

Cite as Det. No. 92-143, 12 WTD 179 (1993).

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. 92-143
)	
. . .)	Unregistered
)	
)	

- [1] RULE 178 AND RCW 82.12.0251 -- USE TAX -- TEMPORARILY WITHIN THE STATE -- PROPERTY AND PERSON. In order to qualify for the exemption from use tax for the use of tangible personal property brought into the state by a nonresident while temporarily within the state, both the nonresident and the property must be temporarily within the state. A vessel moored in Washington a number of years was not exempt.
- [2] ESTOPPEL. The Department is not estopped from assessing tax by a letter specifying requirements for an exemption when the taxpayer fails to meet those requirements.
- [3] RULE 178 AND RCW 82.12.0251 -- VESSEL REGISTRATION -- ULTRA VIRES ACTS. The Department's requirement that a vessel be moored on the Columbia River and registered in Washington to qualify for a use tax exemption were reasonable and within its authority for the proper enforcement of the tax.

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: . . .

NATURE OF ACTION:

An Oregon resident protests the assessment of use tax on a vessel he moored in this state.

FACTS AND ISSUES:

Heller, A.L.J. -- The taxpayer is an Oregon resident. He was not a Washington resident. He purchased a 36' vessel in 1979. The vessel was moored in Washington for a number of years and was assigned a specific slip at a private marina. It was registered and licensed in Oregon.

The Compliance Division issued a Notice of Use Tax on August 23, 1988. It assessed use tax on the vessel. No interest or penalties were assessed.

The taxpayer objects to the assessment on three grounds. First, he contends that the Department has misinterpreted the statute which he argues was intended to exempt nonbusiness property of nonresidents even if the property is permanently in Washington. Second, he argues that he relied on a letter to the Washington Public Ports Association granting the exemption for certain Oregon nonresidents with boats on the Columbia River. Finally, he asserts that the Department of Revenue made an unauthorized distinction by granting the exemption to vessels registered/licensed in Washington from those on Puget Sound not licensed here.

DISCUSSION:

The use tax complements the sales tax by imposing a tax equal to the sales tax on an item of tangible personal property used in this state in cases where the retail sales tax was not paid. WAC 458-20-178 (Rule 178). RCW 82.12.020 imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." "Use" is defined at RCW 82.12.010(2) as "the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include[s] installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state." "Consumer" is defined in RCW 82.04.190(1) as "any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business. . . ."

RCW 82.12.0251 provides an exemption from the use tax for:

. . . the use of any article of tangible personal property brought into the state by a nonresident

thereof for his use or enjoyment while temporarily within the state

The taxpayer contends that, because he is only temporarily within the state, the statute does not require that the property be only temporarily within the state and the exemption should apply. He argues that the term "temporarily" in the statute should be interpreted under the rule of the preceding antecedent, meaning that it modifies "his" or "nonresident". Therefore, if the nonresident is only here temporarily, the exemption applies regardless of how long the property is here.

We disagree. If the nonresident was not here temporarily, he would be here permanently. As such, he would be a resident. There would be no reason for adding the word "temporarily" to the statute if it was intended to modify "nonresident."

The Department is required to interpret a statute in such a way as to avoid an absurd result. Yakima First Baptist Homes v. Gray, 82. Wn.2d 295 (1973). It is further required to construe exemptions from the tax law narrowly. Budget Rent-A-Car, Inc. v Department of Rev., 81 Wn.2d 171 (1972). To follow the taxpayer's interpretation would lead to an absurd result.¹ The word "temporarily" would add nothing to the meaning of the section if it only modified "nonresident."

It would allow nonresidents to keep personal property within the state permanently and incur no use tax liability, so long as the nonresident was only in the state on a temporary basis. The property would reap the benefits of police protection and fire department services, but the nonresident would incur no tax liability to maintain those benefits.

The vessel was moored here for a number of years. Because it was not "temporarily within the state," rather it was here on a long-term basis, the statutory exemption does not apply.

[2] The taxpayer also contends that the Department should be estopped from assessing use tax because the Department had issued a letter to the Washington Public Ports Association ruling that nonresidents who registered pleasure watercraft on the Columbia River and moored them on the Washington side would be exempt from use tax. The letter expressly provided that it did not apply to moorage facilities on Puget Sound. Because the taxpayer's vessel was moored at facilities on Puget Sound, the taxpayer should not

¹ Additionally, the taxpayer's interpretation would be inconsistent with RCW §§ 82.08.0264, .0265, and .0266 which exempt certain nonresidents from the retail sales tax when the purchased goods are only temporarily within the state.

have relied on that correspondence. The Department is not estopped from assessing use tax.

Further, the taxpayer raised the issue of territorial uniformity. In Bond v. Burrows, 103 Wn. 2d 153 (1984), the Washington Supreme Court struck down the border county's reduced sales tax rates because they violated the doctrine of territorial uniformity. The taxpayer argues that this doctrine requires the Department to extend the exemption given to vessels moored on the Columbia River to those moored on Puget Sound. While we do not agree that the doctrine applies to this situation, if it did apply, the result would be denial of the exemption to those on the Columbia, not the expansion of it.

[3] Finally, the taxpayer argues that the additional requirements in the letter were beyond the Department's authority if it contended that nonresidents' nonbusiness property permanently in Washington was subject to tax. The taxpayer argues that the Department improperly distinguished between vessels in Puget Sound and those on the Columbia River. Nor could it require that they be licensed in Washington to qualify for the exemption. According to the taxpayer, none of these requirements have a reasonable relationship to the exemption statute and are outside the authority of the Department to impose.

Again, we disagree. We believe the Department acted within its authority regarding enforcement in a difficult area on the border between this and another state. Unlike the international border where there is a customs office to monitor vessels as they cross back and forth over the border, there is no similar monitoring on the state border. It is nearly impossible to determine if watercraft remained in Washington the sixty days designated for registration. Therefore, it would have been reasonable, for enforcement purposes, for the Department to allow the exemption for boats registered in both Oregon and Washington on the Columbia River. This policy may be reviewed and changed, but that does not effect the taxability of the taxpayer's vessel on Puget Sound.

DECISION AND DISPOSITION:

Taxpayer's petition for correction of use tax is denied.

DATED this 9th day of July 1992.