

Cite as 2 WTD 101 (1986)

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

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Leasehold )	
Excise Tax Assessment of )	No. 86-311
)	
. . . )	Registration No. . . .
)	
)	

- [1] **LEASEHOLD EXCISE TAX:** PUBLIC PROPERTY -- USE OR OCCUPANCY -- SERVICE PROVIDERS -- SERVICE FOR PUBLIC OWNER.

The leasehold excise tax does not apply to the use or occupancy of public property at no charge where the sole purpose of such use or occupancy is to render services to the public owner.

- [2] **LEASEHOLD EXCISE TAX:** LEGISLATIVE PURPOSE -- LEGISLATIVE INTENT -- PUBLIC PURPOSES. Legislative purpose and intent in enacting leasehold excise tax was to assess tax upon use of public property for private purposes, but not to assess a tax upon the use of public property in furtherance of a public purpose.

- [3] **LEASEHOLD EXCISE TAX:** LEASEHOLD INTEREST -- WHAT CONSTITUTES POSSESSION. "Leasehold interest" requires both use and possession, and no right of possession is granted where use and occupancy of public property is provided at no charge solely for the purpose of rendering services to the public owner.

Headnotes are provided as a convenience for the reader and are not in 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: December 8, 1985

NATURE OF ACTION:

. . . (taxpayer) is a [foreign] corporation and is qualified to do business in Washington. The taxpayer provides services to the United States of America, Department of the . . . in this state pursuant to a government contract. These services are rendered at . . ., Washington.

The Department examined the contract between the taxpayer and the government to determine if there was any leasehold excise tax liability for the period January 1, 1981 through March 31, 1985. The Department concluded that the taxpayer's use and occupancy of certain public property pursuant to the contract gave rise to leasehold excise tax liability and interest totalling \$84,045.27. Leasehold Excise Tax Assessment No. 111039 in that amount was issued on July 10, 1985 specifying a payment due date of August 5, 1985. At the taxpayer's request, the due date was extended to September 4, 1985. By letter dated August 30, 1985, the taxpayer petitioned for a correction of the assessment asserting that no tax is due. The assessment remains unpaid.

#### FACTS AND ISSUES:

Rosenbloom, A.L.J.--The taxpayer renders a wide range of support and maintenance services pursuant to its government contract. These include photographic/graphic arts services, family housing maintenance services, custodial services, grounds/ground structures maintenance services, pest control services, utilities maintenance and operational services, and numerous other activities.

The taxpayer is allowed, at no charge, the use and occupancy of certain public property in order to carry out these functions. For example, the government provides storage and general office space for the taxpayer's use. The taxpayer does not use the public property for any private purpose of its own. they are used only for business activities which are incidental to services rendered to the government under the contract.

The taxpayer asserts that no taxable leasehold interest exists. The taxpayer argues that it is not the intent of the leasehold excise tax law to impose liability upon the use of public property for a public purpose. Only use of public property for a private use should be subject to tax, according to the taxpayer.

In the alternative, the taxpayer argues that the leasehold interest has no value because the sole purpose of the taxpayer's use and occupancy of the public property is to render services to the public owner.

Finally, the taxpayer argues that to the extent a leasehold interest exists and to the extent it has any value, the leasehold interest is nevertheless exempt by reason of RCW 82.29A.040(11). That section provides a leasehold excise tax exemption for any leasehold interest in publicly owned property that arises solely by virtue of a contract for public improvements or work executed under the public works statutes of the United States between the public owner of the property and the taxpayer.

#### DISCUSSION:

[1, 2] The leasehold excise tax does not apply to the use or occupancy of public property at no charge where the sole purpose of such use or occupancy is to render services to the public owner. The legislature's purpose in enacting the leasehold excise tax is explained at RCW 82.29A.010, which provides:

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.

Where a private person's use or occupancy of public property at no charge is in furtherance of the public owner's purposes, then it is the public owner who benefits from governmental services rendered in respect to such property. Thus, it is inconsistent with the legislative purpose and intent to impose

leasehold excise tax upon the use or occupancy of public property at no charge for public purposes.

Further support for this position is found at RCW 84.40.175, which relates to the valuation of publicly owned property. RCW 82.29A.020(2)(b) establishes an alternative procedure for determining taxable rent based on the market value of the property and other factors. This was in fact the provision under which taxable rent was established in the present audit, since the property was provided at no charge, i.e., there was no contract rent. In the present case, the auditor used the replacement costs provided by the Navy to determine the market value of the property. But another method of determining market value for purposes of establishing taxable rent is provided in RCW 84.40.175 as follows:

. . . with respect to publicly owned property exempt from taxation under provisions of RCW 84.36.010, the assessor shall value only such property as is leased to or occupied by a private person under an agreement allowing such person to occupy or use such property for a private purpose when a request for such valuation is received from the department of revenue for use in an audit of taxable rent as provided for in RCW 82.29A.020(2)(b): . . .  
(Emphasis supplied.)

The foregoing language was added as an amendment as part of the same law that created the leasehold excise tax (see, Laws of 1975-'76, chapter 6, section 15).

We recognize that an argument could be made that the taxpayer is using the property in question for a private purpose: to make money as a government contractor. Such an approach, however, would obliterate any distinction between a private and public purpose and render meaningless the legislature's use of the words "private purpose" in RCW 84.40.175. We cannot interpret the law in such a manner as to render a portion of it meaningless and of no effect. State v. Fenter, 89 Wn.2d 57 (1977).

Perhaps the clearest way of explaining the distinction between a private and public purpose is to illustrate it with an example. One contractor operates a snack bar at the base where food and beverages are sold to all comers, and the contractor derives a profit from the proceeds of such sales. Another contractor, like the taxpayer in this case, operates a mess hall where food is delivered at no charge to persons with

appropriate I.D., and the taxpayer is reimbursed on a cost-plus basis. The former is engaged in a business enterprise the same as any other restaurateur. The latter is merely providing a service to [Department of]. . . personnel that the Navy would otherwise have to provide. The former is using public property for a private purpose, while the latter is using public property for a public purpose.

For these reasons, we conclude that the taxpayer is not occupying or using the property for a "private purpose," but for a "public purpose."

[3] Furthermore, in order for the leasehold excise tax to apply, there must be a leasehold interest. RCW 82.29A.030(1). RCW 82.29A.020(1) defines the term "leasehold interest" as follows:

. . . an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership.

The taxpayer's contract with the government does not create a "leasehold interest." RCW 82.29A.020(1) provides that a leasehold interest is one which grants "possession and use" of public property. Clearly the taxpayer had use of public property, but both possession and use are required for a leasehold interest to arise. Possession is not defined in the statute but must have a meaning beyond that of mere use. No right of possession is granted where use and occupancy of public property is provided at no charge solely for the purpose of rendering services to the public owner.

#### DECISION AND DISPOSITION:

The taxpayer's petition for correction is granted. Leasehold Excise Tax Assessment No. . . . is withdrawn.

DATED this 10th day of December 1986.