

Cite as Det. No. 99-287, WTD 660 (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. 99-287
	)	
...	)	Use Tax Assessment
	)	TDO No. ...

- [1] RULE 178; RCW 82.12.020: USE TAX – TAXABLE USE. Taxpayer's cruising of a vessel in Washington water, offer of charter in Washington waters, and use of the vessel as a home in Washington constituted taxable use in Washington state.
- [2] RCW 82.32.070: RECORDS TO BE PRESERVED. Every Taxpayer is required to keep adequate records to establish tax liability. Failure to provide such records renders the taxpayer unable to question the assessment.

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 use tax assessed on a vessel claimed to have been purchased for resale.<sup>1</sup>

FACTS:

Lewis, A.L.J. – ... (Taxpayers) are long-time residents of Washington. Undisputed are the facts that:

- Taxpayers have received their mail for the charter business at a [Washington] address since at least 1995 and that there is a telephone listing for the [Washington] address.
- Taxpayers were registered to vote in ..., Washington until January, 1999.
- Mr.[Taxpayer] has a Washington driver's license.
- Mr. [Taxpayer] banks in Washington.
- Mr. [Taxpayer] owns real estate in Washington.

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

- Mr. [Taxpayer] has three boats registered with the Washington State Department of Licensing.
- Mr. [Taxpayer] has a pick-up truck registered in Washington.
- Mr. [Taxpayer] owns two residential properties in . . . , Washington.

In addition, as early as July, 1979, Mr. [Taxpayer] registered with the Department of Revenue (Department) under the name “. . .” (Reg. No. . . .).<sup>2</sup> On December 14, 1998 the Department’s Compliance Division issued Taxpayers a \$. . . use tax assessment related to a . . . Yacht named “. . .” (“the vessel”).

The “[vessel]” first came to the Department’s attention in January, 1998. The vessel was offered for skippered charter in . . . a [Washington Corporation] brochure distributed at the January, 1998 Seattle Boat Show.<sup>3</sup> The advertisement included a color photograph of the vessel on Lake [in Washington]. The vessel next came to the Department’s attention in August, 1998 when it was observed by a Department of Revenue employee in the San Juan Islands. On August 27, 1998, following the sighting in the San Juan Islands, the Department’s Compliance Division (Compliance Division) sent Taxpayers a letter requesting information about the use of the vessel in Washington. On September 25, 1998 Revenue Agents observed the vessel on Lake [in Washington]. On September 26, 1998 the Compliance Division received a written reply from Mr. [Taxpayer] mailed from [Washington City]. Mr. [Taxpayer] stated:

The vessel is currently in transit between Juneau and Florida and as a result we are somewhat slow in our responses. Our mail is being forwarded along the route but may take several weeks to reach us, particularly as we pass through Central America.

As our file should indicate, we purchased this vessel in Florida in January of 1996 with the idea of reselling it after completing a refit. “[the vessel]” has been listed for sale and we have chartered her on both a bareboat and crewed basis in British Columbia and Southeast Alaska this past summer to generate income. She was not chartered prior to that time as she was undergoing a refit. We anticipate chartering her in the Caribbean this winter as we make our passage to Florida.

On September 30, 1998 the Compliance Division wrote a letter to Taxpayers informing them that use tax was due on the vessel. The letter stated:

My inquiry was based on information in the [Washington Corporation]’s 1998 charter catalog, which featured “[the vessel]” on its [skipped charters] page and included a photo of the vessel on Lake [in Washington], your internet site, . . . that offered the vessel for skippered charter in the San Juan Islands, a sighting of the vessel at Friday Harbor, WA, by the Island County Marine Patrol, a sighting of the vessel by one of our revenue agents

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<sup>2</sup> In October, 1991 the business’ name was changed to “. . .” In May, 1994 the business registration was closed. In May, 1995 the business registration was requested reopened by the Taxpayers.

<sup>3</sup> . . .

in the San Juan Islands and a verification of moorage by the Harbor Master at Friday Harbor.<sup>4</sup>

Additionally, the vessel was observed and photographed on September 25, 1998 while she was moored on Lake Union.

Based on this information Use Tax and Personal Property Tax are due on the vessel.

(Footnote added.)

On October 10, 1998, Mr. [Taxpayer] left a telephone message stating he was en-route to Panama Canal. On December 14, 1998, the Compliance Division mailed a use tax assessment to Taxpayers' [Washington] address.<sup>5</sup> On January 8, 1999, Taxpayers filed a petition protesting the use tax assessment with the Department's Appeals Division. Taxpayers' petition explained:

We purchased [the vessel] in Florida for \$. . . with the idea of reselling the boat after repairs had been completed. We listed the boat for sale through a broker. The boat is actively for sale and has been shown several times. For example, your agent said the boat was spotted in Friday Harbor. We showed the boat to a prospective buyer in Friday Harbor on an appointment previously arranged by a yacht broker from Friday Harbor.

Because the boat has not sold, we placed the boat in charter and have chartered in Canada, Southeast Alaska and the Eastern Caribbean.

My understanding of the rules is that tax in the State of Washington is not due under these circumstances and certainly not in the amount you are requesting even if it was due.

