural mandate, which states: "If any vendor collects a tax in excess of that imposed by this article it shall be remitted to the department[.]" According to the Department, a vendor's mistaken collection of sales tax generates an "excess" tax that belongs exclusively to the State. (Docket Nos. 2013-08 & 2013-50, Hr'g recordings, Lovett testimony, Noble testimony; Docket No. 2013-50, Dep't's Br. 4). The Department reasons that vendors are unjustly enriched if allowed refunds of taxes they mistakenly collect and remit. *Id.*

27. Mr. Noble and Ms. Lovett discussed the Department's interpretations in light of several Wyoming Supreme Court decisions, including *M & B Drilling and Construction*

Co., Inc. v. State Board of Equalization, 706 P.2d 243 (Wyo. 1985) and *Wyoming Department of Revenue v. Buggy Bath Unlimited, Inc.*, 2001 WY 27, 18 P.3d 1182 (Wyo. 2001). Mr. Noble suggested that should vendors be entitled to refunds of taxes negligently collected from customers, vendors might purposefully misapply taxation guidelines and then seek refunds of taxes, enjoying a windfall when unable to return the refunded monies to customers. (Docket Nos. 2013-08 & 2013-50, Hr’g recordings, Noble testimony). Mr. Noble stated, however, that there was no indication that Jedediah purposefully erred to generate such a windfall. *Id.*

28. The Department further relies on its administrative rule addressing the handling of “excess tax” collections:

(l) Excess Tax Collected. Excess tax collected shall be returned to the purchaser or, if the purchaser is unknown or cannot be ascertained, remitted to the Department. Vendors shall not be entitled to retain excess taxes collected. Due date of the remittance is the same as provided in Paragraph (c) of this section.

Rules, Wyo. Dep’t of Revenue, ch. 2 § 7(l) (2012) (Docket No. 2013-50, Dep’t’s Br. 4; Docket. Nos. 2013-08 & 50, Hr’g recordings, Lovett testimony, Noble testimony).

29. Jedediah counters that Chapter 2, section 7(l) of the Department’s rules, upon which the Department relies, is contrary to statute and cannot legally justify the Department’s denial of a refund or offset to Jedediah. (Docket. No. 2013-50, Jedediah’s Br. 8-9).

D. Statutory analysis

30. The Department identifies three grounds to support its denial of Jedediah’s refund/offset credit claims. The Department asserts that under Wyoming statute and rule, vendors are not entitled to recover taxes improperly collected from customers and remitted to the State, except under two circumstances which do not apply in this case: 1) a vendor that relies upon improper departmental guidance (in which case the taxes are deemed “erroneous” taxes) may receive a refund per *Buggy Bath, infra* ¶¶ 45-50; or 2) a vendor that first refunds “excess” taxes to the vendor’s customers is eligible for a refund. Second, the Department argues that even if the law permits Jedediah a refund, Jedediah has not sufficiently documented its refund claim. Third, the Department urges that at least a portion of the refund is not recoverable because Wyoming’s three year statute of limitation bars recovery of a part of 2009’s tax over-collection. The State Board disagrees.

The Department incorrectly applied the Act's refund/credit provisions

31. In applying statutes, the Wyoming Supreme Court recently said:

[O]ur primary consideration is to determine the legislature's intent. All statutes must be construed *in pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is *de novo*. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.

Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of statutory construction to the language of the statute in order to construe any ambiguous language to accurately reflect the intent of the legislature. If this Court determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

Whether a statute is ambiguous is a question of law. A statute is unambiguous if reasonable persons are able to agree as to its meaning with consistency and predictability, while a statute is ambiguous if it is vague or uncertain and subject to varying interpretations.

Travelocity.com LP v. Wyo. Dep't of Revenue, 2014 WY 43, ¶ 20, 329 P.3d 131, 139 (Wyo. 2014) (quoting *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415-16 (citations and internal quotation marks omitted)).

