

Cite as 11 WTD 193 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In The Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment	)	
of	)	No. 91-151
	)	
. . .	)	Registration No. . . .
	)	NOTICE OF USE TAX DUE
	)	3-3-TD3

RULE 178, RULE 211: RETAIL SALES TAX--USE TAX--WATER VESSEL--CHARTER WITH CREW. The purchase of a vessel to be used as charter with a crew is not a purchase for resale that is exempt from the retail sales tax. When no sales tax was paid on purchase, the use tax is due at the time of first use, which was either the storage or when the first repairs were made, since both were preparatory to actual use.

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:

Taxpayer protests the assessment of use tax on a boat purchased for charter.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- Taxpayer was assessed use tax on the . . . water vessel, in the amount of \$ . . . , plus \$ . . . in interest [in February of 1990]. Taxpayer protested the assessment.

The taxpayer explained that in 1988 he decided to purchase a boat to charter to others so that he could receive income when he retired from his then place of employment. He purchased the vessel and moved it to its moorage in . . . . He contacted the Department of Revenue, reporting the purchase

cost, location, and his intention to place the boat in charter. He paid the appropriate property taxes on the boat.

Because the boat required extensive repairs, the taxpayer stayed for a time at a motel near the boat's moorage. He eventually decided that he needed even more time on the boat, and moved onto the boat and lived there while completing the work. He states that he does not "remain aboard the boat out of choice, but out of necessity, and I would like to point out that I have never over this period of time deviated from my plan to place the boat in charter." In response to a request for additional information, the taxpayer explained that the vessel, because of its size and complexity, requires a U.S. Coast Guard licensed captain plus a crew member to handle lines, etc. With that requirement, the boat can then carry up to six passengers for hire in water referred to as "waters other than ocean and coastwise." The boat was put into charter for the 1990 season, and taxpayer grossed \$ . . . , which he reported to the Department as a service taxable activity, although below the minimum and therefore not taxable. The charters are from Seattle and/or Port Orchard to the San Juan Islands and back. Taxpayer also uses the boat for charity work, taking senior citizens from rest homes and underprivileged children on cruises.

The Revenue Officer assessed use tax on the boat, considering that when taxpayer lived on the boat, that constituted "intervening use" of the boat and that use tax was due at that time.

#### DISCUSSION:

RCW 82.04.050 (1) defines a retail sale, in relevant part, as

every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person. . . .

Generally speaking, the purchase of property to be rented or leased out is not subject to the retail sales tax, because its purchase is considered a purchase for resale. However, when

the property is to be leased or rented with an operator, it is not considered a purchase for resale. WAC 458-20-211 (Rule 211) explains as follows:

Where the owner of the equipment or the owner's employees or agents maintain dominion and control over the personal property and actually operate it, the owner has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Also, under this statutory definition, the term "retail sale" includes the renting or leasing of tangible personal property to consumers. However, equipment which is operated by the owner or an employee of the owner is considered to be resold, rented, or leased only under the following, precise circumstances:

- (a) The property consists of construction equipment;
- (b) The agreement between the parties is designated as an outright lease or rental, without reservations; and,
- (c) The customer acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

Here, the taxpayer claims that it rents its boat with a captain and crew. It is not renting construction equipment. Thus the boat is not considered to be rented, resold or leased under the rule or statute, and its original purchase, if made in Washington, should have been subject to sales tax. Certain amusement activities are taxable under the service classification of the B&O tax. The charter of a boat with a crew for sightseeing cruises is not a retail sale, but is instead a service B&O taxable activity. See ETB 531.04\08.183, . . . .

The use tax is due on the first use in Washington, as a consumer, of tangible personal property on which no retail sales tax has been paid. RCW 82.12.020. Any use of the boat preparatory to its use as a charter for sight-seeing would subject it to use tax. RCW 82.04.190. Taxpayer's first use in Washington was either the storage of the boat or the

repairs, since both were preparatory to its use in a service-taxable activity.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 5th day of June, 1991.