

Cite as Det. No. 94-151E, 15 WTD 37 (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 Refund of)	
)	No. 94-151E
)	
. . .)	Registration No. . . .
)	FY. . ./Audit No. . . .
)	

RCW 82.29A.130(4): LEASEHOLD EXCISE TAX -- COUNTY FAIRS. Receipts of county fair for leasing horse stalls and storage space are not exempt from leasehold excise 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.

NATURE OF ACTION:

A county fair board protests the assessment of leasehold excise tax upon rent received during periods while the fair was not in operation.

FACTS:

Pree, A.L.J.-- A county fair holds one county fair each year. During the off-season it rents horse stalls and storage areas to individuals.¹

The county holds title to the fairgrounds. Therefore, property tax was not paid on the fairgrounds. The Board of County Commissioners employed a director of the Fair Department and appointed a Fair Board which operated the fair and managed the

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

fairgrounds. It rented horse stalls and storage space throughout the year.

The taxpayer states that it uses the off-season rent for the fair. Following the hearing, it provided a resolution by the county commissioners to that effect.

In 1987, the Audit Division in an advisory assessment, instructed the taxpayer that the leasehold excise tax was applicable to leases of fair property during periods other than fair time. The taxpayer petitioned this division and was advised that the instructions in the assessment were correct. Yet, because the assessment was advisory only, the taxpayer was told that its petition could not be appealed.

During the audit period, the taxpayer did not charge its renters leasehold excise tax. Nor did it remit leasehold excise tax to the state. The Audit Division assessed leasehold excise tax, explaining that the exemption under RCW 82.29A.130(4) applied only to fair time activities. The assessment did not include leases under \$250, leases for periods less than 30 days, nor to fair time income.

RCW 82.29A.130(4) exempts from leasehold excise tax:

All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

ISSUE:

Whether the exemption from leasehold excise tax applies to rent received during the off-season for leases over \$250 and for more than 30 days.

The taxpayer contends that since all rental receipts were used for fair purposes, it was entitled to the exemption. It raises a substantial portion of the money to operate the fair in this manner. According to the taxpayer, this exemption was intended to assist the financing of the fairs.

In response to the audit explanation, the taxpayer reasons that the legislature could not have intended to exempt only fair time rents because the county fairs were all less than 30 days. Also, seldom would any leases during the fair period exceed \$250. If the legislature intended to limit the exemption's application to the amount collected during the fair, the taxpayer asserts that it would have used the phrase "during the fair" rather than "for fair purposes."

(1) There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent: PROVIDED, That after the computation of the tax there shall be allowed credit for any tax collected pursuant to RCW 82.29A.040.

The tax is actually imposed on the lessees. In this case, the fair was required to collect and remit it to the state under RCW 82.29A.050, which provides in subsection (1):

The leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 shall be paid by the lessee to the lessor and the lessor shall collect such tax and remit the same to the department of revenue.

The fair is being assessed the tax that it failed to collect as lessor from the lessees of the horse stalls and storage space. The proviso in RCW 82.29A.130(4) limits the exemption to the leasehold interests of the fair associations, not their subleases. Therefore, the fair's receipts for horse stalls and storage space were subject to leasehold excise tax.

This holding is consistent with the purpose of the leasehold excise tax as expressed in RCW 82.29A.010:

The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly

compensate governmental units for services rendered to such lessees of publicly owned property.

While use by the Fair Association to conduct a fair may be a public purpose exempt from property taxes, private leases for horse stalls and storage space are not for public purposes. Further, fairs leasing horse stalls and storage space compete with private landowners who pay property taxes on similar property. Those taxes are passed on to their renters. Likewise, the fair should collect leasehold excise tax from its renters.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 22nd day of August, 1994.