32. Examining the ordinary and obvious meaning of the statutes in question, it helps to look at the Act as a whole and to consider the manner in which the Wyoming Legislature defined refund/credit rights. A vendor or taxpayer may first receive a refund after submitting a tax return and payment to the Department. As a matter of course, the

Department shall review those returns, identify mistakes and, if excess taxes are paid, the Department must refund or credit those taxes to the **vendor or person who submitted the return**. Wyo. Stat. Ann. § 39-15-107(a)(ix) (2013); *supra* ¶ 21. This particular statute, describing basic tax system “compliance” and “procedure,” does not qualify or limit a vendor’s right to a refund or credit. The language is simple and clear and requires that the Department shall refund excess taxes to the party who filed the return. *Id.*

33. Specific statutory taxpayer remedies, including refunds and credits, are no less clear: “**Any tax, penalty or interest which has been erroneously paid, collected or computed shall either be credited against any subsequent tax liability of the vendor or refunded.**” Wyo. Stat. Ann. § 39-15-109(c)(i), (d)(i) (2013) (emphasis added); *supra* ¶¶ 22-23. The Legislature selected language that, by its plain and ordinary meaning, entitles vendors or taxpayers to a refund or credit regardless of the manner in which the tax overpayment, over-collection or erroneous computation could arise. In other words, the Legislature’s use of the term “collected” logically refers to a vendor’s collection of taxes from customers, while “paid” could refer either to a vendor’s payment of taxes collected or taxes incurred through its business activities. The Legislature’s use of the term “computed” is broad and can apply in a wide range of circumstances. With this broad language, the Legislature expressed its clear intent that refund or credit rights be inclusive, rather than exclusive in nature.

34. The State Board perceives no ambiguity in these provisions, nor has either party argued such exists. “[A] statute is ambiguous not only if it is vague or uncertain and subject to varying interpretations, but also if it irreconcilably conflicts with another statute or section of the same statute *in pari materia*.” *Mountain Cement Co. v. South of Laramie Water & Sewer Dist.*, 2011 WY 81, ¶ 40, 255 P.3d 881, 897 (Wyo. 2011) (citation omitted). The statute unmistakably directs that vendors are entitled to a refund or credit of “[a]ny tax, penalty or interest” which has been “erroneously paid, collected or computed[.]” Wyo. Stat. Ann. § 39-15-109(c)(i), (d)(i) (2013); *supra* ¶ 22-23.

35. Yet, the Department seeks to limit this refund right, arguing that the term “erroneous” refers only to those taxes collected as a result of a vendor’s reliance upon departmental guidance. *Supra* ¶¶ 10, 26-28. There is no statutory definition of the terms “erroneous tax” or “excess tax” that, consistent with the Department’s view, so narrowly or exclusively limits application of these terms.⁷ In any event, the Act does not distinguish between “excess” and “erroneous” tax collections. “[D]ivergent opinions among parties as to the meaning of a statute may be evidence of ambiguity. However, the fact that opinions may differ as to a statute’s meaning is not conclusive of ambiguity.” *Pagel v. Franscell*, 2002 WY 169, ¶ 9, 57 P.3d 1226, 1230 (Wyo. 2002) (internal citation

⁷ For example, the term “erroneous tax” is more broadly defined as “A tax levied without statutory authority,” “[a] tax on property not subject to taxation,” or “[a] tax levied by an officer who lacks authority to levy the tax.” Black’s Law Dictionary, p. 1686 (10th ed. 2014).

omitted) (quoting *Wyo. Cmty. Coll. Comm'n v. Casper Cmty. Coll. Dist.*, 2001 WY 86, ¶¶ 16-18, 31 P.3d 1242, 1249 (Wyo. 2001)).

36. In rejecting the Department's argued distinction, the State Board is guided by the Wyoming Supreme Court's admonition that "exceptions not made by the legislature in a statute cannot be read into it." *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005) (citation omitted) (quoting *In re Estate of Seader*, 2003 WY 119, ¶ 23, 76 P.3d 1236, 1244 (Wyo. 2003)). Further, undefined words in a statute are given their common or ordinary meaning "unless the statute clearly intends otherwise." *Penny v. State ex rel. Wyo. Mental Health Prof'l Licensing Bd.*, 2005 WY 117, ¶ 44, 120 P.3d 152, 174 (Wyo. 2005) (citing *Saiz v. State*, 2001 WY 76, ¶ 10, 30 P.3d 21, 25 (Wyo. 2001)). Contrary to the Department's application of refund/credit remedies, the statutes do not classify or distinguish types of refund/credit claims, or authorize the Department to withhold refunds from vendors that have verifiably over-collected and over-remitted taxes. The Department erroneously implies an exception for vendor refund/credit claims where the vendor has mistakenly collected and may not have the ability to identify the customers from whom sales taxes were collected. The statutes simply do not support the Department's interpretation of the statutory refund/credit remedies.

