

Cite as Det. No. 04-0266, 25 WTD 1 (2006)

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. 04-0266
)	
...)	
)	Registration No. . . .
)	Document Nos. . . . and . . .
)	
)	Docket No. . . .

- [1] RULE 238; RCW 82.08.0266: RETAIL SALES TAX -- SALE OF WATERCRAFT TO NONRESIDENT -- 45-DAY REMOVAL REQUIREMENT -- REQUIREMENT OF REPAIR AFFIDAVIT IF REMAINS MORE THAN 45 DAYS FOR COMMISSIONING. Watercraft sold to nonresidents are exempt from retail sales tax only when the watercraft will not be used in Washington for more than 45 days. The Department has a policy of tolling the running of the 45-day period while a vessel remains in Washington for commissioning if the vessel is present under a nonresident repair affidavit filed with the Department. The sale of a vessel to a nonresident is subject to retail sales tax if the vessel is not removed from Washington within 45 days, excluding days that the running of the 45-day clock is tolled by the filing of a nonresident repair affidavit.
- [2] RCW 88.49.020; RCW 88.02.030: WATERCRAFT EXCISE TAX -- NONRESIDENT REPAIR EXEMPTION -- LATE-FILED AFFIDAVITS INEFFECTIVE TO EXTEND REPAIR EXEMPTION. To extend the repair exemption from vessel registration in RCW 88.02.030 beyond sixty days, and therefore be exempt from Watercraft Excise Tax under RCW 82.49.020, the nonresident must file a nonresident repair affidavit with the Department on or before the sixty-first day while the vessel is located upon the waters of the state exclusively for repair. A nonresident repair affidavit that is filed late is not effective to extend the repair exemption.

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

Prusia, A.L.J. – A nonresident requests cancellation of assessments for use tax/deferred retail sales tax and Watercraft Excise Tax (WET) on a yacht he purchased in Washington. The yacht remained in the state for nearly four months after purchase. During that period, the owner did not file a nonresident repair affidavit, the nonresident did not obtain identification documents required by RCW 88.02.030 and WAC 458-20-238, and the vessel was used for personal use. The nonresident contends the yacht was exempt from retail sales tax under RCW 82.08.0266, and was exempt from WET and use tax because, excluding repair days covered by late-filed nonresident repair affidavits, the yacht was only in the state temporarily. We conclude: the vessel was subject to retail sales tax because it was not removed from the state within 45 days, and the vessel was subject to WET because it did not meet any exception from vessel registration. We deny the petition.¹

ISSUES

- [1] Was purchase of the vessel exempt from retail sales tax? Specifically, were the requirements of RCW 82.08.0266 satisfied?
- [2] Was use of the vessel in Washington exempt from use tax?
- [3] Was the vessel exempt from WET?

FINDINGS OF FACT

. . . (“Taxpayer”) is a resident of [State A]. He is a non-resident of Washington State, and was a non-resident of Washington in 2002, when he purchased a . . . yacht from [Washington Yacht Dealer].

Taxpayer did not pay retail sales tax on the purchase of the yacht. When the purchase closed, April . . ., 2002, Taxpayer provided the seller with a non-resident exemption certificate which stated Taxpayer was a [State B] resident, and gave a [State B Location] address as the buyer’s address.²

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

² The certificate further stated:

I certify that (a) the vessel described above will be registered or documented with the United States Coast Guard or the state of principal use; or (b) I am a resident of a foreign country I further certify that this vessel will leave Washington water within forty-five days of delivery, and the purchase of this vessel is exempt from Washington state retail sales tax under the provisions of either RCW 82.08.0266 or 82.08.02665. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud or tax evasion.

The vessel had been issued a documentation number by the U.S. Coast Guard in 1998. Taxpayer re-named the vessel the “[Yacht],” and had the Coast Guard documentation number transferred to him in April 2002. Taxpayer did not register the [Yacht] with the Washington Department of Licensing.

