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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 Correction of Assessment of)	
)	No. 88-12
)	
. . .)	Registration No. . . .
)	
)	

[1] **RULE 178, RCW 82.04.050(1)(a), RCW 82.12.020, RCW 82.12.010(2), AND RCW 82.04.190(1):** RETAIL SALES -- USE TAX -- LEASES -- CHARTER -- BOAT -- INTERVENING USE: The taxpayer, a limited partnership, used a boat which was held out to the public for bare-boat charter leasing. The taxpayer also allowed the limited partners to use the boat without paying rental fees or sales tax. Use tax found to be due, because the partnership's and partners' use of the boat constituted intervening use.

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:

The taxpayer protests the assessment of use tax on the value of a boat which is used for bare-rental charter purposes. The Department of Revenue assessed the tax on an "intervening use" theory.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- The taxpayer is a limited partnership. It owns a 34 foot long Skyline Sedan Trawler called the "" The vessel is used for bare boat rentals or charters.

The Department audited the taxpayer's business records for the period from August 11, 1983, through March 31, 1986. It found that the taxpayer was not previously registered with the Department. All income associated with the rental or lease of the boat was, instead, reported under the registration of the taxpayer's general partner, Once this error was corrected, the taxpayer established its own registration and now reports income on its own tax returns.

The audit resulted in a tax and interest deficiency in the total amount of \$ The assessment (. . .) includes state and local use tax in the amount of \$. . . , (excluding interest) attributable to the value of the boat. By letter dated October 20, 1987, the taxpayer protested the assessment of use tax. This Determination is in response to the taxpayer's petition.

The audit assesses use tax on the charter boat and accessories. This is because, in reviewing the ship's log, the auditor discovered that the boat made several excursions, other than rentals or leases, for partnership business purposes. In addition, the boat was used by some of the partners without payment of rental fees and sales taxes. Although the partners paid retail sales tax on the rental charges in most instances, the Department gave the taxpayer credit for these taxes collected and paid.

The taxpayer believes that the use tax is not due on the boat. The vessel is used for charter purposes and the taxpayer states that it collects rental payments and sales tax from all users of the boat, including the partners. Thus, the taxpayer believes that it operates a legitimate charter business and is not liable for use tax on the value of the boat, which is held for resale. Therefore, the taxpayer seeks a correction of the assessment of use tax in the audit.

DISCUSSION:

The auditor's basis for asserting the use tax was that the taxpayer put the boat to "intervening use" when it was used by the partnership or by some of the partners for their own personal use.

[1] RCW 82.12.020 imposes the use tax in these terms:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a

consumer any article of tangible personal property
purchased at retail . . .

Thus, if the taxpayer purchased the boat at retail and used it within this state as a consumer, the taxpayer is liable for the tax.

A retail sale is defined by RCW 82.04.050(1) as:

. . . every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business . . . other than a sale to a person who (a) purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person

RCW 82.12.010(2) states:

"Use," "used," or "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; . . .

RCW 82.04.190 defines a consumer as:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of his business . . . other than for the purpose (a) of resale as tangible personal property in the regular course of business. . . .

Applying these statutes to the facts of this case, we find that the taxpayer is liable for the use tax.

The taxpayer's purchase of the boat was a retail purchase under the law because, while the sale to the taxpayer (. . .) was for the purpose of resale (through bare leases or charters), the taxpayer also put the boat to intervening use. The Department has consistently held that a taxpayer that both uses and leases the same article of tangible personal property

is subject to retail sales tax or use tax based on the purchase price or acquisition value and, in addition, is required to collect and report retail sales tax on gross rentals. (ETB 356.12.211.)

The taxpayer was a "consumer" because it purchased the boat and used it other than for the exclusive purpose of resale in the regular course of business, even though the taxpayer also used it for that purpose.

Thus, the taxpayer "used" the boat within the meaning of the statute. As RCW 82.12.010(2) makes clear, "use" is defined in extremely broad terms. In addition, the taxpayer's use need not have been substantial because any use whatsoever as a consumer, will lead to tax liability. If the taxpayer's use had been strictly for purposes of resale, including such things as maintenance and checkout, the taxpayer would not have used the boat as a consumer, in the statutory sense, and would not be liable for the use tax. However, those are not the facts presented here.

Although we do not question that, in most cases, the taxpayer charged the individual partners rental fees and collected sales tax on most uses of the boat, it is apparent from the auditor's report that the boat was also used for the partnership's and partners' pleasure without payment of fees or taxes. For example, the auditor identified four instances from the taxpayer's own log where the boat made excursions other than charters or "shakedown" cruises. These include:

<u>Date Out</u>	<u>Date In</u>	<u>Operator</u>	<u>Destination</u>	<u>Notes</u>
8/11/83	8/11/83	--	--	Gen. meeting- signed papers.
1/07/84	1/21/84	--	--	Corinthian club race committee boat for races.
4/01/84	4/01/84	--	Quartermaster Harbor	Group cruise meeting.
5/05/84	5/13/84	*	Port Townsend, Friday Harbor, San Juans	--

yacht
course

* . . . and . . . are limited partners.

In addition, all of the above uses of the boat occurred without the payment by the user of rental fees or sales tax. These circumstances weigh heavily against any contention that the boat was held exclusively for charger or leasing purposes.

Finally, and as an additional source of authority, the Washington Supreme Court in a recent case, Duncan Crane Service, Inc. v. Department of Revenue, 44 Wn.App. 684 (1986), treated that part of RCW 82.04.050(1) (quoted above) as an exemption from the sales tax. Since an exemption in a taxing statute must be strictly construed in favor of taxation and against a claim of exemption, id. at 688, there is adequate justification from the auditor's report to sustain the imposition of the use tax. The Department holds the sales or use tax to be applicable to the purchase or use of any item of tangible personal property used for both leasing (charger) and personal purposes. The assessment of use tax was, therefore, proper.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 22nd day of January 1988.