

Cite as Det. No. 99-102, 19 WTD 236 (2000)

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. 99-102
)	
...)	Use Tax Assessment
)	Petition for Refund
)	

- [1] RULE 178; RCW 82.12.020; RCW 82.12.010(1): USE TAX -- PERSONAL PROPERTY -- SALE OF -- ALLOCATION OF PURCHASE PRICE. The amount of the purchase price allocated to personal property in a real estate transaction may not represent true value for the personal property even though the transaction as a whole was at arm's length. When an estimated property tax valuation (a depreciation method of valuation) for the personal property varies widely from the value assigned by the parties to the personal property, evidence is presented that the purchase price allocated to the personal property may not represent true value for the personal property.
- [2] RULE 178; RCW 82.12.020; RCW 82.12.010(1): USE TAX -- PERSONAL PROPERTY -- SALE OF -- VALUATION. Value for use tax purposes is to 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. For use tax purposes, a depreciation method of valuation may be an aid in arriving at an opinion of market value, but this evidence must be supplemented by evidence of such comparable sales.
- [3] RULE 178; RCW 82.12.020; RCW 82.12.010(1): USE TAX -- PERSONAL PROPERTY -- SALE OF -- VALUATION -- AUCTIONS. To the extent auction-related evidence is offered to establish market value of personal property, such evidence must show that it involved comparable sales and did not involve a forced sale of property.

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:

Purchaser of apartment complex protests the assessment of additional use tax on the personal property acquired in the transaction.¹

FACTS:

Mahan, A.L.J. – On February 4, 1998, the taxpayer’s agent executed Real Estate Excise Tax Affidavits regarding the purchase of an apartment complex located in King County, Washington. In these affidavits, the taxpayer identified . . . in personal property (“appliances”) not subject to real estate excise tax. The taxpayer paid use tax on the personal property.

The Department of Revenue’s Miscellaneous Tax Division (Department) reviewed the affidavits and, on April 6, 1998, asked the taxpayer to provide additional information, as follows:

Since this [use tax amount] is considerably less than we would expect for a complex of this size, we are requesting the following information:

- (1) Number of units and age of complex.
- (2) Complete listing of personal property at time of purchase.

No other information was requested, e.g., original purchase price of the appliances, condition, or opinion of value.

The taxpayer responded that the complex was six years old and had 201 units, and provided a listing of appliances as well as personal property in common areas. The taxpayer further stated “at purchase the value of the appliances and fixtures was provided by the seller.”

On May 12, 1998, the Department issued a use tax assessment based on an additional, unreported value of personal property in the amount of The Department arrived at this amount by taking an estimated original value of common washers, dryers, refrigerators, and stoves and depreciating them at the rate of 16% per year. This schedule of depreciation was taken from the Personal Property Valuation Schedules issued by the Department for property tax purposes.² Under this valuation method, a per-unit value for the appliances was deemed to be approximately \$557. The Department concluded that the original use tax payment was sufficient only for the common area personal property.

The taxpayer appealed the use tax assessment and contends the Department erred in using the valuation methodology it did. For valuation purposes, the taxpayer stated it:

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

² Under this schedule, a 16% reduction in a declining balance occurs each year until a 20% value is reached, at which time the value remains at 20%. At a 16% depreciation rate, the appliances would reach the 20% minimum value in the eleventh year. After six years, the value would be at 37.6% of the original value.

checked with reputable auction companies in the greater Seattle area, and have been assured that the amount which they could obtain at a sale that took place on the premises of the apartment, with the equipment still located inside each individual unit, and with 201 units full of appliances to be sold, would be negligible: between \$50 and \$75 per unit. . . . [The Department's depreciation] method is appropriate in order to determine fair market value for personal property tax assessments when there has been no arm's length transaction involving transfer of title to the property. However, when there is a sale, RCW 82.12.010 requires that the fair market value be determined by the retail selling price at the place of use of similar products of like quality, quantity and character.

