Cite as Det. No. 05-0021, 24 WTD 377 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In The Matter of the Petition For Correction of Notices of Balance Due of | ) | D E T E R M I N A T I O N |
| | ) | No. 05-0021 |
| . . . | ) | Registration No. . . . |
| | ) | Doc. No. . . . |
| | ) | Doc. No. . . . |
| | ) | Docket No. . . . |

[1] RULE 178: USE TAX – NONTAXABLE USE -- VESSEL -- SEA TRIAL – TO BE CONSIDERED IN CONTEXT. Sea trials constituting nontaxable use (*i.e.*, use not consistent with use as a consumer) must be considered in context. Evaluating the repairs on an expensive yacht with numerous complex systems prior to acceptance from a repair facility will require a different type (and duration) of sea trial than would the evaluation of a new 8-foot ski/fishing runabout for purchase.

[2] RULE 178: USE TAX – NONTAXABLE USE – VESSEL – SEA TRIAL – DESCRIPTION. A non-taxable sea trial is designed to examine a vessel – either by specific function or as an entire whole – systematically through a comprehensive series of examinations. The objective is to identify essential problems for correction (engines, navigation, electrical, etc.) or to test the safety and essential functionality of the vessel in the context of repairs, insurance surveys, or appraisals in purchase situations.

[3] RULE 178: USE TAX – NONTAXABLE USE – VESSEL – SEA TRIAL – BURDEN OF PROOF – DOCUMENTATION. To satisfy the necessary burden of proof that a sea trial is nontaxable, a taxpayer must document the purpose of the trial, the specific test performed, and the results. To evaluate repairs, a sea trial is best performed with a professional on-board operator or observer with written records of tests performed.

[4] RULE 178: USE TAX – VALUE – REBUILT VESSEL – LACK OF DOCUMENTATION. When a vessel is completely rebuilt before its first use in

Washington, the Department will accept Compliance's value when Taxpayer has not submitted records to support its assertion that Compliance's valuation of the vessel at the time of its first use was in error

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 objects to the imposition of use tax, based on a theory of intervening use, on a boat Taxpayer acquired for "bareboat charter." Taxpayer also objects to the measure of the tax. We find there was a taxable intervening use and that Taxpayer has not submitted evidence of a lower value than that assessed.[1]

ISSUES:

1. Has Taxpayer carried its burden of proof in claiming that its use of its vessel on Memorial Day weekend 2002 was for a nontaxable "sea trial"?

2. Has Taxpayer supported its assertion that Compliance's valuation of the vessel was in error?

FINDINGS OF FACT:

Bauer, A.L.J -- The Compliance Division (Compliance) of the Department of Revenue (Department) issued to . . . (Taxpayer), a Washington corporation, the above-described Notices of Balance Due, which were use tax assessments, on October 8, 2002. Payment was due on November 7, 2002. Taxpayer, on this due date, timely filed a Petition for Correction of Assessments objecting to the assessments in their entirety.

[Corporation] purchased . . . (the vessel), a . . . custom motor yacht, without payment of retail sales tax in [State A] in 1997. [Corporation] was a [State B] corporation and its sole shareholder and corporate officer was [Individual]. In April 1997, the vessel was modified in [State A] for northwest cruising. It was intended that the final fitting out would occur in Washington during the fall of 1997, and the vessel would be available for bareboat charter in the 1998 season. Because it was purchasing the boat for bareboat charter (*i.e.*, resale), [Corporation] paid no retail sales tax on its purchase in [State A], and did not remit use tax when it entered Washington State.

During transit from [State A], the vessel was subjected to severe sea damage, including a fire. It entered Washington waters on July. . . , 1997 skippered by [Individual]. By this time vessel had become unseaworthy, and its value was calculated by a state-licensed marine surveyor to be mere salvage. In August 1997, after the initial damage surveys were competed, the vessel was moved to [Marina 1] in [Washington City] for repairs. The vessel sat dormant for almost a year waiting for the insurance company to act.[2]

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[2] Taxpayer ultimately had to sue the insurance company over the amount of loss, and that case was not resolved

On August 28, 1999, while the vessel was still under repair, [Corporation] sold the vessel to Taxpayer, which was also managed by [Individual] and his wife. The boat's value in this sale was $[2X], and no retail sales tax or use tax was paid or remitted. On September . . ., 1999, Taxpayer registered to do business in the State of Washington. Taxpayer's Master Business License states its purpose to be "bareboat charters."

