

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
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 Refund of )	
)	No. 88-189
)	
Valuation . . . )	Re: Watercraft
)	
)	. . .
	. . .

- [1] **BOAT TAX:** VALUATION -- FAILURE TO LIST -- ESTIMATED VALUE. Where a commercial fishing vessel owner fails to list the vessel with the Department, the Department estimates the value of the vessel for property tax purposes according to the length of the vessel and comparison to the value of other like vessels. Adjustment permitted after owner listed and provided a full description of the vessel including its purchase price.
- [2] **BOAT TAX:** SITUS -- WASHINGTON CORPORATION. Situs for taxation of ships and vessels is the domicile of the owner, unless the vessels have acquired situs elsewhere. Before tangible personal property may be taxed in a state other than the domicile of the owner, it must have acquired a more or less permanent location in that state, and not merely a transient or temporary one.
- [3] **BOAT TAX:** PERSONAL PROPERTY TAX -- COMMERCIAL VESSEL -- FAILURE TO LIST -- PENALTY. "Reasonable cause," for the purposes of RCW 84.40.130 which assesses a penalty for failure to list taxable personal property unless the failure is due to reasonable cause, depends upon the circumstances of each case. Automat v. Yakima County. Advice by an

accountant not to list the vessel because of pending legislation is not such a situation.

[4] **BOAT TAX:** PERSONAL PROPERTY TAX -- COMMERCIAL VESSEL -- FAILURE TO PAY -- INTEREST. There is no statutory authority for waiver of interest provided for by RCW 84.56.025 because of late payment of personal property taxes.

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: November 10, 1986

#### NATURE OF ACTION

Appeal for correction of assessment of property tax on a commercial fishing vessel.

#### FACTS:

Burroughs, A.L.J. -- The taxpayer is and has been at all times a Washington corporation and is the owner of the vessel which has been taxed. The vessel for the years 1983, 1984, 1985 and 1986 was engaged in fishing seafood products on the high seas or in waters under the jurisdiction of states other than the State of Washington.

During the years stated above the vessel spent little time in the State of Washington, the time spent in this state being mainly for repairs. Other than for repairs, the vessel spent less than 60 days within this state for each year indicated.

During the early years, the corporation had retained an accounting firm to represent it with respect to the personal property tax and informational returns. The taxpayer's president, who devoted considerable time out-of-state on the vessel as its skipper, was advised by the accounting firm not to complete the Notice of Value and Informational Form concerning the vessel's cost. The accounting firm instead prepared various letters for the president's signature, which letters were sent to the Department in November and December, 1984. The thrust of the December letter was that, because the legislature in January of 1985 was scheduled to consider the matters of registration and taxation of commercial fishing

vessels, the taxpayer preferred to defer paying tax until the matter was so addressed.

Because the Department had no information on which to base the vessel's value, an estimated value of \$765,000, based on comparable vessels of like size, was used. The taxpayer was assessed tax, penalties, and interest based on this estimated value, for years 1983, 1985, and 1986.<sup>1</sup> These assessments were paid in full in May 1986 when the taxpayer understood that continued nonpayment would result in seizure and sale proceedings.

In March 1986, the taxpayer furnished a Statement of Value to the Department reflecting a purchase price of \$312,187 in 1970. The value of the vessel for tax years 1987 forward, then, have been adjusted accordingly. The taxpayer has been advised that, due to new legislation, there will be no tax owed for tax year 1987.

The taxpayer, in this petition for refund, is requesting that the Department revalue the vessel for tax years 1983, 1985, and 1986 based on its original purchase price, and delete all penalties and interest since none of the failures to comply or respond were intentional on the part of the taxpayer and were in reliance on information and advice received from accounting professionals.

The taxpayer further requests that all taxes, interest and penalties paid be refunded, presumably because of the vessel's limited time spent within the State of Washington.