37. In support of its position that Jedediah is not entitled to a refund of taxes mistakenly collected from customers, the Department directs the State Board to a separate statutory provision in the Act which reads: "If any vendor collects a tax in excess of that imposed by this article it shall be remitted to the department[.]" Wyo. Stat. Ann. § 39-15-107(b)(vii) (2013); *supra* ¶ 26. This provision, according to the Department, requires it to deny refunds and conveys permanent ownership of "excess" taxes to the State. (Docket No. 2013-50, Dep't's Br. 4-9; 2013-08 & 2013-50, Hr'g recordings, Lovett testimony, Noble testimony); *supra* ¶ 26.

38. The State Board disagrees. "[W]e will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions." *State ex rel. Wyo. Dep't of Revenue v. Hanover Compression, LP*, 2008 WY 138, ¶ 8, 196 P.3d 781, 784 (Wyo. 2008) (citations omitted) (quoting *BP Am. Prod. Co. v. Wyo. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo. 2005)). The Department has taken this statutory provision out of context and overstates its intended effect. In context, Wyoming Statutes section 39-15-107(b)(vii) (2013) falls within the Act's procedural "Payment" provisions and enumerates basic tax payment guidelines. This provision simply requires that vendors **initially** remit all taxes to the Department, including excess taxes collected. The statute does not, as the Department incorrectly infers, address the permanent status or ultimate disposition of those excess taxes- or the availability of taxpayer remedies such as refunds or credits.

39. In addition, the Department's construction of Wyoming Statutes section 39-15-107(b)(vii) (2013), if accepted, conflicts with, or operates as an implied exception to, the

refund and credit provisions of Wyoming Statutes section 39-15-109(c)(i), (d)(i) (2013). “[I]n ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony.” *Hanover Compression, LP*, ¶ 8, 196 P.3d at 784 (quoting *BP Am. Prod. Co. v. Wyo. Dep’t of Revenue*, 2005 WY 60, ¶ 8, 196 P.3d 781, 784 (Wyo. 2005)). Even if we agreed that the two statutory provisions conflict, the specific statute governing refunds and credits would control over the more general procedural guideline concerning payment of excess taxes to the Department. *See Thunderbasin Land, Livestock & Inv. Co. v. Cty. of Laramie Cty.*, 5 P.3d 774, 782 (Wyo. 2000) (Where two statutory provisions irreconcilably conflict, the specific provision prevails over the more general).

40. Moreover, aside from any role the Department plays in refunding taxes to a vendor’s customers, customers may directly recover improperly paid taxes from vendors. Wyo. Stat. Ann. § 39-15-109(c)(ii) (2013); *supra* ¶ 22. That provision states: “Any tax erroneously paid by a taxpayer shall be refunded by the vendor who originally collected the tax. No cause of action shall lie against the vendor by the taxpayer until not less than sixty (60) days elapse following a request by the taxpayer for a refund from the vendor.” *Id.* Had the Legislature intended that vendor refunds be contingent upon first identifying customers from whom taxes were improperly collected or refunding taxes to the vendor’s customers, it likely would have made that prerequisite clear. “The legislature is presumed to act in a thoughtful and rational manner with full knowledge of existing law[.]” *Redco Constr.*, ¶ 37, 271 P.3d at 418.

41. Along with Wyoming Statutes section 39-15-107(b)(vii), the Department relies upon its rule that:

(l) Excess Tax Collected. Excess tax collected shall be returned to the purchaser or, if the purchaser is unknown or cannot be ascertained, remitted to the Department. Vendors shall not be entitled to retain excess taxes collected. Due date of the remittance is the same as provided in Paragraph (c) of this section.

Rules, Wyo. Dep’t of Revenue, ch. 2 § 7(l) (2012); (*see* Docket No. 2013-50, Dep’t’s Br. 4-6).

42. It is first important to note that this rule does not specifically address refunds or credits and, consistent with its statutory counterpart, merely directs that vendors must remit excess collected taxes to the Department. *See* Wyo. Stat. Ann. § 39-15-107(b)(vii) (2013). In its argument, the Department has improperly extended the rule’s application beyond its plain language, which simply provides a procedural guideline for filing tax returns and remitting taxes to the Department. Section 7(l) does not speak to refund or credit rights, and the Department may not informally extend the rule’s language to

address those distinct taxpayer remedies, especially to the extent such would be inconsistent with statute.

