Cite as Det. No. 05-0195, 25 WTD 61 (2006)

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. 05-0195
. . .	)	
	)	Registration No. . . .
	)	Document Nos. . . .
	)	Docket No. . . .
	)	

[1] RULE 178, RULE 238; RCW 82.12.0251: USE TAX -- NONRESIDENT REPAIR EXEMPTION -- LATE-FILED AFFIDAVITS INEFFECTIVE TO EXTEND REPAIR EXEMPTION. To extend the nonresident repair exemption from use tax beyond sixty days, the nonresident must file a nonresident repair affidavit with the Department on or before the sixty-first day while the vessel is located upon the waters of the state exclusively for repair. A nonresident repair affidavit that is filed late is not effective to extend the repair exemption.

[2] RCW 88.49.020, RCW 88.02.030: WATERCRAFT EXCISE TAX – NONRESIDENT REPAIR EXEMPTION – LATE-FILED AFFIDAVITS INEFFECTIVE TO EXTEND REPAIR EXEMPTION. To extend the repair exemption from vessel registration in RCW 88.02.030 beyond sixty days, and therefore be exempt from Watercraft Excise Tax under RCW 82.49.020, the nonresident must file a nonresident repair affidavit with the Department on or before the sixty-first day while the vessel is located upon the waters of the state exclusively for repair. A nonresident repair affidavit that is filed late is not effective to extend the repair exemption.

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.

NATURE OF ACTION

A nonresident who purchased a yacht in Washington, and later brought it back to Washington and left it with a repair yard for more than four months, without filing a nonresident repair affidavit or obtaining identification documents from the Department of Licensing, requests cancellation of assessments for deferred retail sales tax or use tax and Watercraft Excise Tax

(WET). The taxpayer contends she removed the yacht from the state within 45 days of purchase, and therefore did not incur liability for deferred retail sales tax/use under RCW 82.08.0266 and Rule 238(4)(a). She contends that nonresident repair affidavits she filed late were effective to exempt the vessel from use tax and vessel registration requirements during the subsequent repair period, and that, excluding exempt repair days, the vessel was not in the state sufficient time for use tax or WET to apply. We conclude that the taxpayer met the requirements of RCW 82.08.0266 and Rule 238(4)(a), but became liable for use tax and WET during the subsequent return to the state. We conclude that the late-filed repair affidavit was ineffective. We remand the WET assessment for adjustment.[1]

ISSUES

[1] Was the taxpayer liable for deferred retail sales tax or use tax for failure to meet the 45-day removal requirement of RCW 82.08.0266 and Rule 238(4)(a)?

[2] Was a nonresident repair affidavit the taxpayer filed after the repair period effective to grant the exemptions from use tax and vessel registration set out in WAC 458-20-238(4)(c) and RCW 88.02.030(5)?

[3] Was use of the vessel in Washington more than "temporary," for purposes of RCW 82.12.0251, which provides an exemption from the use tax for "temporary" use in the state by a nonresident?

[4] Was the vessel exempt from WET, because it was not in the state long enough, excluding any exempt days, to be subject to the registration requirements of Chapter 88.02 RCW?

FINDINGS OF FACT

Prusia, A.L.J. – . . . ("Taxpayer") is a resident of [State A]. She has been a non-resident of Washington State at all times relevant to this decision.

This is an appeal of assessments of Washington use tax/deferred sales tax and watercraft excise tax (WET) issued against Taxpayer on October . . . , 2003, with respect to a . . . yacht.

On April . . . , 2002, Taxpayer and her husband, . . . (hereinafter referred to as [Husband and Wife] when referred to jointly), entered into an agreement with . . . ("Seller"), of . . . Washington, to purchase a [yacht]. The purchase agreement stated a base boat price, FOB [non-Washington City], of $. . . , and additional charges for factory options, freight from [non-Washington City] to [Washington City], estimated commissioning and bottoming work, and estimated fees. The agreement required an initial cash payment of 20% of factory base boat price and options, additional payments at specified events, and a final payment upon final delivery to the buyer. Taxpayer made wire-transfer or check deposits on the purchase price on . . . .

