

Cite as Det. No. 07-0098, 26 WTD 236 (2007)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	
)	No. 07-0098
)	
)	Registration No. . . .
)	Request for Refund of LET
)	Docket No. . . .

- [1] RCW 82.29A.120: LEASEHOLD EXCISE TAX -- VALUE -- CORRECTION OF -- “OMITTED PROPERTY” -- LIMITATION – TIMING. Improvements erroneously omitted from a county’s property tax assessment roll are not “accurately listed” and constitute “omitted property.” County assessors are required to add “omitted property” to the tax rolls for any current and prior years that were not more than three years before the year in which the error was discovered. There is no statutory limitation as to when this change in value can be made.
- [2] ETA 2036.29A: LEASEHOLD EXCISE TAX – VALUE -- PUBLIC MARINAS – BOAT SLIPS. ETA 2036.29A provides an acceptable formula to compute the amount of LET public marinas are required to collect from lessees on the rental of their boat slips.

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.

Bauer, A.L.J. – A boat owner appeals a denial of a refund of the Leasehold Excise Tax (LET) he paid on a publicly-owned boat slip, contending that an RCW 82.29A.120 credit should have applied, because the LET amounts collected on all boat slips exceeded the property tax that would have applied to the slips had [they been owned] privately. Held: A refund is due under the provisions of ETA 2036.29A and the corrected property tax valuation adjustments.¹

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

ISSUES

1. Can property tax values corrected under RCW 84.40.080's "omitted property" provision be used to determine whether a lessee is eligible for an RCW 82.29A.120 tax credit against LET paid during those years?
2. Does recently-published ETA 2036.29A apply to determine whether Taxpayer is entitled to a refund of the LET he paid during the years 2001 through 2004?

FINDINGS OF FACT

[Taxpayer] leased a boat slip from a (Marina) in [a Washington county] (County) during the years 2001 through 2004. Because the Marina is located on public property, it does not pay property tax. In lieu of property tax, the Marina charges boat owners who lease its permanent boat slips (tenants) leasehold excise tax (LET), which tax is then paid over to the State of Washington.

Taxpayer, a tenant, believed that the leasehold excise tax he was charged for tax years 2001 through 2004 was . . . in excess of what was allowable. He thus filed a petition for refund to the Department of Revenue's (Department's) Special Programs Division (Special Programs). That petition for refund was denied.

Taxpayer appealed to this Division on . . . , 2005. . . .

The issue of the amounts of LET charged to the Marina's tenants first arose in 2003 when one of its tenants requested a LET refund, and the Marina inquired as to its appraised value.² In 2004, the County's Assessor's Office discovered 1996-2004 valuation errors and requested the Department's assistance. The Department's Property Tax Division advised the County how to correct the erroneous valuations in accordance with the "omitted property" provision of the law (RCW 84.40.080 and WAC 458-12-050). This resulted in a change in valuation for tax year 2004 from \$. . . to \$. . . . Unbeknownst to the Department, the changes for years 2001, 2002, and 2003 were not successfully implemented.

Special Programs' denial of Taxpayer's initial petition for refund in 2005 was based on its good faith belief that the County had already corrected the Marina's property tax values for years 2001 through 2004 in accordance with the Department's prior instructions. When it became evident in 2006 that the County had not been successful in changing the Marina's valuation for tax years 2001-2003, the Department again instructed the County on how to correct those values. In 2006, the County successfully changed the Marina's valuation for the years 2001, 2002, and 2003 under the "omitted property" statute. . . .

² Because public properties do not pay property tax as do private citizens, they are not issued property tax valuations.

On November 28, 2006, the Department published ETA 2036.29A, which provides public marinas with an acceptable formula to compute the amount of LET the marinas are required to collect from lessees on the rental of their boat slips. The ETA has built into its calculation both the property tax levy rate and the assessed value of the marina for property tax purposes, so that both of these are taken into account when setting the measure for LET.

ANALYSIS

RCW 82.29A.030 levies LET on “the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest.” The purpose of the LET is to tax private leasehold interests in publicly-owned real or personal property. The LET is thus “in lieu” of the property tax that would otherwise be paid to the owner through lease payments. It is intended to provide equity in taxation of all property. Otherwise, private users of public property would realize an economic benefit over users of privately-owned property.

