

Cite as Det. No. 00-063, 20 WTD 164 (2001)

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. 00-063
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .
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...)	Registration No. . . .
)	FY. . . /Audit No. . . .

RCW 82.27.020; RCW 82.27.040: ENHANCED FOOD FISH B&O TAX – A credit against the Enhanced Food Fish B&O Tax is allowed for any tax previously paid on that same fish to any legally established taxing authority. This Determination overrules Det. No. 87-127, 3 WTD 111 (1987), which only allowed a fish tax credit for tribal taxes paid on the Indian fish sold on the reservation. The fact that fish were purchased off the reservation does not preclude application of the credit. The statute only requires the taxing authority be legally established.

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:

Taxpayers protest the disallowance of credits taken for tribal taxes paid on crab purchased from Native American fishers where delivery of the crab to Taxpayer occurred off the reservation.¹

FACTS:

Lewis, A.L.J. – Taxpayers purchase and sell crab. Much of the crab is purchased from Indian fishers. Delivery of the crab to Taxpayer occurs both on and off the reservation.² In all cases, because the crab is purchased from an Indian fisher, Taxpayers are required to pay a fish tax to the fishers' tribe.

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

² The delivery of the crab may occur on a boat or dock on reservation land or at taxpayer's place of business (off reservation) in . . . , Washington.

The Department of Revenue's ("Department") Miscellaneous Tax Division audited Taxpayers' books and records to verify that the enhanced food fish tax had been correctly paid.³ On October 13, 1999, the Department issued assessments for each Taxpayer. Washington's enhanced food fish tax applies to the first possession of fish (including crab) in Washington by an owner. RCW 82.27.020. RCW 82.27.040 allows a tax credit for "any tax previously paid on that same enhanced food fish to any other legally established taxing authority." The Miscellaneous Tax Division determined that Taxpayers had erroneously taken a credit for fish tax paid to the Indian tribe when the crab was delivered to Taxpayers/buyers at docks off the reservation. Taxpayers did not dispute owing Washington's enhanced fish tax. Taxpayers did however, dispute the Miscellaneous Tax Division's disallowance of the credit taken for taxes paid to the Indian tribes. On February 4, 2000, Taxpayers filed a petition for correction of assessment maintaining that the enhanced fish tax had been reported in conformity with the verbal and written information supplied by the Department. Taxpayers' petition explained:

At the time the taxpayer (. . .) started the business as a dealer in the purchase and sale of crab, he contacted the Department of Revenue and he spoke with . . . regarding the requirements for commercial fishing operations. She forwarded information regarding the fish taxes (copies included in this packet) to the taxpayers. In addition, she informed the taxpayers that a credit was allowed for payment of fish tax to their taxing authorities including Indian tribes. Also the literature she forwarded to us (see attached notice to taxpayers, chapter 82.27 RCW) says that a credit is allowed "with respect to any tax previously paid on that same enhanced food fish to any other legal taxing authority". The taxpayers relied on this information in filing their food fish returns and believe that they filed their returns correctly and that the fish tax paid to other taxing authorities should be allowed as a credit. Based upon the above, we ask that you remove all tax and interest as requested in the audit.

ISSUES:

1. May a tax credit be taken against the enhanced fish tax where the tax was paid to an Indian tribe, but the crab was received outside the reservation?
2. May the Department be estopped from collecting a lawfully due tax because of incomplete or ambiguous tax reporting information provided by the Department?

³ The . . . account was audited for the period July 1, 1996 through September 30, 1997. The . . ., the successor to . . . was audited for the period October 1, 1997 through March 31, 1999.

DISCUSSION:

[1] RCW 82.27.040 allows a credit for all fish taxes paid “to any legally established taxing authority”:

A credit shall be allowed against the tax imposed by RCW 82.27.020 upon enhanced food fish with respect to any tax previously paid on that same enhanced food fish to any other legally established taxing authority. To qualify for a credit, the owner of the enhanced food fish must have documentation showing a tax was paid in another jurisdiction .

The credit applies to tribal taxes. However, in the past, we have denied such credit for tribal taxes imposed on fish caught by an Indian fisher in his or her usual and accustomed fishing grounds, but which were not sold on the reservation. In Det. No. 87-127, 3 WTD 111, 118 (1987) we said:

Furthermore, this deduction may only be taken for fish purchased on Indian reservations per se. It may not be taken for fish purchased in usual and accustomed waters which are located outside reservation boundaries. We do not read either the Point Elliott Treaty or the Tulee case as extending beyond reservation borders the Indian tribes' right to tax in a fashion similar to the manner in which their right to fish is extended.

We believe this determination is incorrect with regard to the credit and we overrule it on that issue.^[4] The purpose of the credit was to equalize the impact of taxes paid on the price of the fish. As long as a taxpayer is able to document the [fish] tax [on the fish] was paid to a legally established taxing authority, which includes the tribes, the fact that the fish were not purchased on the reservation does not preclude the application of the credit. The statute only requires that the taxing authority be legally established. It does not confer on the Department the duty to determine the legal validity of the tribe's tax. Where such [fish] tax has been [imposed and] paid, the party responsible for the enhanced fish tax may take the credit for it. Accordingly, we grant Taxpayers' petition for correction of the assessment.⁵

DECISION AND DISPOSITION:

Taxpayers' petition is granted.

Dated this 30th day of March, 2000.

⁴ [Prior to the 1985 amendment, RCW 82.27.040 extended the credit to "any tax legally imposed and paid to another state by the taxpayer upon the same food fish or shellfish purchased in the other state." Laws of 1980, ch. 98, § 4 (emphasis added). When the section was changed to include the tribes, the legislature changed the language from "legally imposed and paid" to "previously paid." We cannot assume the change was unintended. This omission was not addressed in the Det. No. 87-147.]

⁵ Because the relief that Taxpayer has requested has been granted we need not address the second issue.