43. Moreover, the Department's focus on Section 7(l) of its rules, as opposed to Chapter 2, § 10 of its rules, which specifically addresses refunds and credits, is peculiar. *See supra* ¶ 24. Section 10 sets forth guidelines for claiming refunds and credits, but does not dictate that refunds to vendors are contingent upon the vendor first identifying customers who are due refunds. Rules, Wyo. Dep't of Revenue, ch. 2 § 10 (2013); *supra* ¶ 24.

44. The Department's overall differentiation of tax overpayments as either "erroneous" or "excess," and its disparate treatment of refund requests, does not arise from statutory authority; rather, the Department's practice appears to have evolved to comply with several Wyoming Supreme Court decisions. Those decisions appear to have significantly influenced the Department's differential treatment of refund/credit requests, the discussion of which played prominently in the parties' respective case presentations. We must resolve whether the Department justifiably relied upon the decisions cited in support of its statutory interpretations.

45. The Department relies most heavily on a sales tax dispute between the State and a construction contractor. *M & B Drilling & Constr. Co., Inc. v. State Bd. of Equalization*, 706 P.2d 243 (Wyo. 1985). In that case, contractor M & B Drilling challenged the Board of Equalization's administration of refund statutes and simultaneously sought a declaratory judgment to establish its preferred interpretation and/or to challenge the constitutionality of Wyoming's sales tax refund statute, Wyoming Statutes section 39-6-409(a) (1977). However, without addressing the refund statute in question, the district court determined it had no jurisdiction because M & B Drilling's action was untimely. *Id.* at 244. The district court also determined that M & B Drilling's claim was precluded under separate statutes, Wyoming Statutes sections 39-6-410(e) and 39-6-510(f) (1977), which required that aggrieved taxpayers could appeal a decision from the State Board only after paying the assessed taxes, penalty and interest. M & B Drilling had not paid the disputed tax liabilities and, consequently, forfeited its right to challenge the State Board's decision in court.

46. In an interesting twist, however, the Wyoming Supreme Court considered whether M & B Drilling had effectively paid the taxes when it remitted taxes it had inappropriately collected from its customers. In addressing this narrow threshold requirement, the Court reasoned: "Inasmuch as the money in question belongs to third parties and should be returned to them, it cannot qualify as payment of M & B's taxes for the purpose of giving subject matter jurisdiction to the district court on appeal as required by § 39-6-410(e)[.]" *M & B Drilling and Constr. Co.*, 706 P.2d at 246 (footnote omitted). The Court cited favorably a much earlier decision, in which it held:

The vendor should, we think, not be permitted-unless the statute in clear and positive language so says, and this it is far from doing-to use the money of a vendee who for one reason or another has overpaid the sales tax on a purchased article to offset the failure of such vendor to collect the proper amount from another taxpayer.

Id. at 245-46 (quoting *Walgreen Co. v. State Bd. of Equalization*, 166 P.2d 960, 964, *reh. denied* 169 P.2d 76 (Wyo. 1946)) (quotation marks omitted).

47. The Department offers *M & B Drilling* and *Walgreen* as case authority for its policy-driven view that refunds and credits are not available to vendors unless the vendor first identifies customers due refunds and/or refunds excess collected taxes to its customers. (Docket No. 2013-50, Dep't's Br. 2, 9). Unfortunately, these cases did not fully address the questions presented, and they do not provide dispositive guidance for resolving the present dispute. The Court's decision in *Walgreen*, aside from recognizing the objectionable outcome, merely confirmed that a vendor's right to a refund of customer-paid taxes must be "clear and positive." *M & B Drilling*, 706 P.2d at 245-46.

48. Jedediah counters with more recent authority concerning a vendor's right to a refund of erroneously collected taxes, notwithstanding the vendor's admitted inability to identify the customers from whom the taxes were collected. *Wyo. Dep't of Revenue v. Buggy Bath Unlimited, Inc.*, 2001 WY 27, 18 P.3d 1182 (Wyo. 2001). In that case, the Department denied a car wash business' refund request because the business had not first refunded the erroneously collected taxes to its customers. As in the present case, the Department offered *M & B Drilling* and *Walgreen* as authority for its position that the car wash operators were not entitled to a refund of taxes originally paid by customers. *Id.*, ¶¶ 13-15, 18 P.3d at 1186-87.

