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BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 05-0162
)	
...)	Registration No. . . .
)	REFUND
)	Docket No. . . .
)	

RULE 171; RCW 82.04.050(7): RETAIL SALES TAX - PUBLIC ROAD CONSTRUCTION - BOAT RAMP. Because a boat ramp is not used primarily for foot or vehicular traffic, the ramp's construction does not constitute public road construction, and charges for the ramp's construction are subject to retail sales tax

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.

M. Pree, A.L.J. – A port requests a refund of retail sales tax paid to a contractor to renovate its boat launch ramp and contends the renovation is exempt from retail sales tax as public road construction. The boat launch ramp was not used primarily for vehicular traffic. We conclude the renovation charges are not for public road construction and are subject to retail sales tax.¹

ISSUE

Is a boat launch ramp a road, street, place, easement, or right-of-way used primarily for vehicular traffic?

FINDINGS OF FACT

[Taxpayer] is a municipal corporation in the state of Washington. The taxpayer contracted with a private contractor to renovate and expand an existing boat launch ramp. . . . The contractor billed the taxpayer for the work and included retail sales tax on the charge for the construction.

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

The taxpayer paid the sales tax to the contractor but requested the Department refund the sales tax claiming the renovation and expansion of the boat launch ramp was public road construction, an activity that is not a retail sale. The Department's Audit Division denied the refund request concluding that the activity was not public road construction. The taxpayer appealed.

The boat launch ramp is located on property the taxpayer acquired in an exchange The boat launch ramp consists of three lanes descending into the water, which rise and fall with the tide. The taxpayer's title report recognized the right of the general public to unrestricted use of the water, which affected the premises subject to submergence (below the high tide level). Similar limits were recognized for members of the public to use shore lands or tide lands.

The ramp is located at the water's edge of the taxpayer's property The taxpayer states it owned the land under the ramp. Access to the ramp from the city street is accomplished by crossing a paved area and proceeding across this area to the boat ramp. This paved area also gives access to the taxpayer's parking lot and a marina, both adjacent to the boat ramp, but neither were part of the renovation project. . . .

The contractor extended the ramp and replaced the asphalt surface with a concrete slab and planks.² Two thirds of the cost of the renovation came from the state of Washington general fund in the form of a project grant. . . . The taxpayer agreed to convey to the state of Washington, the right to use the real property forever for outdoor recreation or habitat conservation purposes.³ The taxpayer agreed to operate and maintain the facility for public use at reasonable hours and times of the year.⁴ The taxpayer agreed to restrictions on the use of any fees generated from use of the boat launch.⁵ The taxpayer identifies the boat launch as a public boat ramp.⁶

The taxpayer charges . . . for use of the boat launch.⁷ Generally, motor vehicles tow licensed trailers carrying watercraft over public roads to the boat launch. The driver can pull off to the side of the ramp, loosen any tie-downs holding the boat to the trailer, and then back the trailer down the ramp until the boat floats off the trailer or slides into the water. The motor vehicle pulls the trailer up the ramp. The vehicles may be parked in the adjacent parking lot until the boat is retrieved, when the procedure is reversed.

² To avoid contamination of the water, it was necessary to use pre-cast concrete planks below the high water line, rather than cast in place concrete. . . .

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⁵ Fees could be used only to offset the cost of the boat launch, maintenance or operation of the launch as well as other units in the recreation area, or for similar acquisitions and/or development.

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⁷ A sign instructs individuals to drop the fee in a box near the ramp. The taxpayer believes many boaters do not comply with this request. A calendar year pass is also available . . . from the marina office. Fees for recreational use of boat launch facilities are taxable as a license to use real estate under WAC 458-20-118(3)(b)(viii).

The Audit Division concluded that the renovation and expansion of the existing boat launch ramp was not public road construction because the ramp was not a street, road, place, highway, right of way or easement used by the public primarily for vehicular or pedestrian traffic.

ANALYSIS

The sale of materials and labor to build, repair, or improve structures on real property are generally subject to retail sales tax. RCW 82.08.020; RCW 82.04.050. A limited exception is provided for certain public road improvements. RCW 82.04.050(7). Under this provision, labor and service charges for improvements to roads owned by municipal corporations or political subdivisions of the state are not retail sales.⁸ If the state or private owner of the road is a retail customer of the prime contractor, the prime contractor must collect retail sales tax on the full contract price. WAC 458-20-170(4) (Rule 170(4)).