The vessel remained under the Marina's operational control while repairs were made, with the Marina being the prime contractor on the project.[3] During this time, 6-8 short sea trials were scheduled by the Marina in and around the [Washington City] area. [Individual] attended most of these trials, and Taxpayer's personnel were sometimes also invited to come along in order to displace workmen that would have otherwise been supplied by the Marina. This saved Taxpayer approximately $60 per hour per workman. These sea trials are not at issue.

Taxpayer submitted resale certificates instead of paying retail sales taxes on the vessel's repairs.

Taxpayer accepted the vessel from the Marina on July. . ., 2001, at which time it was moved to its permanent mooring in [Marina 2] in [another Washington City]. . . . At this point the vessel was neither totally finished nor ready for unlimited charter. The Marina was not involved in any sea trials after [the date Taxpayer accepted the vessel].

After the vessel was released by the Marina, Taxpayer continued work on it. Beginning with a trip on July . . ., 2001, [Individual] took the vessel out seven times during the next twelve months – two of them for overnight stays -- claiming these trips to be "sea trials." Compliance believed the overnight sea trial on Memorial Day weekend . . . 2002 . . . constituted a personal taxable use of the vessel and assessed use tax on the vessel.

Information extrapolated from the vessel's log from this period is as follows:

| Date | EH[4] | Details |
|---|---|---|
| 7/. . ./01 | 1.9 | Delivery to [Marina 2] from [Marina 1], 6 persons onboard |
| 8/. . ./01 | 6.5 | Sea trial around . . . Island, 14 persons onboard[5] |
| 8/. . ./01 | 7.6 | Sea trial around . . . Islands, 8 persons onboard[6] |
| 9/. . ./01 | 1.7 | Vessel moved to Marina[7] for warranty work |
| 10/. . ./01 | 1.6 | Return to [Marina 2] |
| 4/. . ./02 | 4.7 | Charter, from [Marina 2] to . . . Island and back.[8] |

until about the time the boat repairs were finished.

[3] It was moved a number of times to various subcontractors for specialty work.

[4] Both port and starboard engine hours were recorded in the log, both of which logged an essentially equal number of hours. Port engine hours were used for the calculations of each trip in the table.

[5] No reason given in log. [Individual], by separate letter, has explained that 14 people were needed to "check every . . . system on board, and we used a lot of different people with different backgrounds and expertise."

[6] No reason given.

[7] Presumably [Marina 1].

| | | |
|---|---|---|
| 5/. . ./02 | 11.7 | Sea trial[9] |
| 5/. . ./02 | 1.6 | Moved to . . . for maintenance work |
| 5/. . ./02 | 7.3 | Sea trial[10] |
| 5/…/02– 5/. . ./02[11] | 18.8 | Sea trial, "12-volt $H_2O$ inadequate" |
| 7/7/02 | 3.6 | Sea trial, "navigation ck" |
| 7/22/02 – 7/23/02 | 8.5 | Overnight sea trial, "check 220 $H_2O$ and navigation" |
| 9/22/02 | 3.9 | Charter for burial.[12] |
| 9/2?[13]/02 | 2.8 | Charter for burial.[14] |
| 10/15/02 | 4.9 | Moved from [Marina 2] to ?[15] for bottom paint and return |

[Individual] claims that, during this period, the vessel's final interior finish work was done, and new propellers and an anchor system had been installed and needed testing. [Individual] also claims that lengthy sea trials were necessary to determine both speed and fuel flow data for all power ranges. Although [Individual] states that he used knowledgeable people with different backgrounds and expertise to test the vessel's systems, Taxpayer has not submitted either a record of these tests or any claim that there was Marina or other repair personnel onboard. According to [Individual], overnight sea trials were conducted because certain trials could not be performed in one day and still be effectively scheduled around the tide change . . . . Similarly, according to [Individual], two round trips of some 6 hours each around the north end of [Washington City] would not have been efficient.

Because the vessel was not yet ready for charter, "no business" tax returns were filed in 1999, 2000, and 2001.