Thus, Taxpayers petition for correction of the assessment asserted that the vessel was not subject to use tax because it was purchased for resale; and even if the use tax were due, the amount assessed was based on an inflated vessel valuation

#### ISSUES:

1. Is use tax due on a vessel that is brought into Washington and used by a resident?
2. May the Department establish a valuation for the vessel when a taxpayer fails to provide documentation to support the alleged valuation?

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<sup>4</sup> Taxpayers' internet site at . . . listed the services and prices offered by [Taxpayers] including suggested itineraries. The skippered charter offerings included two cruises beginning in . . . , Washington. Following contact by the Department, the internet site was modified and the [Washington] cruises . . . were deleted from the internet site offering.

<sup>5</sup> The Compliance Division's use tax assessment was based on a vessel valuation of \$2,500,000. The \$2,500,000 valuation was made based on a review of comparable vessels offered for sale. The estimated value was used because Taxpayers had failed to provide documents to substantiate the alleged \$600,000 purchase price.

## DISCUSSION:

[1] RCW 82.12.020 imposes a use tax:

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 any article of tangible personal property purchased at retail . . . . The tax shall be levied and collected in the amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for retail sales tax . . . .

(Emphasis added.)

"Use" is defined by RCW 82.12.010 as follows:

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; . . . .

"Consumer" is defined by RCW 82.04.190 as follows:

Any person who purchases, acquires, owns, holds or uses any article of tangible personal property irrespective of the nature of the person's business . . . other than for the purpose (a) resale in the regular course of business . . . .

"Retail Sales is defined by RCW 82.04.050 as follows:

[e]very sale of tangible personal property . . . to all persons irrespective of the nature of their business . . . other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who . . . purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; . . . .

Under the law, the first use as a consumer in Washington is the incident, which gives rise to use tax liability, measured by the value of the article used. RCW 82.12.020. Use is defined as the first act within the state by which a taxpayer takes or assumes dominion or control over the article. RCW 82.12.010.

In this case, the Department has established that the vessel was used in Washington.

- Departmental employees observed the vessel use in the San Juan Islands and on Lake [in Washington].
- The . . . Brochure included a picture of the vessel on Lake [in Washington].

- Taxpayers' website advertised the vessel for skippered charter in [Washington].
- Taxpayers' website stated, when introducing [Ms. Taxpayer] that "She enjoys sharing her home, [**Vessel name**], with guests and prepares outstanding meals for your enjoyment."

We are not persuaded that the vessel was purchased for resale. Taxpayer has not presented any documentation to support this contention. By Taxpayers' own public admission on the internet they have "used" the vessel as their home. Based on the facts, we find that the vessel was used in Washington and that the use tax was properly assessed. This decision is consistent with the earlier Department decisions that have upheld use tax assessments in cases on much less actual use. In Christensen v. Department of Revenue, BTA Docket No. 49466 (1997), the BTA was asked to determine whether the Department correctly assessed use tax on two motorcycles that a taxpayer purchased in Oregon and stored in Washington, but never rode in Washington. Taxpayer maintained that "because he kept his motorcycles in his garage and they were not actually driven on Washington streets or highways, they are not subject to use tax...." The BTA upheld the use tax assessment. The BTA concurred with the Audit Division's finding that the exercise of dominion and control over the equipment was the taxable event. Here, Taxpayers did much more than just store the vessel. The "[vessel]" cruised in Washington waters; was advertised for skippered charter within Washington waters; and, served as [Ms. Taxpayer's] home.<sup>6</sup> Accordingly, we find that the use tax was correctly assessed.

[2] Finally, Taxpayers maintain that the use tax was assessed on an inflated value of the vessel. Taxpayers have represented that the vessel was purchased for \$. . . . Unfortunately, despite repeated requests, Taxpayers have failed to provide documentation to support the \$. . . value. The Compliance Division's response was to assess use tax based on a \$. . . value.<sup>7</sup> RCW 82.32.070 requires that any person subject to tax under the Revenue Act must keep adequate records so that his tax liability may be established. Failure to keep or provide such records to the Department renders that person unable to question any assessment in any proceeding.

Taxpayers will be allowed one last opportunity to provide the previously requested documentation. Taxpayers will be allowed thirty (30) days from the date of this determination to provide sufficient records to establish an alternate valuation. Taxpayers' failure to provide the records within the thirty (30) day period will result in the assessment becoming final.

#### DECISION AND DISPOSITION:

Taxpayers' petition is denied. However, Taxpayers will be allowed thirty (30) days from the date of this determination to provide to the Compliance Division documentation of the vessel's

<sup>6</sup> The Department has consistently held that the purchase of a vessel to be used for charter with a crew is not a purchase for resale. Det. No. 91-151, 11 WTD 193 (1991).

<sup>7</sup> Taxpayers failed to provide documents supporting their valuation. Accordingly, the Department set the value of the vessel after reviewing the asking prices of comparable vessels.

alleged lesser value. Upon submission of documentary evidence, the Compliance Division may or may not adjust the assessment.

Dated this 29<sup>th</sup> day of October, 1999.