RCW 82.29A.120 provides that if the LET amount exceeds the property tax that would apply to the property if it were privately owned, a credit is allowed equal to the amount of LET that exceeds the appropriate tax.

1. Can property tax values corrected under RCW 84.40.080’s “omitted property” provision be used to determine whether a lessee is eligible for an RCW 82.29A.120 tax credit against LET paid during those years?

When Taxpayer petitioned for a refund, the property tax valuation of the Marina was \$. . . for each of tax years 2001 through 2004. The County adjusted the Marina’s 2004 property tax valuation after January 1, 2004 [to a much higher amount]. The Marina’s 2001, 2002, and 2003 property tax valuations were similarly increased in 2006.

Generally, a property tax assessment must be based on the assessed value of the property as of January 1 of that year. RCW 84.36.005; RCW 84.40.020; and *Advanced Silicon Materials v. Grant County*, 156 Wn.2d 84, 124 P.3d 294 (2005). Under this general rule, the applicable property tax valuations in this case would be those that were in effect on January 1 of each of 2001, 2002, 2003, and 2004, . . . even though these valuations were erroneous.

[1] An exception to the January 1 valuation date . . . is the “omitted property” statute, RCW 84.40.080, which provides:

An assessor shall enter on the assessment roll in any year any property shown to have been omitted from the assessment roll of any preceding year, at the value for the preceding year, or if not then valued, at such value as the assessor shall determine for the preceding year, and such value shall be stated separately from the value of any other year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section. . . .

(Emphasis added.) WAC 458-12-050 defines “omitted property” as including:

[A]ll real and personal property that was not entered on the assessment roll. Omitted property does not include: . . . (b) Real or personal property that was accurately listed but improperly valued by the assessor.

(Emphasis added.) The Marina improvements that were erroneously omitted . . . from the Marina’s . . . property tax assessment roll were no longer entered on the assessment roll and therefore were not “accurately listed.” Under WAC 458-12-050, they therefore constituted “omitted property.” RCW 84.40.080 requires “omitted property” to be entered on the assessment rolls of “any” preceding years, subject only to the RCW 84.40.085 statute of limitations, which provides:

No omitted property or omitted value assessment shall be made for any period more than three years preceding the year in which the omission is discovered.

(Emphasis added.) Thus, reading RCW 84.40.080 and RCW 84.40.085 together, county assessors are required to add “omitted property” to the tax rolls for any current and prior years that were not more than three years before the year in which the error was discovered. Because the omitted property in this case was discovered in 2004, the County could lawfully correct the Marina valuations for 2004, 2003, 2002, and 2001. There is no statutory limitation as to when this change in values can be made.

Thus, we hold that the correct[ed] property tax valuations [can] be used in deciding whether Taxpayer is due an RCW 82.29A.120 credit

2. Does recently-published ETA 2036.29A apply to determine whether Taxpayer is entitled to a refund of the LET paid during the years 2001 through 2004?

Under RCW 82.29A.030, the current rate of LET is 12.84 percent of taxable rent. RCW 82.29A.030(2)(B) and WAC 458-29A.200(6), however, also provide that the Department may establish a taxable rent computation for use in determining the tax payable in instances when a leasehold interest:

[H]as not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor

[2] Because of the historical difficulty in establishing the correct amount of LET due by those who lease permanent moorage at public marina slips, the Department has, over the years, advised public marinas on a methodology for the calculation of LET on permanent moorage. This

guidance has been recently published in ETA 2036.29A. The formula therein results in a lower LET tax liability than does RCW 82.29A.030's 12.84 percent statutory rate. Because this ETA merely reflects advice previously provided to public marinas, does not involve a change in interpretation, and merely promulgates the department's practice in this area, it is applicable here.

We hold that the correct amount of LET that should have been charged on Taxpayer's boat slip is most accurately calculated under ETA 2036.29A using the corrected property tax assessments. . . .

DECISION AND DISPOSITION

Taxpayer's petition for refund is granted, but not in the full amount requested.

Dated this 20th day of April 2007.

STATE OF WASHINGTON DEPARTMENT OF REVENUE