#### ISSUES:

The following issues have thus been presented for our resolution:

1. Whether the value of the taxpayer's vessel should be adjusted based on new information provided by the taxpayer as to its purchase price.
2. Whether the State of Washington has jurisdiction to tax the vessel based on its limited time in the state.

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<sup>1</sup> No tax was assessed for tax year 1984, for reasons which are not entirely clear. Omission of this year is thought to have been an oversight.

3. Whether late filing penalties should be excused, and
4. Whether interest should be excused.

#### DISCUSSION:

[1] Vessels used exclusively for commercial fishing are exempt from the watercraft excise tax, but are subject to ad valorem property taxes. RCW 82.49.020 and RCW 84.36.080. RCW 84.08.200 (recodified in 1986 to RCW 84.40.065) provides that every individual shall list with the Department of Revenue all vessels which they own, possess, or control and which are subject to ad valorem taxation. All personal property in this state subject to taxation is to be listed and assessed every year, according to its value and ownership on the first day of January of the assessment year. RCW 84.40.020. All property is to be valued at 100% of its true and fair value.

WAC 458-12-300 defines "true and fair value" as the market value. To assist in arriving at the market value of a vessel, the Department prepared a depreciation schedule. The Department reviewed all available blue book sources on the value of vessels, and considered comparable sales and market conditions of the fishing industry in preparing the schedule. The schedule is applied to the total cost of the vessel when the owner has provided that information to the Department.

Because the taxpayer did not list the vessel with the Department when requested, the Department estimated its value for property tax purposes as required by RCW 84.40.200. The estimated value was based on the vessel's length and use. As the taxpayer has now provided information regarding the cost of the vessel, the assessments for 1983 and 1985, which were based on the estimated values of the vessel, shall be reduced such that the measure thereof bears a reasonable relationship to the purchase price of the boat.

[2] As to the taxpayer's assertion that the vessel was in the state an insufficient time period to invoke the State of Washington's jurisdiction to tax, we must disagree.

We find that the taxpayer's vessel, during the assessment periods, was properly subject to Washington property tax. Generally, personal property may be properly assessed for taxation only in a state where it has a situs. 71 Am. Jur. 2d, State and Local Taxation + 655. The modern day concept of situs, at least as between states, is grounded on due process.

Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment, 347 U.S. 590 (1954).

Washington Administrative Code (WAC) 458-12-255 (Rule 255), which has the same force and effect as law, provided during the period in question:

Listing of property--Ships and vessels--Taxable situs in Washington. The state of Washington has no jurisdiction to tax ships, vessels, or boats having no situs within the state. Such vessels shall therefore be totally exempt for ad valorem taxation.

The county assessor shall be governed by the following general principles in determining whether a ship or vessel has situs within the state of Washington for taxation purposes:

(1) Situs for taxation of ships and vessels is the domicile of the owner, unless the vessels have acquired situs elsewhere. (Northwestern Lumber Co. v. Chehalis County, 25 Wash. 95 (1901)) The domicile of an individual is his permanent place of residence; the domicile of a corporation is its principal place of business. (AGO 3-25-1931)

(2) Situs for taxation is not controlled by place of home port or port registry. (AGO 2-20-1931)

(3) While the general rule is that situs is controlled by domicile of the owner, ships and vessels may be subject to taxation by a state in which they acquire actual situs. (Guiness v. King County, 32 Wn.2d 503 (1949)) In order to acquire actual situs in the state of Washington, regardless of the domicile of the owner, a ship or vessel must be more or less permanently, rather than [than] temporarily, located in this state. (Guiness v. King County, 32 Wn.2d 503 (1949)) If presence within the state is merely for the purpose of taking on and discharging cargo or passengers, or for the need of safety and convenience in conducting business, such vessels have not acquired actual situs. (AGO 2-20-1931) However, where the stay of a vessel is indefinite, and it is maintained in this state to suit the convenience of the owner or to be subjected to protracted local use, actual situs for

taxation purposes is acquired. (Guinness v. King County, 32 Wn.2d 503 (1949) (Emphasis added.))