49. The Court factually distinguished *M & B Drilling* and *Walgreen* from the *Buggy Bath* dispute. The Court noted that *Buggy Bath* had not mistakenly applied the tax laws and had conformed to the Department's directions until the Department's rules were declared null and void. *Id.*, ¶¶ 13-15, 18 P.3d at 1186-87. The Court added that *Buggy Bath* was seeking a refund, rather than a credit against its separate tax liability as a vendor. *Id.* Unfortunately, the Court offered no further insight to its rulings in *M & B Drilling*, *Walgreen* or the general principle that a vendor should not be permitted to offset its own tax liability by seeking a refund of taxes improperly collected from the vendor's customers.

50. Helpful for our purposes, however, the Court interpreted refund language identical to the current refund provisions. Compare Wyo. Stat. Ann. § 39-6-410(c) (1997) with § 39-15-109(c)(i), (d)(i) (2013). The Court explained:

The language of both versions of the subsection mentions only the vendor with no reference to the purchaser, taxpayer, or any other individual identifiable as a party to the sales transaction. This omission is not without significance because other provisions of the sales tax act do mention these other parties. The operative sentence reads: “Any tax, penalty or interest which has been erroneously paid, collected or computed shall *either* be credited against any subsequent tax liability of the vendor or refunded.” 1997 Wyo. Sess. Laws ch. 111, § 1. . . . The specific language of § 39-6-410(c) only provides for the vendor to receive a refund or credit. No other party is named. It would be pure conjecture and speculation to read into the language additional provisions that either (1) permit the Department to withhold refunds to vendors pending proof of reimbursement to the purchasers or (2) permit the Department to make direct refunds to purchasers.

Buggy Bath Unlimited, Inc., ¶ 16, 18 P.3d at 1187 (internal footnotes citing statutes and session laws omitted).

51. The differences and similarities between Jedediah’s request for refund and Buggy Bath’s refund request are unmistakable. The cases differ in that the over-collection of taxes in *Buggy Bath* resulted from a departmental rule that was contrary to statute, while Jedediah’s over-collection of taxes was due to its own negligence, not a faulty rule. They are similar in that in either instance, the customers that paid the taxes are unlikely to be identified.

52. The question becomes whether, in compliance with *M & B Drilling* and *Walgreen*, *supra*, the Legislature positively and clearly requires the Department to refund taxes erroneously collected, even if the vendor may not be able to refund those taxes to customers? The State Board construes Wyoming Statutes section 39-15-109(c)(i) and (d)(i) (2013) as a sufficiently affirmative directive that such refunds or offsetting credits be issued, regardless of the vendor’s ability to refund those erroneously paid taxes to the customer. Applying well-established rules of statutory construction, the Department’s denial of Jedediah’s refund/offsetting credit claims cannot be reconciled with the Legislature’s clearly manifested intent to require them.

53. While the Department urges compelling policy reasons for denial of Jedediah’s refund/credit claims under the facts, we take our lead from legislative expressions of intent set forth in unambiguous statutes. “It is not the [State Board’s] prerogative to usurp the power of the legislature by deciding what should have been said[]”; like courts, we “declare what the law is[]” and are not responsible for its defects. *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005) (citations omitted) (quoting *In re Estate of Seader*, 2003 WY 119, ¶ 23, 76 P.3d 1236, 1244 (Wyo. 2003)).

54. Answering the first two issues, the State Board finds that Jedediah is entitled to a refund or credit of taxes incorrectly charged its customers and remitted to the Department. Jedediah is not required to first identify customers who overpaid taxes to Jedediah or to refund said taxes to those customers. It is likely that the Legislature, should it disagree with this outcome, will modify these statutory remedies to account for the windfall to the vendor in these circumstances. However, the plain language of these statutes do not currently allow the Department to deny a refund or an offsetting credit in this case.

55. In its initial appeal, Jedediah challenged the Department's audit assessment to the extent the Department disallowed an offsetting credit (Docket No. 2013-08, Jedediah's Notice of Appeal). Mr. Sherman, auditing manager who supervised preparation of Jedediah's audit, testified that the Department of Audit did not audit the collection of taxes on non-taxable food sales because Jedediah had complied with statute and remitted those improperly collected taxes to the Department. (Docket No. 2013-08, Hr'g recording, Sherman testimony); *supra* ¶ 6. However, Mr. Sherman stated that the Department of Audit could have calculated the taxes improperly charged for the sale of food. (Docket No. 2013-08, Hr'g recording, Sherman testimony); *supra* ¶ 6.