There was some confusion concerning Taxpayer's registering the vessel for bareboat charter. On February 4, 2002, a Revenue Agent (RA) called and spoke with [Individual], who stated the vessel was still in repair. On February 14, 2002, [Individual] mailed page 2 (only) of the Commercial watercraft Personal Property Listing of Ships and Vessels, form REV 8710022 (9025-96). [Individual] was later informed this application for charter registration was incomplete, and it appears he may have initially been given an incomplete application. On April 4, 2002, [Individual] spoke with the RA and stated he planned to use the boat as an international bareboat charter and that he intended to provide a list of skippers to the lessees.

Excise tax returns reporting retailing business and occupation and retail sales taxes were submitted for the charters made in 2002.

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[8] Tax was paid on this charter.
[9] No reason given.
[10] No reason given.
[11] Memorial Day weekend.
[12] Tax was paid on this charter.
[13] We assume a second digit is missing on the date.
[14] Tax was paid on this charter.
[15] Destination cannot be deciphered.

Taxpayer's federal income tax return indicates that it earned $ . . . charter income in 2003. According to Form "REV 87 1001A-1 (10-24-03) submitted by . . . , the vessel was out of the state 5 days, in state exclusively for repairs 270 days, and either moored or in service for 90 days. [Individual] has stated that, while it associated with a local charter company in 2003, [16] that association turned out to be somewhat less than successful.

Compliance noted in its original investigation that there was no charter insurance coverage during 2001-2002 on the vessel. The insurance documents at that time stated: "Losses not covered . . . (5) when the yacht named in this policy is being chartered." Taxpayer, however, claims he notified the company through its agent of the nature of the one-day charters and was given oral permission. Taxpayer did not pay an extra premium for charter insurance until the vessel was fully operational and ready to charter in the fall of 2002.

Compliance also noted in its investigation that Taxpayer had not advertised the vessel. Taxpayer states it did not begin advertising until Taxpayer was ready to provide bare boat charter service. The vessel was not completed until late fall 2002. The three small local charters occurred even though the lessees knew the vessel was not complete.

Taxpayer originally planned to skipper the boat for charters. However, because the vessel has a non-US built hull, the federal Jones Act restricted its use to bare-boat charters. In early 2003 Taxpayer applied to the Maritime Commission (MARAD) of the U.S. Department of Transportation for a waiver of the Jones Act and has now received a full skippered-charter capability for up to 12 passengers in addition to the bareboat use the Jones Act already permitted.

[Individual] claims his family has never used the vessel for personal enjoyment because it has another . . . vessel it uses for that purpose.

As to the valuation issue, the vessel, before leaving [State A], was surveyed and its value established to be $[14X], with a replacement value of $[28X]. The vessel was again surveyed in April 1998 after it reached Washington in a damaged condition, and its salvage value, with accessories, then was established to be $[2X]. For the period 11/30/01 – 11/30/02, Taxpayer insured the vessel for $[17X]. That value was lined through by an unknown party on an unknown date and replaced by a value of $[27X] on the insurance papers.

Compliance, for purpose of this use tax assessment, used a $[40X] measure for the use tax, based on its estimate of the vessel's fair market value and the valuable art and other personal property onboard. Taxpayer, although objecting to the assigned value, has not supplied the Department with a survey or other records supporting any other valuation as of the 2002 Memorial Day weekend.[17] Taxpayer instead contends:

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[16] The name of the charter company was not revealed.

[17] The Department valued the vessel for 2005 property tax purposes as $[35X], and [Individual] on behalf of Taxpayer has indicated he will also contest this value in a petition for refund, but has not yet submitted either a petition or any evidence of a lesser valuation.

> We have not changed or upgraded the vessel for it to be able to do more than when it left [State A]. If the vessel has a higher appraisal now than six years ago, then this is due to inflation and area, not vessel improvements.

(Taxpayer's Letter dated January 2, 2003.)

ANALYSIS:

The use tax is imposed on the use in this state as a consumer of any article of tangible personal property.[18] The tax applies to all persons in this state whether a resident or nonresident, unless a statutory exemption or other exception applies. Thus, the tax applies to the use of watercraft in this state, whether for pleasure or for business, and whether by a resident or a nonresident, unless the use is statutorily excepted or determined to be otherwise exempt. See, Det. No. 87-105, 3 WTD 1 (1987). Tax liability arises at the time the property is first put to use in this state. WAC 458-20-178(3).