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

On June . . . , 2002, Seller executed a Bill of Sale to "[taxpayer] Trustee of the [taxpayer] Trust . . . " for a [yacht]. The bill of sale stated the buyer's address as [State A Location].

On June . . . , 2002, before receiving delivery of the yacht, the [Husband and Wife], giving a [Canada Location], address, entered into a moorage agreement with [a Canadian marina], effective July 15, 2002 through May 31, 2003. On July 4, 2002, they insured the yacht with a Canadian insurance company, giving the same Canadian address.[2]

On July 13, 2002, before completing commissioning work, Seller gave the yacht to the [Husband and Wife] to use for the weekend. The [Husband and Wife] cruised to [Washington Locations] on July 13-14, and returned the yacht to Seller at the end of their cruise. Seller then completed its commissioning work.

On July . . . , 2002, the U.S. Coast Guard issued a certificate of documentation for the yacht to Taxpayer, at her [State A Location] address.

On July 18, 2002, Seller and the [Husband and Wife] signed a certificate of delivery and release, and Seller formally delivered the yacht to them. Taxpayer, as "[taxpayer] Trustee," gave Seller a sales tax exemption certificate. The certificate stated her address as the above [State A Location] address. Seller gave Taxpayer a "Buyer's Closing Statement" showing a total price paid of $. . . .

The yacht's daily cruising log shows the [Husband and Wife] cruised to various [Canada Locations] during the period July 22 to August 16, 2002. On August 19, 2002, they returned to Washington, clearing customs at [Washington Location]. They returned to Canada two days later. The yacht re-entered Washington sometime between December 17, 2002 and January 7, 2003, and the [Husband and Wife] placed it in the custody of Seller in [Washington Location], where the yacht remained until May 23, 2003.[3]

On January 7, 2003, a revenue agent with the Department of Revenue (DOR) observed the yacht moored in [Washington Location] without Washington state vessel registration. On March 17, 2003, the revenue agent wrote Taxpayer at her [State A] address to inquire about whether she had previously paid sales or use tax, or was claiming that Washington sales or use tax was not due. On April 8, 2003, Taxpayer responded by telephone, stating she purchased the vessel in June 2002 at Seller in [Washington Location], she was a [State A] resident, she did not pay sales tax to Washington or [State A], she removed the vessel from Washington within 45 days and was

[2] The policy lists the address as [Canadian City], but it is the same street address.

[3] There is inconsistency in the documents and the recollection of Taxpayer and Seller regarding the dates. Taxpayer told DOR's revenue agent, in April 2003 that the boat was in Canada from July 2002 until January 2003. Compliance Exhibit 2. . . . , Seller's vice-president, said in an affidavit dated June 27, 2003, and again in a sworn statement dated January 20, 2005, that the yacht was at her business for repair work between December 17, 2002, and May 23, 2003, and the [Husband and Wife] did not have use or possession of it at all during that period. The vessel's log shows that on December 19, 2002, it cleared U.S. customs at [Washington Port].

in Canada until January 2003, and she did not obtain a Non-resident Out-of-State Vessel Repair Affidavit or Department of Licensing identification documents.

The [Husband and Wife] took the yacht from Seller on May 23, 2003, and returned it to Canada on May 26, 2003. The yacht remained in Canada until July 23, 2003. On that date, the [Husband and Wife] took the yacht into U.S. waters, returning to Canada on July 25. That is the end of our information on the whereabouts of the yacht.

On July 22, 2003, in response to earlier requests from the Compliance Division, Seller provided the Compliance Division with a copy of a work order listing the work Seller had done on the yacht during the four to five-month period ending May 23, 2003, and the charges for work not covered by the warranty. The work order showed a total of 38 hours of work performed on the yacht during that period.

