

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment of)
) No. 89-279

)
. . .) Registration No. . . .
) LEASEHOLD EXCISE TAX
) . . . /Audit No. . . .

[1] **LEASEHOLD EXCISE TAX:** INCIDENCE OF TAX -- LIABILITY FOR PAYMENT -- DATE ON WHICH PAYMENT IS DUE. The incidence triggering leasehold excise tax liability is the use by private persons of publicly-owned, tax-exempt property. The leasehold excise tax statutes resemble, but do not mirror, property tax statutes. As an excise tax with the incidence on use, payments of tax are due at the time specified for payments to the lessor for such 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:

Taxpayer petitions for correction of assessment of leasehold excise tax on the grounds that payment is required in the year of use rather than in the manner used for payment of property tax.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer leases property from a city port authority, which is exempt from property tax on its real property. The parties entered into a lease agreement under which the taxpayer was to construct a building on the port's 7.47-acre parcel, giving the port the option to purchase the property upon completion. Taxpayer received in exchange a 10-year lease on the property with an option to renew for an

additional 10-year term. Rental payments of \$10,000 per month for the property are due on the first of each month and commenced on January 1, 1988.

Taxpayer contends that the leasehold excise tax is required to mirror exactly the mechanics of the property tax statutes. The essence of its lengthy argument is that a fee owner of the property would pay its 1988 property tax bill in 1989, due to the procedures used for calculation, assessment and collection of that type of tax. It explained that the assessor would value the property using 1987 figures, that the owner would be notified in January of 1989 and that installment payments thereof would be due in April and October of 1989.

DISCUSSION:

[1] RCW 82.29A states that use of property owned by tax-exempt entities is subject to leasehold excise tax when leased to private parties for private uses, because "private lessees of such public properties receive substantial benefits from governmental services provided by units of government." RCW 82.29A.010. The intent of the statute is to ensure that property owned by tax-exempt entities bears its fair share of the cost of governmental services when rented to a lessee who would be subject to property taxes if he were the owner of the rented property. Because of that clearly-stated intent, the Department often, and correctly, applies property tax principles.

However, the important distinction between the property tax and the leasehold excise tax is that the incidence of tax is on the use of the public property for private purposes; it is not on the public lessor, nor is it on the public lands.

Although the purpose of the two taxes is similar, the manner of calculation of the two taxes is not always exactly the same. In RCW 82.29A.030, the legislature specifically framed the leasehold tax as an excise tax:

There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest. . . .
(Emphasis supplied.)

In this case, taxpayer contracted to lease property from the port, and the use commenced on January 1, 1988, with the first payment for such use due on that date.

With RCW 82.29A.050, the legislature clearly manifested its intent that, as an excise tax, the event triggering the tax was to be the private use of public property and that payment of the tax was to be due at the same time that payment was made for such use:

[t]he leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 shall be paid by the lessee to the lessor and the lessor shall collect such tax and remit the same to the department of revenue. The tax shall be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. (Emphasis supplied.)

Finally, the legislature also clearly, in the 1986 amendment to RCW 82.29A.120, manifested its intent that, because the tax is intended only to equalize treatment between private property owners and lessees from public entities, the tax should not exceed that which a private owner would pay:

After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040 there shall be allowed the following credits in determining the tax payable:

(1) With respect to a leasehold interest other than a product lease, executed with an effective date of April 1, 1986, or thereafter, or a leasehold interest in respect to which the department of revenue under the authority of RCW 82.29A.020 does adjust the contract rent base used for computing the tax provided for in RCW 82.29A.030, there shall be allowed a credit against the tax as otherwise computed equal to the amount, if any, that such tax exceeds the property tax that would apply to such leased property if it were privately owned. (Emphasis supplied.)

The credit required by RCW 82.29A.120 has been properly calculated and applied to taxpayer's assessment. The audit division found that, based on the county appraiser's valuation of the property, the leasehold excise tax exceeded the amount which would be due if the property were privately owned. As a result, the measure of the tax was the contract rent adjusted

by the amount of the credit; the amount of tax asserted in the assessment was reduced by more than 40%. It is not unnoticed that the property value and taxing mechanics demanded by the taxpayer require use of the 1987 value for 7.47 acres of undeveloped land on which taxpayer could then defer payment until 1989. The property which taxpayer used for all of 1988 was improved considerably by the addition of a building, which raised the appraised value of the property from 1987's \$59,700 figure to 1988's \$725,200 value.

Nowhere in the leasehold excise tax statutes is there any requirement that the mechanics of the leasehold tax mirror exactly the mechanics of the property tax. Use of the word "shall" in all three statutes clearly reflects the legislature's intent and plan: to make timing, payment and collection of the tax mandatory, as well as adjustment of the tax where the need therefor is indicated. The Department of Revenue, as an administrative agency, is without authority to go beyond the plain, unambiguous language of the statute to read into it the interpretation desired by the taxpayer. Such interpretation is clearly not desired or mandated by the legislature.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 24th day of May 1989.