Taxpayer claims its vessel was exempt from use tax when it first entered Washington as the property of [Corporation] because it was brought into Washington for the purpose of bareboat charter, *i.e.*, resale, under RCW 82.04.050(1)(a).[19] Taxpayer claims the vessel was still exempt – for the same reason -- from retail sales tax and use tax when Taxpayer purchased it from [Corporation] while it was here in Washington. Taxpayer used resale certificates to avoid the payment of retail sale tax when the vessel was repaired in Washington under the same rationale. Taxpayer reasons that the vessel is still exempt from use tax because there has been no intervening personal use of it as a consumer by Taxpayer or its managers, and that the "sea trials" that were conducted by Taxpayer's managers were not taxable intervening uses.

The issue before us concerns whether a vessel owned by a Washington limited liability corporation (LLC) was "used," for use tax purposes, by Taxpayer's members when it was taken for what it claims was a "sea trial" on Memorial Day weekend in 2002.

Compliance argues that the sea trial on Memorial Day weekend . . . 2002, which took a route through the San Juan Islands constituted a personal taxable use of the vessel by the Taxpayer's members because it was overnight.

Sea trials, and whether they constitute taxable personal use of a vessel, have been considered in a number of different contexts by the Department. Certain sea trials may be allowed as nontaxable use when retail sale or use tax has otherwise not been due. Examples of such instances are a nonresident temporarily in the state of Washington performing a sea trial after taking delivery of

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[18] RCW 82.12.020(1) provides: "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 (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession or bailment . . . ."

[19] The pertinent portion of this exemption reads: "(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person. . . ."

a vessel from a seller or repair facility, and a taxpayer (such as in this case) that owns and maintains its vessel for resale (*i.e.*, bareboat charter) and performs a sea trail related to repairs made.

. . . WAC 458-20-238 (Rule 238) concerns the RCW 82.08.0266 and 82.08.02665 exemptions from the retail sales and use taxes where delivery of vessels to nonresidents takes place in Washington, but the vessel is to be used outside this state. One example[20] therein demonstrates that the testing (*i.e.*, sea trial) of a yacht will not be considered to be personal taxable use while still under repair as long as an employee of the repair facility is on board for all testing and that sea trials while the yacht is at the repair facility exclusively for repair do not count as personal use.

Det. No. 92-144ER, 13 WTD 68 (1992),[21] held that the conduct of extensive sea trials prior to the acceptance and delivery of a custom-built yacht by a nonresident from a Washington builder, even if done personally by the owner of the vessel, did not constitute "use" for purposes of the 45 day limitation in RCW 82.08.0266 for a nonresident's use (emphasis added).

Det. No. 01-198, 23 WTD 257 (2001), also considered whether a yacht manufactured in Washington for a non-resident owner was correctly assessed use tax because the yacht was in Washington waters without the benefit of a Nonresident Out-of-State Vessel Repair Affidavit. The vessel, having been delivered by the manufacturer, was moored at a dock in Washington waters personally owned by the yacht's owner, and was no longer considered to be "transient"

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[20] Example (5)(d) in Rule238 provides:

> Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required identification document issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months. As explained in subsection (4)(c) above, Mr. Smith makes a timely filing of each required "Nonresident Out-of-State Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.
>
> Mr. Smith may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the instate use of the yacht for personal enjoyment will not exceed six months in a twelve-month period. The time the yacht is at the repair facility exclusively for repair does not count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment. Retail sales tax is due, and must be paid, however, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

(Emphasis added.)

[21] That determination stated:

> These [log] entries and others support the taxpayer's testimony that the yacht required substantial sea trials and repairs before it was ready for delivery. The yacht cost more than four million and was built with state of the art features. Even if the taxpayer enjoyed the sea trials and some of the days were "good days" as the log notes, we believe the use of the vessel for the sea trials was part of the construction process and did not constitute taxable "use" by the taxpayer.

by the Compliance Division. The owner claimed his extensive use of the yacht after he had taken delivery from the manufacturer was nontaxable "sea trials" that consisted of a several month "shakedown cruise" to Alaska, followed by a lengthy cruise to the Caribbean and Europe, and thereafter numerous repairs, warranty work, and sea trials both wholly in Washington and with stops in Canada. Although sometimes guests were present, no member of the yacht's repair facilities was ever on board. It was held that these "sea trials" had a pleasure component and triggered the use tax, since use in this state was for more than the 60 days in a 12-month period allowed for nonresidents.