On September 10, 2003, Taxpayer sent the Compliance Division an affidavit, dated June 27, 2003, and signed by Seller's owner . . . , which states:

> On 17 DEC 02, [Seller] accepted care and custody of the [Taxpayer's] vessel from the owners for the purpose of effecting repairs and warranty work. Upon completion of said work, the vessel was returned to their custody on 23 MAY 03. At no time in the intervening period, did the owners, their agents, heirs or beneficiaries have any use, possession or even access to the vessel whatsoever.

On October 23, 2003, the Compliance Division issued an assessment against Taxpayer for use tax/deferred sales tax on the vessel in the amount of $. . . tax, plus penalties and interest, for a total of $. . .. The assessment stated the date of purchase/first use was July 18, 2002, and the value of the vessel was $. . .. At the same time, the Compliance Division issued an assessment against Taxpayer for WET, for the periods September 18, 2002 through June 30, 2003, and July 1, 2003 through October 31, 2003, in the amount of $. . . , including penalties and interest.

ANALYSIS

Retail Sales Tax/Deferred Retail Sales Tax/Use Tax

In general, all sales in the state of Washington of tangible personal property to consumers are subject to retail sales tax unless the sales are otherwise exempt from taxation. RCW 82.08.020; RCW 82.04.050.[4] Washington imposes a use tax for the privilege of using within this state as a consumer, any article of tangible personal property purchased at retail on which retail sales tax was not paid. RCW 82.12.020. Certain exemptions from retail sales tax and use tax apply to nonresidents who purchase or use watercraft in this state. Those exemptions are the focus of this

[4] The tax is to be paid by the buyer to the seller, and remitted by the seller to the state. RCW 82.08.050. When a buyer has failed to pay the tax to the seller, DOR may proceed directly against the buyer for collection. RCW 82.08.050.

appeal. WAC 458-20-238 (Rule 238) is the DOR rule that explains these exemptions. We begin our consideration with the exemptions with RCW 82.08.0266.

a. RCW 82.08.0266 exemption

The Compliance Division asserts Taxpayer is liable for deferred retail sales tax/use tax for failure to meet the requirements for exemption in RCW 82.08.0266 and Rule 238(4)(a). RCW 82.08.0266 exempts from the retail sales tax sales of watercraft to nonresidents, even when delivery is made in this state, but only when the watercraft will not be used in Washington for more than 45 days and a nonresident exemption certificate is provided.[5] There is no specific exemption from use tax for use by a nonresident consumer of watercraft purchased from a Washington vendor and first used in Washington, but by implication from RCW 82.08.0266, such use is exempt for the first 45 days. Rule 238(4) explains the tax consequences to a nonresident of failing to remove a vessel from the state within 45 days after purchase:

> If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department such sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. . . .
>
> (a) Tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales tax or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

Thus, if a nonresident who has purchased a vessel in Washington and given its seller a nonresident exemption certificate fails to remove the vessel from the state with 45 days, the nonresident is liable for deferred retail sales tax or use tax.

We conclude that Taxpayer is not liable for deferred retail sales tax/use tax, under RCW 82.08.0266 and Rule 238, because the vessel did leave Washington waters within 45 days. The 45-day clock began to run on July 18, 2002, when Seller formally delivered the yacht to Taxpayer. Before that date, Taxpayer had contracted to purchase the vessel, had made four deposits on the price, and had even been allowed to take the vessel out for a trip before the

[5] The statute states:

> The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the Federal Boating Act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as provided by the department of revenue and signed by the purchaser or his agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, one copy to be filed with the department of revenue with the regular report and a duplicate to be retained by the dealer.

closing, but Seller did not transfer its dominion and control over the yacht until July 18.[6] The vessel left Washington just a few days after July 18, 2002, when Taxpayer took it to Canada on July 22.

