

Cite as 9 WTD 059 (1990)

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

In the Matter of the Petition) D E T E R M I N A T
I O N
For Correction of Assessment)
of) No. 90-12
)
 . . .) Watercraft Valuation No. . . .
)
)

[1] BOAT TAX: RCW 84.36.080 -- RCW 82.49.020(2) -- RCW 88.02.030(10) -- PROPERTY TAX -- AD VALOREM TAXATION --PARTIAL EXEMPTION -- VESSELS USED EXCLUSIVELY FOR COMMERCIAL FISHING -- VESSELS PRIMARILY ENGAGED IN COMMERCE. Vessels used exclusively for commercial fishing purposes or vessels primarily engaged in commerce are subject to partial ad valorem taxes for state support of common schools. Taxpayer's vessel, not used exclusively for commercial fishing nor primarily engaged in commerce, held exempt from ad valorem taxation.

[2] BOAT TAX: RCW 82.49.010 -- RCW 82.49.020 -- WAC 308-93-050 -- WATERCRAFT EXCISE TAX -- EXEMPTIONS -- BOAT -- REPAIRS TO. Boats temporarily in this state for repairs may be exempt of watercraft excise tax. A boat here 210 days in each of two consecutive years which boat is owned by a Washington domiciliary is not here temporarily and, thus, not exempt of 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.

TAXPAYER REPRESENTED BY: Self

NATURE OF ACTION:

Appeal of property tax assessment on boat allegedly used only in Alaska.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is the owner of a 28 foot boat named . . . Based on his failure to respond to a questionnaire, property tax was assessed against the vessel calculated on a valuation of \$42,000. The taxpayer appeals.

In his petition for correction of the assessment, the taxpayer questions the Department's valuation of the boat which he says is "more than a 100 per cent high." The point he stresses most, however, is jurisdiction. On that subject the taxpayer writes:

For the past four years the boat has been used exclusively in Alaskan and Canadian waters as transportation between native villages collecting ethnographic data. The home port is Juneau and before that it was Petersburg, Alaska. The boat enters Washington waters solely for repairs and winter maintenance.

The issue in this case is whether Washington may assert its property tax against a boat which is only maintained and repaired in this state.

DISCUSSION:

[1] All ships and vessels are exempt from personal property taxes except (1) vessels used exclusively for commercial fishing purposes and (2) vessels primarily engaged in commerce as a documented vessel of the United States. See RCW 84.36.090, RCW

84.36.080, RCW 84.36.079, RCW 82.49.020, and RCW 88.02.030. However, the latter two types of vessels are subject to property taxes levied only for any state purpose. The state levies property taxes for support of common schools (RCW 84.52.065).

If the vessel ". . ." is not "used exclusively for commercial fishing purposes" or is not "primarily engaged in commerce," then it is not subject to personal property taxation.

According to the taxpayer, "for the past four years the boat has been used exclusively . . . as transportation between native villages collecting ethnographic data."

We find the vessel does not satisfy the first exception because it is not used exclusively for commercial fishing purposes. Vis-a-vis the second, is it "primarily engaged in commerce"?

Department of Licensing regulation WAC 308-93-010 (3) defines "commerce" to mean:

. . . the transportation of goods, products, commodities, or passengers between specified points for which a fare or shipping cost is levied.

WAC 308-93-010 (16) defines "primarily" to mean:

. . . the principal purpose for which a vessel is used when considered in conjunction with all of its uses.

The vessel does not transport goods, products, commodities, or passengers between specified points for which a fare or shipping cost is levied. Its only use is "as transportation between native villages collecting ethnographic data." Not only is it not "primarily engaged in commerce," it appears

not to be engaged in commerce at all. Accordingly, we find that the vessel does not satisfy the second exception because it is not "primarily engaged in commerce."

Because the vessel is not "used exclusively for commercial fishing purposes" and is not "primarily engaged in commerce," we conclude that it is not subject to personal property taxation.

Ships, boats, or vessels may be subject to another variety of state taxation, however, namely, the watercraft excise tax. The statutory source of said tax is:

RCW 82.49.010 EXCISE TAX IMPOSED.

An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. . . .

RCW 82.49.020 provides:

EXEMPTIONS.

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.

[2] Clearly, the taxpayer does not qualify for exemption under sections two through six of the statute. With respect to one, we refer to WAC 308-93-050 which is nearly identical to RCW 88.02.030. Of the 12 types of vessels listed as exempt of watercraft excise tax, only three; (4), (9), and (12); have conceivable application to this taxpayer. (4) doesn't apply, however, because the taxpayer is a resident of this state.

Paragraph nine (9) of WAC 308-93-050 may be pertinent in that it exempts "vessels which are temporarily in this state undergoing repair or alteration." The taxpayer has stated that his boat was in Washington only for "repairs and winter maintenance". We note, however, that he filled out "Notice of Value" forms sent to him by the Department indicating that for both the tax assessment years 1986 and 1987 his craft was in this state for 210 days. For those two years, anyway, the ". . ." was in Washington 58 percent of the time. Indeed, that information would seem to indicate an annual pattern. We do not believe that a boat which spends more than half of the time every year in this state can reasonably be said to be here "temporarily." That is especially so when its owner is domiciled in Washington. Indeed, the Department

has held previously that for purposes of taxation, the situs of a boat is determined by the domicile of its owner. 5 WTD 333 (1988) at 335-337. We conclude that this vessel is not exempt under WAC 308-93-050 (9).

Nor is it exempt under section (12) which reads "A vessel not using the waters of this state". It uses the waters of this state every year coming and going to Alaska. Presumably, it floats on the waters of this state for most, if not all, of the 210 days it spends here every year. Notwithstanding the fact that its "productive" use may be in Alaska, we cannot make a finding that it does not use the waters of this state.

For the above-stated reasons, the subject vessel is not exempt of this state's watercraft excise tax.

DECISION AND DISPOSITION:

As to personal property tax, the taxpayer's petition is granted. That assessment is cancelled. Inasmuch as we have determined that the ". . ." is subject to watercraft excise tax, however, this case is remanded back to the Property Tax Division so that it or the Department of Licensing may calculate the amount of that tax

owed. Thereafter, another assessment will be issued which will be due on the date indicated thereon.

DATED this 11th day of January 1990.