Letter dated June 1, 1998.

ISSUE:

In the purchase of commercial real and personal property, what is the proper method of valuing the personal property for use tax purposes?

DISCUSSION:

RCW 82.12.020 imposes a use tax for:

the privilege of using within this state as a consumer any article of tangible personal property purchased at retail . . . The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020, as now or hereafter amended, in the county in which the article is used.

(Emphasis added.) RCW 82.12.010(1) defines the term "value of the article used" as:

the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. . . . In case the article used is . . . sold under conditions wherein the purchase price does not represent the true value thereof, 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 and regulations as the department of revenue may prescribe.

The only rule promulgated by the Department in accordance with this statute, WAC 458-20-178 (Rule 178)(13), similarly defines value for use tax purposes, as follows:

The [use] tax is levied and collected on an amount equal to the value of the article used by the taxpayer. The term "value of the article used" is defined by the law as being the total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of

the article used. In case the article used was . . . sold under conditions where the purchase price did not represent the true value thereof, 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 . . .

(Emphasis added.) The Department has not promulgated a rule that identifies the conditions when a purchase price does not represent true value or a methodology, other than by comparable sales of like quality, quantity, and character, for determining value if the consideration paid does not represent true value.

In several determinations, we have recognized that, in an arm's length sale, the value placed on the property by the parties to the transaction may be persuasive evidence of value. See, e.g., Det. No. 93-310, 14 WTD 063 (1994)(an itemized closing statement signed by both buyer and seller, which attributed a particular dollar amount to farm equipment, is evidence of value); Det. No. 92-156, 12 WTD 195 (1993)(use tax was properly imposed on the agreed price for personal property purchased in a real property transaction).

[1.] In general, an arm's length sale involves a "a transaction negotiated by unrelated parties, each acting in his or her own self interest; the basis for a fair market value determination." Black's Law Dictionary 100 (5th ed. 1979); see also Washington v. Kleist, 126 Wash. 2d 432; 434, 895 P.2d 398 (1995) ("Market value" is defined in this state as the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction"). The transaction at issue involved an arm's length, combined sale of tangible personal property and real property, and the total purchase price would presumably represent a fair market value for the real and personal property. Because use tax is imposed only on the personal property, the value allocated to the personal property may not in and of itself represent the fair market value for the personal property. In other words, such a transaction may present a condition where the allocated purchase price does not represent true value for the personal property even though the transaction as a whole was an arm's length sale.

Det. No. 92-156 described the real property transaction at issue as an arm's length sale. However, it was expressly noted that the value placed on the personal property was in excess of the assessed value for property tax purposes. In other words, there was no evidence that conditions existed such that the purchase price allocated to the personal property did not represent true value. We have the opposite case here. The Department's estimated property tax valuation varies widely from the value assigned by the parties to the personal property. At a minimum, this presents evidence that the personal property was sold under conditions where the purchase price allocated to the personal property may not represent true value for the personal property.

[2.] The question then becomes whether the Department's estimated property tax valuation in and of itself provides a basis for the use tax assessment. With respect to property tax valuations, RCW 84.40.030 provides that, "[a]ll property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law." RCW 84.40.040 requires certain property owners to file a "list and statement" of all

personal property, and the Assessor to list and “determine the true and fair value of the property.” RCW 84.41.090 provides that

The department of revenue shall make and publish such additional rules, regulations and guides which it determines are needed to supplement materials presently published by the department of revenue for the general guidance and assistance of county assessors. Each assessor is hereby directed and required to value property in accordance with the standards established by RCW 84.40.030 and in accordance with the applicable rules, regulations and valuation manuals published by the department of revenue.

In accordance with this statute, the Department provides assessors with Personal Property Valuation Schedules as a guide to personal property valuations. As stated in these schedules, the “valuation indicators are published as guides in estimating market values of equipment in average condition.” 1999 Personal Property Valuation Schedules (January 19, 1999). An assessor’s valuation arrived at by using such a guide is presumed correct and can be overcome only by clear, cogent, and convincing evidence. RCW 84.40.0301.