b. Exemption for temporary use; non-counting repair days

There are only two exemptions that potentially apply to Taxpayer's use after the vessel returned to Washington on August 19, 2002, a temporary use exemption in RCW 82.12.0251 and Rule 238(4)(b), and a nonresident repair exemption in Rule 238(4)(c). The Compliance Division contends Taxpayer exceeded the time limit for the former, and did not qualify for the latter, while Taxpayer contends it met the requirements for both exemptions. These are related exemptions that must be considered together, because days that qualify for the nonresident repair exemption do not count toward (are in addition to) the time limits for the temporary use exemption. Rule 238(5)(d). We now consider the application of the two exemptions under the facts of this case, beginning with the "temporary use" exemption.

RCW 82.12.0251 exempts from use tax:

> the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state . . . .

(Emphasis added.) "Temporary use" is defined in Rule 238(4)(b) by incorporating specific time limits from the state's vessel registration requirements, found in RCW 88.02.030(11). Rule 238(4)(b) states:

> Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state. Except as otherwise provided in this rule, it will be presumed that use within Washington sixty days in any twelve-month period is more than temporary use and use tax is due.
>
> Effective January 1, 1998, nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for their use or enjoyment without incurring liability for the use tax if such use does not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the first sixty days. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption. Prior to January 1, 1998, the

[6] We note that DOR has held that conducting sea trials prior to acceptance and delivery of a watercraft, even if done personally by the owner of the vessel, does not constitute "use" for purposes of the 45 day limitation in RCW 82.08.0266 for a nonresident's use. Det. No. 92-144ER, 13 WTD 68 (1993). . . .

> temporary use exemption period was limited to sixty days for all nonresident users of watercraft.

(Emphasis added.) The identification documentation requirements referenced in the second paragraph are stated as follows in RCW 88.02.030(11): "On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing . . . ."

Taxpayer did not satisfy the identification document requirement in RCW 88.02.030(11) and Rule 238(4)(b), and therefore lost the six-month nonresident use exemption set out in the second paragraph of Rule 238(4)(b). Under Rule 238(4)(b), her use of the vessel in Washington can be considered "temporary" only for a total of 60 days during the 12-month period beginning August 19, 2002 (the date the vessel was first "brought into" the state).

The vessel was in the state a total of between 142 and 163 days between August 19, 2002 and May 26, 2003. Taxpayer exceeded the 60-day temporary use limit, and therefore incurred use tax liability, absent some other exemption.

[1] This brings us to the nonresident repair exemption from use tax that Taxpayer claims applies in this case. During all but six[7] of the 142-163 days, the vessel was at Seller's [Washington Location], ostensibly undergoing warranty work and other repair. If the repair days were exempt under Rule 238(4)(c), they did not count toward the 60-day temporary use period, and Taxpayer did not exceed the 60-day limit.

Rule 238(4)(c) states:

> Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within sixty days. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department of revenue compliance division an affidavit as required by RCW 88.02.030 verifying the vessel is located upon the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident Out-of-State Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department. Failure to file this affidavit can also result in requiring that the vessel be registered in Washington and subject to the use tax.

We read Rule 234(4)(c) as not requiring a nonresident to file a repair affidavit to cover the first 60 days a vessel is in the state exclusively for repair. The rule states the affidavit must be filed to <u>extend</u> the exemption if repair cannot be completed within 60 days. Accordingly, we conclude

[7] The three days in August 2002, and May 22-26, 2003.

that Taxpayer's vessel was exempt from use tax for at least the first 60 days of the 139-160 day period it was at Seller's yard prior to May 22, 2003.[8]

We conclude that the balance of the 139-160 day period the vessel was at Seller's yard prior to May 22, was not exempt under the nonresident repair exemption. Rule 238(4)(c) states that the exemption is extended "by filing" the required affidavit verifying the vessel "is located" upon the waters of this state. We read that language as requiring that the affidavit be filed during the repair period. This reading is supported by the wording of the vessel registration statute that is the source of Rule 238(4)(c), RCW 88.02.030(5), which states, with respect to additional extensions: "and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs." (Emphasis added.) Taxpayer did not file any repair affidavit with the Department while the vessel was located upon the waters of the state for repair, and therefore the vessel was not exempt from use tax under the nonresident repair exemption after the first 60 days at Seller's yard.