The [Yacht] did not leave Washington waters within 45 days of purchase. Instead it remained in Washington for repair, renovation, and equipping. From April 24 through August 7, 2002, except for a two-day period (June 21-22), the vessel was at the [Washington Repair Facility] on . . . for repair and renovation.³

During the two-day period June 21-22, 2002, “the vessel was on a shakedown cruise”⁴ or “systems check.”⁵ An . . . associate of Taxpayer’s, . . . , who was helping Taxpayer with the purchase and renovations, and two of [Taxpayer’s Associate’s] friends, were the only persons on board during the two-day “systems check”; no employee of the repair facility was on board. The vessel returned to the [Washington Repair Facility] yard for additional repair and renovation at the conclusion of the “systems check.” [Taxpayer’s Associate] and his friends also boarded the yacht, on July 4, 2002, while it remained at [Washington Repair Facility], to watch the fireworks display

During the April-August 2002 period the [Yacht] was at [Washington Repair Facility], Taxpayer did not file a Non-Resident Out-of-State Vessel Repair Affidavit as required by RCW 88.02.030(5). At no time did the vessel obtain an identification document from the Washington Department of Licensing.

On June 22, 2002, Taxpayer suffered [a medical emergency] while in . . . [State C]. He was flown to [State A], where he remained continuously through 2003. He has remained seriously ill, and from the onset of his illness through 2003 was unable to attend to his day-to-day affairs.

After purchasing the [Yacht], and before falling ill, Taxpayer had invited several persons to accompany him on future cruises into Canada. Although Taxpayer was unable to take the vessel on the planned cruises, [Taxpayer’s Associate] and other friends of Taxpayer used the yacht for a cruise to Canada in August 2002. On August 7, 2002, they took the yacht from [Washington Repair Facility] to the [Washington Location], and from there to Canada on August 10. On August 12, 2002, the yacht returned to [Washington Repair Facility] for additional work. It remained there until August 24, 2002.⁶

³ \$. . . of work was performed on the vessel at [Washington Repair Facility] during that period. According to [Washington Repair Facility] invoices, the work involved cleaning, painting, testing, repairing and replacing parts, and equipping.

⁴ Petition for Review, page 4.

⁵ Petition for Review, page 5.

⁶ Work performed on the yacht during the period August 12-24 related to checking out problems with equipment experienced on the trip to Canada, including a compass problem, a horn problem, an inoperative fan, a water maker problem, replacing broken glass, and testing systems.

Between August 24, 2002 and September 23, 2002, . . . and other friends of Taxpayer took the yacht on a cruise to the [Washington Location] and Canada. The whereabouts of the yacht during that period is summarized as follows:

August 24, 2002, the vessel was taken from [Washington City] to Canada.
August 28, 2002, the vessel re-entered U.S. waters, going to [Washington Location].
August 29, 2002, the vessel returned to Canada.
September 4, 2002, the vessel returned to the [Washington Location].
September 13, 2002, the vessel returned to Canada.
September 15, 2002, the vessel returned to the [Washington Location].
September 18, 2002, the vessel returned to Canada.
September 23, 2002, the vessel returned to [Washington City]

The person handling Taxpayer's affairs in [State A] decided to sell the vessel. The [Yacht] returned to [Washington City] on September 23 to be put up for sale. It was first docked at [a Washington location] to await space at [Washington Repair Facility] for additional repair and other preparation for selling. On October 15, 2002, the [Yacht] was listed for sale with [Washington Yacht Dealer]. From October 29 to December 11, 2002, the vessel was at [Washington Repair Facility] for repair and cleaning. \$. . . of work was done on the vessel.⁷ On December 11, 2002, the vessel moved to [a Washington Location] where it has remained under the broker's custody and control.

On October 2, 2002, an employee of the Department of Revenue (DOR) observed the [Yacht] at the [Washington Marina], with no visible vessel registration. The Compliance Division of DOR contacted [Washington Marina], and was informed that the Master of the vessel was [Taxpayer's Associate]. On October 9, 2002, the Compliance Division sent letters to [Taxpayer's Associate] at [State B] address and a . . . Washington mail box address, asking if sales or use tax was paid to any state on the vessel. [Taxpayer's Associate] replied to the correspondence, stating he was not the vessel owner, and providing facts regarding the ownership and whereabouts of the vessel since Taxpayer purchased it. [Taxpayer's Associate] provided verification of Taxpayer's medical condition.

On April 28, 2003, the Compliance Division issued a use tax/deferred sales tax assessment against Taxpayer. The assessment was based on a value for the yacht of \$. . . . The total amount of the assessment was \$. . . , composed of state use tax of \$. . . , local use tax of \$. . . , Regional Transit Authority tax of \$. . . , a 20% delinquency penalty of \$. . . , and interest to May 28, 2003, of \$. . . . On the same date, the Compliance Division issued a Watercraft Excise Tax assessment for the period July 2002 through June 2003, in the amount of \$. . . , composed of WET of \$. . . , a 20% delinquency penalty of \$. . . , and interest to May 28, 2003, of \$. . . .

