Cite as Det. No. 99-239R, 19 WTD 367 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Request for Reconsideration of	)	D E T E R M I N A T I O N
	)	No. 99-239R
. . .	)	Registration No. . . .
	)	Use Tax Assessment

[1] RULE 230; RULE 178: USE TAX – CHARTER BOAT – PERSONAL USE – STATUTE OF LIMITATIONS. A charter boat put to personal or intervening use is subject to use tax. It is only the first such use in this state, however, that is taxable. If the statute of limitations runs on that first use, the Department may not, thereafter, assert use tax on a subsequent use by the same person during a period of continuous ownership.

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:

Yacht owner requests reconsideration of determination that upheld the assessment of use tax on his yacht.[1]

FACTS:

Dressel, A.L.J. -- . . .(taxpayer) is appealing Determination No. 99-239 in which we upheld a use tax assessment by the Department of Revenue (Department) on his yacht, ... The amount of the assessment was $. . . . In the Determination we held that even though the taxpayer first used his yacht in this state in 1989, the statute of limitations did not preclude the Department from assessing use tax in 1996. We reasoned that each use of the taxpayer's yacht after the first use re-triggered liability for use tax and set in motion a "fresh" statute of limitations. *See Det. No. 99-239* (1999). The taxpayer contends that conclusion was erroneous. In support he cites WAC 458-20-230; WAC 458-20-178; RCW 82.32.100; RCW 82.12.010; Attorney General

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

Opinion (AGO) 61-62, No. 153 (1962); and *Northwest Alloys, Inc. v. State of Washington Department of Revenue*, BTA Docket No. 28350, issued June 7, 1985. The thrust of his arguments, as it was in the original proceeding, is that only the first use of the boat in Washington was subject to use tax, that the statute of limitations had run on that first use, and that the Department made not, lawfully, assess use tax after the period prescribed in the statute of limitations.

ISSUE:

If a taxpayer first used a boat in this state in 1989, may the Department assess use tax on it in 1996?

DISCUSSION:

In *Det. No. 99-239, supra*, we reasoned:

> Rule 178 reads, in part: "Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person." The purpose of that provision of Rule 178, in our opinion, is to make it clear that a person owes use tax only once on a particular article. It would be illogical to interpret that sentence to mean that if a person could somehow keep its use undetected for the period of the statute of limitations, (s)he could avoid, forever, the obligation to pay use tax.
>
> The better way, in our view, to interpret that sentence is to find in it the implicit requirement that "no additional liability arises with respect to any subsequent use of the same article by the same person" *after* the person first satisfies his or her initial liability. If the person does not satisfy that initial liability, the liability continues until the use tax is paid or the statute of limitations runs. Further, the statute of limitations begins anew each time, thereafter, that the person uses the article in Washington. Applied to the instant case, each time the taxpayer lived on his boat or took a cruise on his boat, he *used* the boat and, thereby, restarted his use tax obligation and the statute of limitations. If the person once pays the use tax, the restarts terminate, as does liability for the use tax.

(Footnote omitted.) While, quite arguably, this is an equitable interpretation, it ignores or, at least, glosses over the statutory definition of "use". The use tax is imposed by RCW 82.12.020, which reads, in part:

> **Use tax imposed.** (1) 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, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); (Italics ours.)

"Using" is statutorily defined at RCW 82.12.010(2), where it says:

> (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; (Italics ours.)

Thus, we see that the legislature has said that "using" or "use", the activity upon which the use tax is predicated, is the "first act" in Washington by which a person takes dominion or control over an article of tangible personal property, such as a yacht. That first act, in the instant case, occurred in 1989 when the taxpayer took possession of the boat in Washington, took it on test cruises, and lived aboard the watercraft. *See Det. No. 99-239.* By implication, if the referenced statute specifies that "use" is the *first* act of dominion and control in this state, "use" is *not* the second act, or the third act, or any subsequent act. RCW 82.12.010(2), specifically, limits use to the first act. Had the legislature meant *any* act or use, it would not have imposed that limitation.

The intent of the legislature is to be determined by what the legislature actually said, as opposed to what somebody thinks the legislature meant. *St. Paul & Tacoma Lumber Co. v. State*, 40 Wa.2d 347, 243 P.2d 474 (1952). An administrative agency may not interpret the statutes it implements in a manner which has the effect of amending them. *In re Meyers*, 105 Wa.2d 257, 714 P.2d 303 (1986). However equitable the result of *Det. No. 99-239* might have been, that is, probably, what we did in that decision.

We conclude that the statute of limitations found at RCW 82.32.100 had run on the taxpayer's first use of the yacht, prior to the assessment of use tax by the Department. In so doing we observe that none of the exceptions of RCW 82.32.100(3) apply, so as to toll the statute of limitations.

DECISION AND DISPOSITION:

The taxpayer's Request for Reconsideration is granted. *Det. No. 99-239* is reversed. The subject use tax assessment is canceled.

DATED this 29th day of November, 1999.