

Cite as Det. No. 90-015, 9 WTD 65 (1990)

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of	)	
	)	No. 90-015
	)	
...	)	Registration No. . . .
	)	FY. . . /Audit No. . . .
	)	LEASEHOLD EXCISE TAX
	)	

- [1] RCW 82.29A.020: LEASEHOLD EXCISE TAX -- EXEMPTION -- OIL AND GAS EXPLORATION LEASES. Leases granting rights of access, occupancy or use solely for the purpose of removing materials or products purchased from a public owner are not subject to leasehold excise tax. Where lease permits exploration for materials or products which would be exempt if in production, such exploration leases are also exempt from leasehold excise 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.

NATURE OF ACTION:

Taxpayer petitions for correction of assessment of leasehold excise tax on lease of public lands for oil and gas exploration.<sup>1</sup>

FACTS AND ISSUES:

Johnson, A.L.J. -- During the term of its lease, taxpayer was engaged in oil and gas exploration. The Department of Revenue conducted a routine audit of the books and records of taxpayer's lessor and found that no leasehold excise tax had been collected by the lessor as required by Chapter 82.29A RCW. As a result, the above-captioned assessment was issued.

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

## DISCUSSION:

[1] RCW 82.29A requires that rental property owned by tax-exempt entities should be subject to leasehold excise tax when leased to private parties for private uses, because "private lessees of such public properties receive substantial benefits from governmental services provided by units of government." RCW 82.29A.010. The intent of the statute is to ensure that property owned by tax-exempt entities bears its fair share of the cost of governmental services when rented to a lessee who would be subject to property taxes if the lessee were the owner of the rented property.

RCW 82.29A.020 defines the arrangements which are subject to leasehold excise tax under this chapter:

"Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner. (Emphasis supplied.)

Taxpayer advances several theories supporting its argument that the leases are not subject to leasehold excise tax. We are unpersuaded by and do not address the merits of these arguments. Instead, we find that the leases are not taxable during the exploration phase based on the statutory exemption contained in RCW 82.29A.020. The exploration phase is the preliminary step to removing materials or products purchased from the lessor. We agree that the language of the exemption granted by the statute includes this type of lease, since the purpose of exploration is to locate materials or products for removal.

## DECISION AND DISPOSITION:

Taxpayer's petition is granted. The file will be remanded to the Audit Section for adjustment or cancellation consistent with this Determination.

DATED this 17th day of January 1990.