⁷ According to [Washington Repair Facility] invoices and labor sheets, the work involved cleanup, testing, tune up work, repair to structure and equipment, painting, and detailing.

On June 27, 2003, Taxpayer, by his attorney, filed with DOR's Compliance Division two 60-day Non-Resident Out-of-State Vessel Repair Affidavits, both dated June 25, 2003, one with an expiration date of June 16, 2002, and the second with an expiration date of August 13, 2002.

Taxpayer petitions for cancellation of the assessments, claiming he qualified for nonresident repair and temporary use exemptions from tax.

ANALYSIS

Relevant retail sales tax and use tax statutes and rules

In general, all sales in the state of Washington of tangible personal property to consumers are subject to retail sales tax unless the sales are otherwise exempt from taxation. RCW 82.08.020; RCW 82.04.050. The tax is to be paid by the buyer to the seller, and remitted by the seller to the state. RCW 82.08.050. When a buyer has failed to pay the tax to the seller, DOR may proceed directly against the buyer for collection. RCW 82.08.050.

Washington imposes a use tax for the privilege of using within this state as a consumer, any article of tangible personal property purchased at retail, unless the use is exempt by law. RCW 82.12.020. The use tax does not apply if the sale to the present user has already been subjected to Washington retail sales tax. *Ibid.* The two methods of taxation complement each other, providing a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how it was acquired. WAC 458-20-178 (Rule 178).

WAC 458-20-238 (Rule 238) further explains the application of the retail sales tax and use tax to watercraft purchased or used in Washington. Rule 238(4) states:

If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department such sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law.

We now consider possible exemptions to the retail sales tax and use tax on watercraft. A person claiming a tax exemption has the burden of proving he or she qualifies for the exemption. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 433 P.2d 201 (1967); *Det. No. 89-268*, 7 WTD 359 (1989).

RCW 82.08.0266 provides an exemption from retail sales tax for watercraft sold to nonresidents, even when delivery is made in this state, but only when the watercraft will not be used in Washington for more than 45 days and a nonresident exemption certificate is provided. RCW 82.08.0266 states:

The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by

the state of principal use according to the Federal Boating Act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as provided by the department of revenue and signed by the purchaser or his agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, one copy to be filed with the department of revenue with the regular report and a duplicate to be retained by the dealer.

Rule 238 explains this retail sales tax exemption, as follows, in pertinent part:

(1) **Introduction.** This rule explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This rule explains the requirements to be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair. . . .

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside the state, even when delivery is made within Washington. . . .

(b) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

(i) The watercraft must leave Washington waters within forty-five days of delivery;

(ii) The seller must examine acceptable proof that the buyer is a nonresident of another state or a foreign country; and

(iii) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. . . .

(Emphasis added.) RCW 82.12.0251 provides an exemption from the use tax for “temporary” use in the state of property brought into the state by a nonresident. The statute states, in pertinent part:

The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless

such property is used in conducting a nontransitory business activity within the state of Washington.

(Emphasis added.) Rule 238 defines “temporary use” by incorporating specific time limits from the state’s statutory vessel registration requirements, found in Chapter 88 RCW. Nonresident individuals may temporarily bring watercraft into this state for their use or enjoyment without incurring use tax liability “if such use does not exceed a total of six months in any 12-month period,” the watercraft is properly registered outside Washington, and if, before the 61st day of use in Washington, the vessel has been issued identification documents by the Department of Licensing. If the documentation and identification requirements are not met, it will be presumed that use within Washington exceeding 60 days in any 12-month period is more than temporary.⁸

Rule 238(4)(c) states another exemption from use tax, for nonresidents’ watercraft in this state exclusively for repair, alteration, or reconstruction, as follows:

Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within sixty days. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department of revenue compliance division an affidavit as required by RCW 88.02.030 verifying the vessel is located upon the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled “Nonresident Out-of-State Vessel Repair Affidavit,” is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department. Failure to file this affidavit can also result in requiring that the vessel be registered in Washington and subject to the use tax.

(Emphasis added.) . . .

Positions of the Compliance Division and Taxpayer with respect to use tax/deferred retail sales tax liability

⁸ Rule 238(4)(b) states:

Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state. Except as otherwise provided in this rule, it will be presumed that use within Washington exceeding sixty days in any twelve-month period is more than temporary use and use tax is due.