First and foremost, exemptions to a tax law are narrowly construed. Taxation is the rule and exemption is the exception. A taxpayer must claim, as well as carry the burden of showing qualification for, a tax deduction, exception, or exemption. *Budget Rent-a-Car of Washington-Oregon, Inc. v. Department of Rev*., 81 Wn.2d 171, 500 P.2d 764 (1972); *Group Health Co-op v. Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967); Det. No. 01-198, 23 WTD 257 (2004). Therefore, a taxpayer must document the scope and reason for the conduct of a sea trial in order to carry the burden of proof that the sea trial was a nontaxable use. Absent such proof, the Department may conclude that the sea trial was a taxable consumer use.[22]

[1] Second, sea trials constituting nontaxable use – *i.e.*, use not consistent with use as a consumer -- must be considered in context. Evaluating the repairs on an expensive yacht with numerous complex systems prior to acceptance from a repair facility will require a different type (and duration) of sea trial than would the evaluation of a new 8-foot ski/fishing runabout for purchase.

[2] Generally, a non-taxable sea trial is designed to examine a vessel – either by specific function(s) or as an entire whole – systematically through a comprehensive series of examinations. The objective of such a sea trial is to identify essential problems for correction (engines, navigation, electrical, etc.), or to test the safety and essential functionality of the vessel in the context of repairs, insurance surveys, or appraisals in purchase situations. Sea trials are most likely to be done prior to delivery to an owner (or purchaser) with the idea that it is easier to get it fixed by the builder (or seller) before one takes delivery of the vessel and moves it to one's own dock. A sea trial will determine how the vessel and its functions either work or do not work under maneuvering and seagoing conditions. Sea trials are often not performed alone, but along with other system appraisals and, possibly, an out-of-water inspection. The vessel and its functions may be examined a number of times for consistency, and verification measures are often laid out in manuals to ensure against false readings or calculations. Aspects of sea trials may include hull, navigational and nautical equipment, machinery and electrical installation, speed and safety alarms.

[22] *See also*, Det. No. 88-367, 6 WTD 409 (1988); Det. No. 89-53, 7 WTD 137 (1989); Det. No. 88-237, 6 WTD 69 (1988); Det. No. 03-0294, 23 WTD 166 (2004); Det. No. 98-070, 17 WTD 375 (1998); Det. No. 94-320ER, 23 WTD 307 (2004); Det. No. 88-12, 5 WTD 1 (1988).

[3] To satisfy the necessary burden of proof that a sea trial is nontaxable, a taxpayer must document the purpose of the trial, the specific test(s) performed, and their results. When evaluating repairs, a sea trial is best performed with a professional as an on-board operator or observer with written records of tests performed.[23] In the case of an evaluation of a vessel for purchase, the sea trial should normally take place with the permission and under the observation of the seller or seller's agent. In cases which might be construed as pleasure trips, the presence of a professional onboard to conduct the test would strengthen a taxpayer's argument that the sea trial had a purpose other than consumer use and thus was nontaxable.

Sea trials may also be conducted to experience the non-essential functionality and esthetics of the vessel, so that the vessel can either be purchased, remodeled, or rebuilt to one's needs or preferences (round the table corners, add a bar, change/add a light or gauge, etc.). The context of this particular type of sea trial must be carefully documented to demonstrate that the vessel is not being used for pleasure. Absent documentation to the contrary, such uses will be considered pleasure – *i.e.,* taxable -- uses.[24]