56. Jedediah was entitled to an audit assessment that included a calculation of any offsetting credits due. Wyo. Stat. Ann. § 39-15-109(d)(iv) (2013) (taxpayers are entitled to offsetting credits for overpaid taxes identified in an audit); Wyo. Stat. Ann. § 9-2-2003(e) (2013) (Department of Audit authorized to conduct excise tax "compliance audits" "for collection of taxes imposed under Title 39[.]"); *See Rules, Wyo. Dep't of Audit, ch. 11 § 3(a)(ii)* (1992).

*Jedediah's claim for a refund of sales tax, the matter contested under
Docket No. 2013-50, is moot*

57. Court-derived doctrines such as mootness, ripeness and the like, which characterize an action's justiciability, apply in administrative proceedings. *See Wyo. Bd. of Outfitters and Prof'l Guides v. Clark*, 2002 WY 24, ¶ 9, 39 P.3d 1106, 1108-09 (Wyo. 2002); *State ex rel. Wyo. Dep't of Revenue v. Union Pac. R.R. Co.*, 2003 WY 54, ¶¶ 41-43, 67 P.3d 1176, 1190-91 (Wyo. 2003). The Wyoming Supreme Court "has often recognized that it will not entertain issues on appeal that are moot." *Union Pac. R.R. Co.*, ¶ 42, 67 P.3d at 1190. "[A]n issue is moot, and not reviewable on appeal, when an event occurs which makes a determination of the issues unnecessary." *Id.* (finding that its decision on other issues within the same case rendered tangential claims moot). In Docket No. 2013-50, Jedediah's claim for a refund of \$47,477.29, and the Department's denial thereof and objections thereto, are rendered moot through the State Board's adjudication of Jedediah's initial appeal of the Department's audit assessment in Docket No. 2013-08. We shall therefore dismiss as moot, Jedediah's redundant claim for a refund, Docket No. 2013-50.

E. Conclusion

58. The Department incorrectly applied the Selective Sales Tax Act of 1937, in particular Wyoming Statutes sections 39-15-107(b)(vii) and 39-15-109(c)(i),(d)(i) (2013), when it denied Jedediah an offsetting refund/credit. The Department misinterpreted those statutes, concluding that Jedediah was not entitled to a refund/credit of taxes unless it could either identify customers from whom taxes were improperly collected, or had first refunded taxes to its customers. The Act does not authorize the Department to withhold refunds/credits on either basis. Accordingly, Jedediah was entitled to a refund or offsetting credit of sales taxes erroneously collected. Wyo. Stat. Ann. § 39-15-109(c)(i),(d)(i) (2013). In appealing the Department's audit assessment (Docket No. 2013-08), Jedediah specifically requested the remedy of an offsetting credit. Thus, Jedediah is entitled to an offsetting credit.

59. Given our adjudication of Jedediah's initial appeal of the Department's audit assessment (Docket No. 2013-08), Jedediah's related appeal challenging the Department's denial of refund request (Docket No. 2013-50), and all issues related thereto, are moot and should be dismissed.

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ORDER

IT IS HEREBY ORDERED the Department of Revenue's audit assessment denying Jedediah's claim for offsetting credit against Jedediah's sales tax liability is **reversed**, and the audit assessment is **remanded** to the Department for further proceedings consistent with this decision, including Department or Department of Audit review of Jedediah's sales tax remittances during the audit period to calculate any over-collection and remittance of sales taxes so that the same may be applied as an offsetting credit against Jedediah's sales tax liability.

IT IS FURTHER ORDERED that Jedediah's appeal from the Department's denial of Jedediah's refund request, Docket No. 2013-50, is **dismissed as moot**.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 9th day of October, 2015.

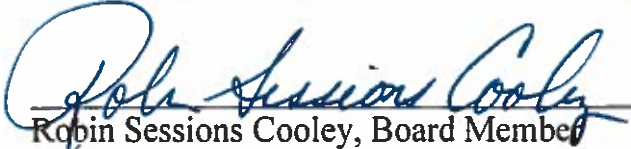
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

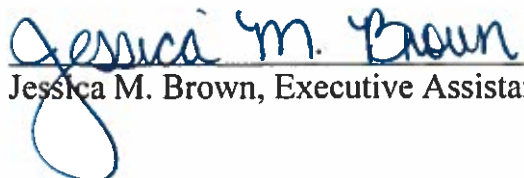


Martin L. Hardsocg, Vice-Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown, Executive Assistant.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2015, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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