Effective January 1, 1998, nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for their use or enjoyment without incurring liability for the use tax if such use does not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the first sixty days. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption. Prior to January 1, 1998, the temporary use exemption period was limited to sixty days for all nonresident users of watercraft.

The Compliance Division contends: 1) The sale of the vessel to Taxpayer did not qualify for the nonresident exemption from retail sales tax because Taxpayer provided a false statement of residency on his nonresident exemption certificate. 2) There were no substantial repairs, only cosmetic improvements to substantiate an increased sales price. 3) Presence for repairs was not exempt under the nonresident repair exemption, because Taxpayer did not timely file nonresident repair affidavits to extend the exemption. 4) The vessel was put to use in Washington for more than 60 days within a twelve-month period, and therefore was subject to use tax.

Taxpayer contends: 1) Taxpayer was a nonresident, and the sale was exempt from retail sales tax because he filed a nonresident exemption certificate. 2) The Compliance Division has not argued that the 45-day removal requirement is not met, so that is not an issue on appeal. 3) For the first four months the vessel remained in Washington, April 17 through August 7, 2002, it was present exclusively for repairs, and its presence was exempt under the nonresident repair exemption, except for the two days of “sea trials” in June. 4) Rule 238(4)(c) does not require that nonresident repair affidavits be completed and sent to the Department while the work is ongoing. The nonresident repair affidavits filed in 2003 complied with the requirements for receiving the nonresident repair exemption. Alternatively, Taxpayer substantially complied with the repair exemption requirements. Alternatively, failure to file the affidavits while the work was ongoing does not result in the mandatory imposition of the use tax. 5) The August 2002 repair period was a new repair period exempt under nonresident repair exemption, and no repair affidavit was required because the repair period was less than 60 days. 6) The vessel was exempt from the time it was listed for sale with [Washington Yacht Dealer] on October 15, 2002. 7) Excluding exempt repairs days, the vessel was not used in Washington for more than 60 days between April 17, 2002 and October 15, 2002, and was exempt under the 60 day provision in Rule 238(4)(b).

Retail sales tax issues

[1] We begin our application of the above laws and rules to the facts of this case by considering Taxpayer’s possible liability for retail sales tax. The sale was a retail sale in this state. It was subject to retail sales tax, unless exempt. RCW 82.08.020. The potential exemption is the nonresident exemption set out in RCW 82.08.0266. That exemption applies only if the watercraft “will not be used within this state for more than forty-five days,” and an appropriate nonresident exemption certificate is filed. The Compliance Division contends the sale was not exempt under RCW 82.08.0266, because the nonresident exemption certificate was invalid because Taxpayer gave a false address. Taxpayer disputes the Compliance Division’s assertion that his nonresident exemption certificate was invalid. He contends the 45-day requirement is not an issue, because the Compliance Division does not argue it.

We disagree with the Compliance Division as to the validity of the exemption certificate. It is undisputed that Taxpayer was a nonresident of Washington. What state he was a resident of is immaterial, so long as he was not a resident of Washington. Giving an [State B] address would

have been relevant on the issue of intent to evade, had Taxpayer been a resident of Washington, but he was not.

We hold that the 45-day requirement of RCW 82.08.0266 is an issue. We cannot disregard an issue raised by the facts merely because the Department's operating division has not argued it. The assessment is for use tax and/or deferred retail sales tax, and we must determine, based on the facts of the case, whether either tax is due. Therefore, we will consider whether the 45-day removal requirement was met.

RCW 82.08.0266 states that watercraft sold to nonresidents are exempt from retail sales tax "only when the watercraft will not be used in Washington for more than 45 days." RCW 82.08.0266 provides no exception to that requirement. Rule 238(3)(b) states that to "perfect any claim for exemption under RCW 82.08.0266 . . . [t]he watercraft must leave Washington waters within forty-five days of delivery." These requirements were not met. It is undisputed the [Yacht] remained in Washington for more than 45 days after purchase. It was here for nearly four months, April 17, 2002 to August 10, 2002, before being taken to Canada.

The repair exemption and the 60-day exemption that Taxpayer claims, are use tax exemptions. There is no repair exemption provided by statute or rule, or other exemption, that would extend RCW 82.08.0266's 45-day limitation. Taxpayer's arguments regarding the interpretation of the use tax exemptions are not relevant to the issue of liability for retail sales tax. . . .