This case is analogous to Det. No. 01-198, *supra*. This is because the vessel in this case had already left the control of the Marina where it had undergone extensive repairs, and was moored at its home port. . . . Taxpayer has not carried its burden of proof concerning the nontaxable nature of this trip. Taxpayer did not document the purpose and conduct of the . . . 2002 Memorial Day weekend "sea trial," except to note in the log "12-volt $H_2O$ inadequate." Taxpayer has submitted no documentation as to which, how, and by whom the vessel's systems were tested over the three day period, or the results thereof. There was no professional from a repair facility on-board. Further, the vessel on this 3-day trip logged only 18.8 engine hours, which implies that there were most likely overnight layovers that constituted a pleasure element. Aside from its after-the-fact assertions, Taxpayer has offered no evidence that this was not, at least in part, a pleasure trip, and thus has not carried its burden of proof that this was a nontaxable sea trial. Thus, in this case Taxpayer has not carried its burden of proving its exemption from tax. We agree with Compliance that Taxpayer has failed to sufficiently document the Memorial Day weekend's use as merely a nontaxable sea trial having no element of pleasure.[25]

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[23] An example of such a report is the letter dated April . . . 1998 by . . . Shop Foreman, [Marina 1]. This letter documents the sea trial wherein, at 12 knots, the vessel was checked for "movement of decks, bulkheads, stations, doorways, overheads, etc."

[24] In some circles, the term "sea trial" seems to be synonymous with "try it out and see if you like it." In fact, certain short cruise packages are labeled as "sea trials." Boating magazines send their reporters on "sea trial" cruises to write reviews on cruise packages or to look at new model cruise ships or vessels. These types of sea trials are more in the context of consumer use and are unlikely in any context to be nontaxable uses.

[25] From an even broader perspective than that taken by Compliance, we also observe that of the seven claimed sea trials appearing on the vessel's log between July . . . 2001 and July . . . 2002, only three even make any mention of any systems that may have been under scrutiny and tested. The remaining four "sea trial" trips are silent as to their purpose. Again, in no instance has Taxpayer submitted specific evidence as to what was being tested and how, that there were any maintenance or repair professionals on board for these trips, or that the vessel was under the control of a repair facility. Taxpayer has not carried its burden of proof that these uses were sea trials.

Finally, we note that Taxpayer, in obtaining a waiver from the Jones Act, intends to use the vessel in conducting its own skippered charter business. In such a charter business -- unlike in bareboat chartering -- the vessel will not be considered to be held for resale and use tax on the vessel will be due. *See,* Rule 178(6);[26] Det. No. 91-151, 11 WTD 193 (1991); Det. No. 00-024, 19 WTD 710 (2000).

We hold that Taxpayer has failed to carry its burden of proof that its members were solely conducting a sea trial on the May 2002 Memorial Day weekend trip and that those three days were absent of any pleasure value. Therefore, use tax on the value of the vessel as of that date – the date of first taxable use -- is due. *See*, Det. No. 01-198, 23 WTD 257 (2004). The fact that the vessel may have been bareboat chartered after this date has no relevance.

As to the vessel's value, RCW 82.12.010(1) [defines] the value of the article used:

> In case the article used . . . is extracted, produced, or manufactured by the person using the same . . . the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

Rule 178(13) similarly provides:

> In case the article used was extracted or produced or manufactured by the person using the same . . . , the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character.

In this case, the price that Taxpayer paid to [Corporation] did not represent the value of the vessel when it was first used by Taxpayer. Taxpayer had the vessel rebuilt from what was essentially a salvage condition. Therefore, its value must be determined according to the "retail selling price, at the place of use, of similar products of like quality, quantity and character."

[4] Because Taxpayer has not submitted records to support its assertion that Compliance's valuation of the vessel at the time of this first use on [Memorial weekend 2002] was in error, we accept Compliance's value. *See,* RCW 82.32.070;[27] Det. No. 99-287, 19 WTD 660 (2000).

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[26] When boats, motor vehicles, equipment and similar property are rented under conditions whereby the lessor itself supplies an operator or crew, the lessor itself is the user, and the use tax is applicable to the value of the property so used.

[27] RCW 82.32.070 provides:

> (1) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records and invoices shall be open for examination at any time by the department of revenue. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such books

Taxpayer's arguments that the vessel may not have been substantially improved over its condition while in [State A], that inflation may have increased its value, or that the vessel may have been worth more than when it was in [State A], are not relevant. The vessel has been completely rebuilt, and its retail value on the date of its first taxable use in Washington is the measure of the tax. ```

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 31st day of January 2005.

and records as shall be required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.