

Cite as Det. No. 94-113, 15 WTD 15 (1995).

BEFORE THE INTERPRETATIONS 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 Tax Ruling of)	
)	No. 94-113
)	
. . .)	Registration No. . . .
)	FY. . ./Audit No. . . .
)	

RULE 166; RCW 67.28.180: HOTEL/MOTEL TAX -- LICENSE TO USE REAL ESTATE -- TRANSIENT -- AIRPORT TIE-DOWN FEES -- BOAT MOORAGE FEES. Transient boat moorage fees and transient airport tie-downs are not subject to the special hotel/motel tax because they are not received for the "furnishing of lodging."

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 county finance department seeks a ruling on whether transient boat moorage fees and transient airport tie-downs are subject to the special hotel/motel tax.¹

FACTS:

Okimoto, A.L.J. -- The taxpayer is a legislative body authorized to impose a special tax upon the furnishing of lodging by hotels, motels, etc., pursuant to RCW 67.28.180. It now asks for a ruling from the Department of Revenue, as to whether amounts charged by marinas for transient boat moorage fees and by airports for transient airport tie-downs are subject to the special hotel/motel excise tax.

The taxpayer explained in a teleconference that transient airport tie-down fees are amounts paid by visiting airplane owners for

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

temporarily allowing them to park their planes at a county or municipal airport. Typically, they are for a duration of considerably less than 30 days. Furthermore, the airport does not provide any other services and airplane owners will normally obtain lodging at a nearby hotel/motel or other facility.

The taxpayer explained that transient boat moorage fees are amounts paid by visiting boat owners to marinas for temporarily mooring their boats at the marina. In contrast to the tie-down fees, marinas often offer significant other moorage related goods or services, such as a fuel dock, marine supplies, groceries, shower and laundry facilities, restrooms, repair services, and even swimming pools.

The taxpayer noted that transient boat moorage users break down into several categories. First, are the persons who are "on tour" and sail their boat from marina to marina. The taxpayer states that these persons almost always stay and live on board, and very seldom utilize hotels. They are also the majority of the boaters. Second, are those persons who are transporting the boat to another location. For example, if a Seattle boat owner is planning a one week sailing trip through the San Juans, he will oftentimes sail the boat to Anacortes on the prior weekend, acquire transient boat moorage during the interim week, drive home to Seattle, and then drive back up to Anacortes to begin the actual trip on the following weekend. Finally, there are the fishermen and persons in smaller watercraft. Because these boats are relatively small in size, the operators normally do not stay on board. They either utilize hotels, stay with friends or drive home.

Subsequent to the teleconference, the taxpayer conducted an informal survey of marina operators and submitted the following results. Out of 20 responses to the survey, one person estimated that 15% of transient boaters stayed in hotels/motels, three estimated 10%, six estimated 5%, three estimated 2%, four estimated 1%, and three estimated 0%.

ISSUE:

Are transient boat moorage fees and transient airport tie-downs subject to the special hotel/motel tax?

DISCUSSION:

[1] RCW 67.28.180 authorizes qualified legislative bodies to impose a special hotel/motel excise tax:

. . . on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use

real property, as distinguished from the renting of leasing of real property: . . .

(Emphasis ours.)

WAC 458-20-166 (Rule 166) is the lawfully promulgated rule implementing the above statute and has the same force and effect as law. RCW 82.32.300. Rule 166 further defines "trailer camp, and the granting of any similar license to use real property, to include:

(c) A "trailer camp" or "recreational vehicle park" as used in this section is an establishment making a charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc. which provide sleeping or living accommodations for the occupants. Additional charges for utility services are a part of the charge made for the rental.

(Emphasis ours.)

We first note that RCW 67.28.180 initially imposes the special hotel/motel tax only on sales of transient lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property. Rule 166 then interprets the phrase "trailer camp" to include "recreational vehicle park" and the phrase "of any similar license to use real property" to mean an establishment making a charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc. which provide sleeping or living accommodations for the occupants.

In interpreting the above statute and rule, it is clear that the special hotel/motel tax was meant to be limited to sales of transient lodging and not to related services. Indeed this is clearly stated in the Rule 166:

(5) **Special hotel/motel tax.** . . . The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(Emphasis ours.)

Although the taxpayer argues that transient boat moorage fees are virtually identical to recreational vehicle parks and campgrounds because they supply a license to use real estate (dockspace) and

many of the same services, including power hookups, community showers and restrooms, pumpout facilities, community laundry facilities and garbage/trash bins, we must disagree. There is a significant distinction between transient boat moorage and recreational vehicle parks and campgrounds. With recreational vehicle parks and campgrounds, it is virtually assured that those persons utilizing the facilities will also be lodging there. We find it highly unlikely that a person would park his/her car at a campground or RV park and then subsequently acquire lodging at a nearby hotel/motel. If hotel accommodations were desired, the person would much more likely leave the campground and park his/her vehicle at the hotel/motel and not incur the additional campground expense. This is not necessarily true with transient boat moorage. The taxpayer's survey indicates that approximately 5% of all transient boat moorage participants will stay in a hotel or motel. To impose this tax on transient boat moorage fees would subject these persons to the hotel/motel tax twice on a single lodging stay. This was not the intent of the Legislature. In addition, other persons who utilize transient boat moorage simply do not stay onboard the boats. They obtain lodging elsewhere. These include local fishermen who are temporarily mooring their boats, and persons shuttling their watercraft to a further debarkation point. Both would normally return home for their lodging. Therefore, because we find that the primary purpose of transient boat moorage facilities is to temporarily store or dock watercraft and not for the "furnishing of lodging", we hold that the special hotel/motel tax does not apply².

Similarly, we find that airport tie-down fees are not subject to the special hotel/motel tax.

DECISION AND RULING:

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However,

²This ruling is also consistent with our regulation governing the taxability of counties, cities, and other municipal subdivisions, WAC 458-20-189 (Rule 189). It provides in part:

"(6) Amounts derived from enterprise activities consisting of . . . moorage fees (less than thirty days), . . . are taxable under the service and other activities classification of the business and occupation tax."

it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 27th day of June, 1994.