We conclude that Taxpayer became liable for use tax on her use of the vessel in Washington sometime between April 13, 2003 and May 4, 2003.[9] Sometime during that period the vessel had been in Washington more than a total of 60 days in a twelve-month period without meeting Department of Licensing identification document requirements and without being exempt under the nonresident repair exemption.

Taxpayer argues she "substantially complied" with the nonresident repair affidavit requirement in Rule 238(4)(c)/RCW 88.02.030(5), by the affidavit she sent the Compliance Division dated June 27, 2003. She argues that if that affidavit was effective to exempt the repair period ending May 23, 2003, then, excluding repair days, the vessel was not in Washington for more than a total of 60 days in a twelve-month period, and she was not subject to use tax. In support of her "substantial compliance" argument, Taxpayer cites several Washington court decisions involving irregularities in complying with statutory notice requirements.[10]

We are not persuaded by that argument. The substantial compliance or substantial performance doctrine is defined in Black's Law Dictionary, Seventh Edition, p. 1443, as follows: "The equitable rule that, if a good-faith attempt to perform does not precisely meet the terms of the agreement, the agreement will still be considered complete if the essential purpose of the contract is accomplished." *See Cont'l Sports v. Dept. of Labor & Indus.*, 128 Wn.2d 594, 910 P.2d 1284 (1996). The doctrine of substantial compliance might apply to a nonresident who has made a good-faith attempt to comply with the affidavit requirement, such as one who has timely filed an affidavit that is incomplete or otherwise defective, but that is not Taxpayer's situation. Taxpayer made no effort whatsoever to comply with the affidavit requirement during the period

[8] The Compliance Division expresses doubt whether the vessel was "exclusively" in the state for repair during the entire period, given the small amount of repair work actually performed. That issue is not determinative in this case, and we will assume, for purposes of this determination, that the vessel was present exclusively for repair.

[9] We are unable to determine the precise date because of conflicting evidence about whether the vessel entered Washington for repair work at Seller's yard on December 17, 2002, December 19, 2002, or January 2003.

[10] The cited cases include *MacVeigh v. Division of Unemployment Compensation*, 19 Wn.2d 383, 142 P.2d 900 (1943), and *In re Saltis*, 94 Wn.2d 889, 621 P.2d 716 (1980).

the vessel was undergoing commissioning or repair. Noncompliance is not substantial compliance. *Crosby v. Spokane County*, 137 Wn.2d 296, 971 P.2d 32 (1999).

Taxpayer argues the revenue agent acknowledged, in this case, that DOR sometimes allows nonresident repair affidavits to be filed after-the-fact, if the nonresident taxpayer provides evidence the vessel actually was in the state being repaired. Even if some revenue agents may have allowed the late filing of repair affidavits in some cases, mistakes of law by a DOR employee do not bind DOR absent written advice or instructions to the specific taxpayer. *See* RCW 82.32A.020(2).

Taxpayer argues that Rule 238(4)(c)'s use of the word "can" ("Failure to file this affidavit can also result in requiring the vessel to be registered in Washington and subject to use tax") indicates the assessment of use tax in this situation is not mandatory. Taxpayer argues that when a nonresident shows the vessel actually was in the state being repaired, DOR can and should exercise its discretion and not assess the tax. We are not persuaded by this argument. Our reading of Rule 238(4)(c) is that the words "can also" are not permissive words but rather informational words. The rule section deals with one exemption, and the requirements for that exemption. Failure to qualify for that one exemption does not necessarily mean that use is taxable. It may be taxable, depending on whether some other exemption or exception applies. The "can result" language merely alerts the taxpayer to the possibility that failing to comply with the affidavit requirements may mean it is subject to registration requirements and use tax.

