

Cite as Det. No. 99-103, 19 WTD 346 (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)	
)	No. 99-103
)	
...)	Registration No. . . .
)	Use Tax Assessment No. . . .
)	

[1] RULE 178; CHAPTERS 82.12, 82.45, and 82.32 RCW: USE TAX -- TRANSFER OF PERSONAL PROPERTY WITH SALE OF REAL ESTATE -- BURDEN OF PROOF. When tangible personal property is included in a transfer of real estate, use tax applies to the value of personal property received in the transaction, and real estate excise tax applies to the value of real estate transferred. Service station operator purchasing its station must respond to request for information about tangible personal property included in the transfer. Where the purchaser shows it purchased and paid tax on the tangible personal property prior to and independent of the real estate transfer, no additional use tax is due.

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:

Purchasers of real property protest assessment of use tax following filing and review of Real Estate Excise Tax Affidavit, on which no portion of the purchase price was allocated to personal property.¹

FACTS:

Johnson, A.L.J. -- . . . (“Purchasers”) bought a gas station and towing business in February, 1998. At the time, the grantor (“Seller”) filed a Real Estate Excise Tax (“REET”) affidavit as required by law. On the affidavit, the entire purchase price was allocated to the sale of real estate, and no portion of the purchase price was allocated to personal property. Seller paid REET on the full purchase price.

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

After routine review of the REET affidavit, an examiner from the Department of Revenue's Special Programs section ("Department") wrote Purchasers in March, 1998, requesting business information for the new station owner and about personal property acquired in the transaction. Purchasers returned the letter with the handwritten notation "none" by the request for information about personal property and failed to respond to requests for further information. The Department issued an estimated use tax assessment, using ten percent of the purchase price as the value for the personal property. The amount of the assessment, including a ten-percent delinquent penalty, was \$. . . Purchaser-husband sent a handwritten note stating "I don't agree with this assessment so I wont [sic] pay it." No information was provided to the examiner, and no support for their position was included with Purchasers' appeal.

ISSUES:

1. What taxes apply when there is a transfer of real estate and personal property?
2. What is the purchaser's responsibility when the Department requests information about the property acquired?

DISCUSSION:

[1] Pursuant to Chapter 82.45 RCW, REET applies to the sale of real estate. The seller of the real property is responsible for filing the REET affidavit and for paying REET, as occurred in this case. REET applies to the value of all real property, buildings, and fixtures transferred in the transaction. If a portion of the selling price is attributable to "personal" property, or property which is not attached to the real estate, that amount is subject to use tax under Chapter 82.12 RCW. As the new owner/user of the personal property acquired in the transaction, the purchaser is liable for the use tax.

At issue is whether any personal property was acquired and, if so, what value should be assigned to the personal property. Purchasers provided no information to the Department, other than a handwritten comment that they did not "agree with this assessment." Even giving Purchasers the benefit of the doubt and assuming they misunderstood the term "personal property" to mean property belonging to them individually as opposed to personal property acquired with the gas station, their refusal to provide information to the Department is not excused.

As stated previously, use tax applies only to the value of personal property, not to fixtures attached to the real property. As a result, the building(s), gas pumps, canopies over the gas pumps, and other fixtures permanently attached to the real estate are subject to REET, not use tax. REET is the responsibility of Seller. Use tax applies to the value of the personal property acquired in the transaction such as display racks; reach-in refrigerated coolers; cash registers and adding machines; tow truck(s) and vehicles, if use tax was not paid at the time of licensing; and carts and tools used in the station's auto-maintenance area. Use tax is the responsibility of Purchasers. Det. No. 89-055, 7 WTD 151 (1989) ("REET and use tax are mutually exclusive").

In the present case, it is possible the examiner's estimated value is high. Because he was provided no information to the contrary, the assessment was based on his experience with sales of similar businesses. Purchasers' station may be older or smaller, with fewer pumps, service bays, or a less-extensive or less-modern "food market", than others on which the examiner's experience is based. However, by refusing to cooperate with the examiner, Purchasers risk losing the opportunity to show their station is different and that personal property of lesser value was acquired.

[2] RCW 82.32.070 states in part:

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. . . . All his books, records, and invoices shall be open for examination at any time by the department of revenue. . . . 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. (Emphasis supplied.)

Det. No. 89-493, 8 WTD 309 (1989) discussed the duty of taxpayers to provide information on request by the Department and noted taxpayers are required by law to cooperate with auditing divisions or risk losing their right to have their appeals heard at a higher level:

. . . [T]he examiners have indicated that the taxpayers have not made all the records available in several issues of dispute. . . . Our position is that information should first be obtained and considered at the audit level. (Emphasis supplied.)

. . .

Taxpayers must make records available to examiners. Examiners can then consider them in any assessment. . . . The Interpretation and Appeals division will normally not examine records which taxpayers refuse to make available to examiners.

Here, the examiner made a reasonable request for information about whether personal property was included in the sale of the gas station and what the value of that property was. When Purchasers did not provide any information, the examiner issued an estimated assessment. Because Purchasers disagree with the assessment, they are required to show the value assigned to personal property is inaccurate or they risk being barred from questioning the assessment. Suitable evidence would include information about all personal property, its value and, if available, photographs to show why this station's personal property value is lower than that estimated by the examiner.

DECISION AND DISPOSITION:

Purchasers' petition is provisionally granted, subject to the requirement that they provide evidence to the examiner within 30 days of the date of this determination, or such additional period as the Special Programs Division in its sole discretion shall allow. If information is provided and a lower value is justified, the examiner will issue a new, lower assessment. If no information is provided within the 30-day period, the existing assessment will become immediately due; and no further appeal of the assessment will be considered by this Division.

Dated this 27th day of April 1999.