

Cite as 4 WTD 47 (1987)

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 Assessment of)	
)	No. 87-280
)	
)	Watercraft Valuation
. . . )	Fishing Vessels:
)	. . .
)	. . .
)	
)	

[1] **WATERCRAFT VALUATION AND RCW 84.36.800 ET SEQ:**  
PROPERTY TAX -- EXEMPTION -- JURISDICTION -- INDIAN  
TREATY RIGHTS. The Department, through the  
Interpretation and Appeals Division, has been given  
limited authority to determine questions of  
valuation for property tax purposes, but not for  
passing upon claims for exemption of such property  
pursuant to RCW 84.36.800, et seq. Such petitions  
must be dismissed.

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: February 6, 1987

NATURE OF ACTION:

Petition for cancellation of a property tax assessment on two  
fishing vessels. The owner, a tribal member, did not live on  
the reservation but used the vessels in the usual and  
accustomed grounds and stations within a treaty ceded area.

#### FACTS:

Burroughs, A.L.J. -- The fishing vessels owned by the above-referenced taxpayer were appraised and assessed by the Department of Revenue pursuant to RCW 84.08.200, as ships otherwise exempt from the watercraft excise tax. (See RCW 82.49.020(2) and RCW 84.36.080). The Department of Revenue has accepted the reported purchase prices of \$44,000 and \$40,000, respectively, upon which to base its assessments. There have been to date no tax statements issued by the county assessor's office.

The taxpayer is a member of the . . . Indian Tribe, duly registered on the tribal rolls. The taxpayer does not live on the reservation, but is licensed by the Tribe to engage in the Treaty Indian Fishery. The taxpayer's fishing vessels, which are used exclusively for fishing, are licensed by the Tribe for use in the . . . Indian Tribe's Treaty Fishing areas. Some of the waters within these "usual and accustomed [fishing] grounds" are outside the . . . Indian Reservation.<sup>1</sup>

#### TAXPAYER'S EXCEPTIONS:

The taxpayer has presented arguments, by extensive brief, to the effect that the State of Washington may not impose a tax which burdens the Treaty fishing rights of members of the . . . Indian Tribe in its usual and accustomed fishing grounds. The taxpayer argues that the property tax on the taxpayer's fishing vessels does just that, and that therefore an exemption should apply.

#### ISSUES:

There are two issues for resolution herein:

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<sup>1</sup> The Treaty Indian Fishery of the . . . Indian Tribe includes the marine areas of Puget Sound from the Fraser River south to the environs of Seattle. United States v. Washington, 384 F. Supp. 312, at 360 (W.D. Wash., 1974) [Finding of Fact 46], aff'd.: 520 F.2d 676 (9th Cir., 1975), cert. den., 423 U.S. 1086 (1976), aff'd sub nom. Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658 (1979). The usual and accustomed fishing grounds and stations of the . . . Indian Tribe extend beyond and outside of the land boundaries of the . . . Indian Reservation.

1. Whether the Department has the authority to resolve this issue under the applicable statutes, and, if so,

2. Whether an exemption does in fact apply.

#### DISCUSSION:

RCW 84.08.200 provides in pertinent part:

Any ship or vessel owner disputing the assessment under this section shall have the same rights of review as any other vessel owner subject to the excise tax contained in chapter 82.49 RCW in accordance with RCW 82.49.060.

A reading of this latter section indicates quite clearly that the Department, through the Interpretation and Appeals Division, has been given only limited authority to determine questions of valuation for property tax purposes, but not for passing upon claims for exemption of such property pursuant to RCW 84.36.800, et seq. Accordingly, the taxpayer's petition must be dismissed.

This does not mean, however, that the taxpayer is without a remedy. The tax can be paid and refund sought under RCW 84.68.020. Where claims of a constitutional nature are involved, taxpayers have sought to enjoin the assessment and collection of such taxes under the exceptions contained in RCW 84.68.010 to the anti-injunction provisions contained in that section or pursue the matter in federal court.

#### DECISION AND DISPOSITION:

The taxpayer's petition is dismissed.

DATED this 19th day of August 1987.