We conclude Taxpayer failed to meet the 45-day limitation of RCW 82.08.0266. His purchase of the [Yacht] therefore was subject to retail sales tax. Because Taxpayer did not pay retail sales tax at the time of purchase, he was required to report and remit the sales tax when he failed to perfect an exemption under RCW 82.08.0266. Rule 238(4).

Use Tax

Having concluded that the sale of the [Yacht] to Taxpayer was subject to retail sales tax, we need not reach the use tax issues.

WET

[2] RCW 82.49.010 imposes an excise tax on the privilege of using a vessel upon the waters of Washington, "except vessels exempt under RCW 82.49.020." WET is an annual tax, and is imposed for a twelve-month period, including the month in which the vessel is registered. RCW 82.49.010(3).

RCW 82.49.020 set out six categories of vessels that are exempt from the WET, only one of which is potentially applicable here: "Vessels exempt from the registration requirements of chapter 88.02 RCW."⁹

⁹ RCW 82.49.020 states, in its entirety:

Taxpayer contends the [Yacht] was exempt from the registration requirements of chapter 88.02 under RCW 88.02.030(5) and (11). Those provisions state, in pertinent part:

Vessel registration is required under this chapter except for the following: . . .

(5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing. However, any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing . . .

(11) On and after January 1, 1998, vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a nontransitory business activity within the state. However, the vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. . . .

(Emphasis added.)

The [Yacht] was not “brought into the state” by Taxpayer during the period between purchase and August 10, 2002. It was already in the state. Therefore, it was not exempt from registration under RCW 88.02.030(11).

The following are exempt from the tax imposed under this chapter:

- (1) Vessels exempt from the registration requirements of chapter 88.02 RCW;
- (2) Vessels used exclusively for commercial fishing purposes;
- (3) Vessels under sixteen feet in overall length;
- (4) Vessels owned and operated by the United States, a state of the United States, or any municipality or political subdivision thereof;
- (5) Vessels owned by a nonprofit organization or association engaged in character building of boys and girls under eighteen years of age and solely used for such purposes, as determined by the department for the purposes of RCW 84.36.030; and
- (6) Vessels owned and held for sale by a dealer, but not rented on a regular commercial basis.

We now consider RCW 88.02.030(5). The [Yacht] was continuously in Washington, for renovation and repairs, for more than sixty days after April 17, 2002. Taxpayer did not file a nonresident repair affidavit on or before the sixty-first day “while” the vessel was located upon the waters of the state for repair. Therefore, the vessel was not exempt from registration under RCW 88.02.030(5) after the sixtieth day.

Even supposing, solely for purposes of argument, that late-filed affidavits satisfied the nonresident repair affidavit requirement of RCW 88.02.030(5),¹⁰ the [Yacht] ceased to be exempt under RCW 88.02.030(5) on June 21, 2002, when the vessel was taken on a “shakedown cruise” or “systems check” without an employee of [Washington Repair Facility] on board the vessel during the testing.

We conclude the [Yacht] did not meet the requirements for any exception to registration after the first sixty days following purchase by Taxpayer. The [Yacht] was subject to the registration requirements of chapter 88.02 RCW beginning in June 2002. The WET assessment in this case assesses WET from July 2002 through June 2003. We sustain that assessment.

DECISION AND DISPOSITION

The taxpayer’s petition for correction of Use Tax/Deferred Sales Tax Assessment and Watercraft Excise Tax assessment is denied.

Dated this 15th day of December, 2004.

¹⁰ Taxpayer argues he “substantially complied” with the repair affidavit requirement by filing the affidavits a year late. The substantial compliance or substantial performance doctrine is defined in Black’s Law Dictionary, Seventh Edition, p. 1443, as follows: “The equitable rule that, if a good-faith attempt to perform does not precisely meet the terms of the agreement, the agreement will still be considered complete if the essential purpose of the contract is accomplished.” The doctrine of substantial compliance might apply to a nonresident who has made a good-faith attempt to comply with the affidavit requirement, such as one who has timely filed an affidavit that is incomplete or otherwise defective, but that is not Taxpayer’s situation. Taxpayer made no effort whatsoever to comply with the affidavit requirement during the period the vessel was undergoing commissioning or repair. *Contrast Evered Lincoln Mercury, Inc. v. State of Washington*, BTA Docket No. 85- 183, 7 WTD 205 (1989).