In sum, Taxpayer used the vessel in Washington as a consumer, and her use did not fall within any exemption from use tax. We sustain the assessment of use tax, and deny the petition for correction of the use tax assessment.

Watercraft Excise Tax (WET)

[2] RCW 82.49.010 imposes an excise tax on the privilege of using a vessel upon the waters of Washington, "except vessels exempt under RCW 82.49.020." WET is an annual tax, and is imposed for a twelve-month period, including the month in which the vessel is registered. RCW 82.49.010(3).

RCW 82.49.020 set out six categories of vessels that are exempt from the WET, only one of which is potentially applicable here: "Vessels exempt from the registration requirements of chapter 88.02 RCW."[11]

[11] RCW 82.49.020 states, in its entirety:

> The following are exempt from the tax imposed under this chapter:
>
> (1) Vessels exempt from the registration requirements of chapter 88.02 RCW;
>
> (2) Vessels used exclusively for commercial fishing purposes;
>
> (3) Vessels under sixteen feet in overall length;
>
> (4) Vessels owned and operated by the United States, a state of the United States, or any municipality or political subdivision thereof;

RCW 88.02.030 sets out the exceptions from vessel registration. It states, in relevant part:

> Vessel registration is required under this chapter except for the following. . .
>
> (5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing. However, any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing; . . .
>
> (11) On and after January 1, 1998, vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a nontransitory business activity within the state. However, the vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. . . .

We have already concluded that Taxpayer did not meet the requirements for the RCW 88.02.030(5) and (11) exemptions from vessel registration (and therefore WET liability) in analyzing the Rule 238 sections that incorporate those statutory provisions. We cannot determine a precise date, but sometime between April 13, 2003 and May 4, 2003, the vessel ceased to be exempt from WET under RCW 82.49.020. Taxpayer was using the vessel upon the waters of Washington, the vessel was not exempt from WET, and therefore Taxpayer was liable for WET. RCW 82.49.010.

Although we hold Taxpayer is liable for WET, we must remand the WET assessment for adjustment. The assessment is for the period September 18, 2002 to June 30, 2003, and a subsequent period. The September 18 beginning date is incorrect, under any reading of the facts. That date is tied to Seller's delivery date (61 days after), rather than to days the vessel was in

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> (5) Vessels owned by a nonprofit organization or association engaged in character building of boys and girls under eighteen years of age and solely used for such purposes, as determined by the department for the purposes of RCW 84.36.030; and
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> (6) Vessels owned and held for sale by a dealer, but not rented on a regular commercial basis.

Washington. The vessel was not even in Washington during September 2002. WET liability did not arise until the vessel had been brought into Washington and had been upon Washington waters for a total of more than 60 days, excluding exempt repair days, which occurred sometime between April 13 and May 4, 2003, as discussed above.[12] Because we are unable to determine a precise date earlier than May 4, 2003, we hold the vessel became subject to WET on that date. We remand the WET assessment for adjustment consistent with this holding.

DECISION AND DISPOSITION

Taxpayer's petition for correction of Document No. . . . (use tax) is denied.

Taxpayer's petition for correction of Document No. . . . (use tax) is denied.

. . . WET assessment is remanded to the Compliance Division for adjustment as required by this decision.

Dated this 30th day of August 2005.

[12] After delivery by Seller and removal from the state, the vessel was not "brought into" the state until August 19, 2002. It remained in the state for only three days. It returned to the state on an undetermined date between December 17, 2002 and January 7, 2003, and remained in the state until May 26, 2003. During that last presence, it was exempt from vessel registration for the first 60 days, under RCW 88.02.030(5).