RCW 82.04.050(7) excludes from the definition of retail sale:

The term [retail sale] shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

At issue in this case is whether the contractor's charge for materials, labor, and services rendered in respect to the renovation of the boat launch on the taxpayer's property falls within the statutory definition of "retail sale," which subjects the charge to retail sales tax. Although the statute specifically identifies any street, place, road, easement, and right-of-way used primarily for foot or vehicular traffic as exempt, the statute is silent as to boat launch ramps.

RCW 82.04.050(7) is considered an exemption statute that is strictly construed against the taxpayer. *Port of Seattle v. Department of Rev.*, 101 Wn. App. 106, 113 (2000), *rev. denied*, 142 Wn.2d 1012, 16 P.3d 1264 (2000). Any ambiguity is construed against the taxpayer.

Under Rule 171 the term "building, repairing or improving of a publicly owned street, place, road, etc." is defined to include landscaping along the road, road signage, road lighting, and road drainage facilities. It is defined to not include "the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system." *Id.* In other words, right-of-way improvements directly related to the construction of roadways or pedestrian pathways for vehicular or pedestrian travel are exempt, but right-of-way improvements unrelated to such vehicular or pedestrian travel are not exempt.

⁸ Contractors are considered to be the consumers of the materials used in such projects, and must pay retail sales tax on the purchase of such materials. RCW 82.04.190(3).

In *Port of Seattle*, the Court of Appeals considered whether a[n] . . . airport terminal [was] eligible for the tax benefit of public road construction. While the Court recognized under a broad definition, airplanes were vehicles; in the context of RCW 82.04.050(7), “vehicle” is understood to mean a machine designed to move solely on land:

For after including 'street,' 'road,' 'highway,' 'right of way,' 'bridge,' 'tunnel,' 'trestle' and 'foot or vehicular traffic,' the words 'public transportation vehicle of any kind' still indicate that a vehicle in the popular sense -- a vehicle running on land -- is the theme. It is difficult to read words that so carefully enumerate the different types of infrastructure that support ground transportation and have no reference to runways or any kind of infrastructure that specifically supports aircrafts, as including airplanes or airports.

Because 'vehicle' may be reasonably interpreted to include either airplanes or be restricted to ground transportation, the term is ambiguous. Further, there is no legislative history that resolves this issue. Thus, we strictly construe the term against the taxpayer, the Port, and hold that the Sea-Tac terminal is not tax exempt because it is not used primarily for vehicles.

The Port contends that even if the terms 'mass public transportation terminal' and 'vehicles' are narrowly interpreted to exclude airport terminals and airplanes, Sea-Tac would still qualify for the tax treatment of RCW 82.04.050(7). The Port argues that Sea-Tac is a major terminal and hub for extensive foot and mass ground transportation and, thus, the Sea-Tac terminal is used primarily for foot and vehicular traffic under RCW 82.04.050(7). Contrary to the Port's arguments, the majority of the people who use the Sea-Tac terminal are there for air travel purposes (i.e. to fly on an airplane, to meet or drop off passengers of airplanes, etc.) The nature of the Sea-Tac terminal is not altered by the large number of people who arrive at the airport in vehicles, cars, shuttles, buses, etc. and who walk through the terminal. We hold that Sea-Tac airport is not used primarily for foot or vehicular traffic; it is used primarily for air travel.

101 Wn. App. at 116-17.

We interpret “vehicle” in RCW 82.04.050(7) narrowly. Vehicles run on land only. Boats are not vehicles.

We apply RCW 82.04.050(7) to boat ramps as the Court of Appeals applied of RCW 82.04.050(7) to airport infrastructure While people arrive in vehicles, and their trailers may roll down the ramp, they are there for boating on the water. The ramp is not used primarily for foot or vehicular traffic; it is used primarily for boating. Because the ramp is not used primarily for foot or vehicular traffic, the ramp's construction does not constitute public road construction. We conclude charges for the ramp's construction were subject to retail sales tax.

DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 28th day of July 2005.

Department of Revenue