The Washington Supreme Court provided the following rule in Guinness v. King County, 32 Wn.2d 503 (1949):

In order to give a state jurisdiction over a vessel for the purpose of taxation, it must become incorporated into the personal property of that state, rather than being there temporarily only. Morgan v. Parham, 83 U.S. 471, 21 L. Ed. 303.

The rule is stated in 51 Am Jur. 568, Taxation, + 453, as follows:

"Before tangible personal property may be taxed in a state other than the domicile of the owner, it must have acquired a more or less permanent location in that state, and not merely a transient or temporary one. (Emphasis added.)"

Alaska Freight Lines, Inc. v. King County, 66 Wn.2d 360 (1965) follows that general rule:

For an ocean going vessel, regularly traveling the high seas in the course of interstate commerce, to acquire an actual situs in a nondomiciliary state, for unapportioned ad valorem tax purposes, requires a blending of the vessel into the commerce and property of that state in such a fashion as to amount to an incorporation of the vessel into the personal property thereof upon a more or less permanent or indefinite basis. Hays v. Pacific Mail S.S. Co., supra; Morgan v. Parham, supra; Southern Pac. Co. v. Kentucky, supra; North American Dredging Co. v. Taylor, supra; Guinness v. King Cy., supra. Registration or enrollment of the vessel in a nondomiciliary state for the sake of convenience or in pursuit of a favorable tax atmosphere, while a circumstance to be considered, is not controlling. Southern Pac. Co. v. Kentucky, supra. Neither is the fact that the nonresident owner may maintain docking and servicing facilities in the nondomiciliary state a factor of compelling significance. Hays v. Pacific Mail S.S. Co., supra. (Emphasis added.)

Thus, a Washington domiciliary's vessel will be subject to this state's property tax unless it has "acquired situs elsewhere." Rule 255. To acquire such situs elsewhere, the property in question must have acquired a "more or less permanent location in that state," Guinness, supra. Such requires "a blending of the vessel into the commerce and property of that state in such a fashion as to amount to an incorporation of the vessel into the personal property thereof, upon a more or less permanent or indefinite basis." Alaska Freight Lines, supra.

The vessel belongs to the taxpayer, a Washington domiciliary. Thus, it has situs in Washington and is taxable here unless it has acquired situs elsewhere. Since the vessel has not acquired a "more or less permanent location" in Alaska waters, we cannot find that there has been a blending of the vessel into the commerce and property of Alaska as required by Alaska Freight Lines, supra. It has not lost its situs in Washington and is therefore subject to Washington property tax.

[3] Because the taxpayer had not listed the vessel with the Department, a 25% penalty was added to the taxes owing when the assessments were finally issued. RCW 84.40.130(1) provides a penalty for failure to list taxable personal property, unless it is shown that the failure was due to reasonable cause. The penalty is five percent of the amount of the tax for each month the property was not listed up to a maximum of 25%.

As the Department mailed the taxpayer a notice of value and a property listing statement in 1984 which the taxpayer did not return, we do not find the failure to list the vessel was due to "reasonable cause." See Automat Co., Inc. v. Yakima County, 6 Wn. App. 991 (1972). If the listing had been returned in 1984, no penalty would have been due. Reliance on an accountant's assertion that the tax should not be paid because of possible pending legislation is likewise not "reasonable cause." The amount of the penalties shall be reduced only in proportion to the amount of reduction granted in the vessel's value.

[4] The taxpayer is not eligible for relief on the interest portion of the assessment. That portion will be reduced concomitantly with our reduction of the boat's assessed value, but no further. Interest on past due property tax is mandated by RCW 84.56.020. RCW 84.56.025 provides for waiver of interest in certain instances, but only for real property tax.

The taxpayer's vessel is personal property, so does not qualify. Interest is charged because the state was deprived of the use of tax dollars which were legally due and owing.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part. This matter will be referred to the Property Tax Division, which will issue amended valuations for the years in question.

DATED this 13th day of April 1988.