Although the use tax and property tax provisions share the common goal of arriving at an estimation of “true value”, there are problems in using the property tax valuation methodology by itself in use tax cases. First, property tax valuations are done to arrive at a true value on an annualized basis (RCW 84.36.010), with the valuation schedules applying statewide.³ In contrast, the use tax provisions require valuation as nearly possible in relation to similar products at the place of use of the products. Property tax estimates would also not be entitled to a presumption of accuracy in use tax cases. More importantly, the use tax provisions do not explicitly provide for a depreciation method of valuation. Rather, value for use tax purposes is to 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.” Rule 178(13).

In general, “fair market value is a matter of opinion.” Northwest Chem. Sec. Co. v. Chelan Co., 38 Wn. 2d 87, 94, 228 P.2d 129 (1951). In Northwest Chemical, the court discussed various valuation methods, including comparable sales, and concluded as follows:

Whatever factors are taken into consideration, it is important to bear in mind that the ultimate question for determination is always the same-what is the reasonable market value of the property at the time the assessment is made? As this court said, in Bellingham Community Hotel Co. v. Whatcom County, supra:

³ There are also problems specific to this case. King County did not require the taxpayer to separately list the appliances, but treated the property as part of the real property in a valuation of the real and personal property on an income basis. Accordingly, there is no listing of the appliances showing an original purchase price, and the Department estimated what the appliance may have originally cost. This provides a potential source of inaccuracy that would not have existed had the property been listed.

"The original cost of construction or the estimated cost of reproduction, less depreciation, may be considered, but only as an aid in arriving at the market value of the building." (p. 612.)

Id. at 91.

For use tax purposes, a depreciation method of valuation may also be an aid in arriving at an opinion of market value, but this evidence must be supplemented by a valuation of comparable sales as envisioned under Rule 178. That information is lacking here. For example, there is no evidence of the valuation of personal property in sales of apartment complexes of comparable size and condition in King County.

The taxpayer's statements regarding possible valuation based on sales at auction also fall short of adequate evidence of value. With respect to valuations based on auctions, one court stated:

Appellant made an offer of proof, tending to show that such auction sales were of recent occurrence, and that the property sold was located near the subject property and was comparable thereto. We specifically note that the trial court refused to admit this testimony solely on the ground that it was not indicative of fair market value. This was error.

The general rule supported by the weight of authority is that evidence of the price received at a free and voluntary public auction is competent and admissible as some evidence of value where, presumably, a willing buyer meets a willing seller in open competition. . . . However, the authorities cited, recognize that forced sales are not admissible as evidence of value (cf. Finch v. Grays Harbor County, 121 Wash. 486, 209 Pac. 833, 24 A. L. R. 644). Here, so far as the record reveals, we are not concerned with a forced sale. The authorities recognize a distinction between sales involving the latter factor and sales, either auction or otherwise, which do not involve this factor.

Washington v. Calkins, 50 Wash. 2d 716, 727, 314 P.2d 449 (1957). To the extent the taxpayer uses auction-related evidence to establish market value, such evidence must meet the requirements of Rule 178(13). Such evidence must show comparable sales, whether by auction or otherwise, at the place of use, of similar products of like quality, quantity, and character. This evidence is lacking in this case. To the extent auction results are used, the record must also show that the sales were not forced sales. This evidence is also lacking in this case.

Because neither the taxpayer nor the Department has presented sufficient evidence of valuation, this matter is remanded for further development in accordance with this determination, and the case is dismissed without prejudice. The taxpayer may, if necessary, petition for correction of any action (including a no-change finding) taken on remand by the Department.

DECISION AND DISPOSITION:

The matter is remanded to the Miscellaneous Tax Division for further development.

Dated this 27th day of April 1999.