

Cite as Det. No. 04-0121, 23 WTD 349 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 04-0121
)	
...)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .

- [1] RULE 178; RCW 82.12.020, RCW 82.04.190: USE TAX – VESSEL – USE AS A CONSUMER – BAREBOAT CHARTER. The taxpayer failed to prove it purchased the vessel solely for resale as tangible personal property in the ordinary course of business. Evidence suggested that the taxpayer intended to engage in crewed charter and that the taxpayer had used the boat for personal enjoyment.

- [2] RULE 178; RCW 82.12.0251: USE TAX – VESSEL – EXEMPTION – NONRESIDENT USING PROPERTY IN WASHINGTON ON A TEMPORARY BASIS. The use tax exemption for tangible personal property brought to Washington by nonresidents for temporary use in this state did not apply where the vessel was based in Washington and the vessel was used in a nontransitory business in Washington. Furthermore, the taxpayer, a corporation organized under the laws of another state, was not a nonresident of Washington.

- [3] RULE 238; RCW 82.12.020: USE TAX – VESSEL – EXEMPTION – NONRESIDENT VESSEL LOCATED IN WASHINGTON EXCLUSIVELY FOR REPAIRS. The vessel was not in Washington exclusively for repairs where the taxpayer intended to use the boat in a Washington charter business and boat was based in Washington. Furthermore, the taxpayer, a corporation organized under the laws of another state, was not a nonresident of Washington.

- [4] RCW 82.32A.020: TAXPAYER RIGHTS AND RESPONSIBILITIES – DETRIMENTAL RELIANCE. The taxpayer did not detrimentally rely on Taxpayer Information and Education Letter Rulings received after the tax at issue had already accrued.

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:

Chartoff, A.L.J. – A [State A] Corporation protests the assessment of use tax on a Yacht and protests the assessment of deferred sales tax on improvements to the Yacht. Taxpayer contends it acquired the Yacht for resale and also that it qualified for exemptions to the use tax for nonresidents temporarily using property in Washington. Taxpayer further contends that the first taxable use of the Yacht occurred approximately three years after it first acquired the Yacht in Washington and that use tax was properly due and paid at that time. We find that Taxpayer has failed to prove it qualified for any exemptions to the use tax and that the Audit Division (Audit) of the Department of Revenue (Department) properly assessed use tax at the time Taxpayer first acquired the Yacht in this state. We also find that Audit properly assessed deferred sales tax on repairs and improvements to the Yacht. Accordingly, we deny Taxpayer's petition for correction of assessment.¹

ISSUES:

1. Did Taxpayer use the Yacht as a consumer in Washington in May 1998 when it first acquired the Yacht?
2. Does the [Taxpayer's use of the] Yacht qualify for the exemption in RCW 82.12.0251 for use of tangible property by a nonresident while temporarily in the state?
3. Does the [Taxpayer's use of the] Yacht qualify for the exemption in WAC 458-20-238 (Rule 238) for vessels owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction?
4. Did Taxpayer detrimentally rely on written instructions from the Department?

FINDINGS OF FACT:

This is an appeal of use tax assessed against . . . (Taxpayer), on use of the yacht . . . (Yacht) in Washington waters in May 1998. This assessment resulted from an audit of Taxpayer's books and records for the period January 1, 1998 through December 31, 2001. Based on its review, Audit determined that Taxpayer's business activities during the audit period were ownership of a boat and a boathouse. Audit issued an assessment on February 26, 2003 for \$. . . consisting of:

- \$. . . use tax on the purchase price of the Yacht;
- a \$. . . credit for use tax paid with respect to the Yacht to the Department of Licensing on September 14, 2001;
- \$. . . deferred sales tax on boat repairs and improvements;
- \$. . . deferred sales tax on the construction of a boat house in Washington in 2000;
- \$. . . retail sales tax on the sale of another boat (the . . .) in Washington; and

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

- \$. . . interest.

Taxpayer filed a petition for correction of assessment disputing only the use tax on the Yacht, and the deferred sales tax on boat repairs and improvements. Taxpayer contends use tax was not due on the Yacht until September 2001 and that Taxpayer remitted the tax to the Department at that time. Taxpayer argues that use tax was not due prior to September 2001 because it used the Yacht in Washington solely for bareboat charter. Furthermore, Taxpayer contends it is a nonresident who used the Yacht in Washington either temporarily, or exclusively for repairs.

Taxpayer contends that the first use of the Yacht in Washington was on September . . . , 2001 in [Washington City A], so the lower [Washington City A] use tax rate . . . applies rather than the [higher Washington City B] use tax rate. In addition, Taxpayer contends that the value of the Yacht at that time was \$ This figure equals the book value of the Yacht and improvements less depreciation as calculated for federal tax purposes. Finally, Taxpayer contends that it detrimentally relied on written instructions from the Department and that the Department should cancel the assessment on this basis.

. . . . The Yacht was acquired . . . , 1998 jointly by . . . , and . . . , Inc, both Washington corporations wholly owned by [Mr. A.].

The Yacht was acquired in exchange for [property] and cash. The stated value of the Yacht on the exchange contract was \$² The two corporations took the boat to Washington and moored the boat at [Mr. A's] personal dock at his home on . . . , 1998. On . . . , 1998, the two corporations transferred the Yacht to Taxpayer in exchange for stock.

Taxpayer is a . . . corporation, incorporated on . . . , 1998, a few days prior to receiving the Yacht. Taxpayer used the [State A] office of [a Corporation] as its resident agent and maintained a Post Office Box in [State A]. Taxpayer registered to do business in [State A] on . . . , 1998.³ Taxpayer registered the Yacht with the United States Coast Guard to its [State A] address. During the entire audit period, the Yacht was moored in [State A] in daily public moorage for a total of 13 days. Taxpayer had no paying charters in [State A] during the audit period. Taxpayer had no employees in [State A] and conducted no business activity in [State A] during the audit period.

Taxpayer conducted its business primarily in Washington. Taxpayer has a Washington address and phone number that it used for most purposes. Taxpayer's officers and employees were based in Washington. The maintenance log indicates that business was conducted on the Yacht while it was located in Washington. Almost all repairs and improvements to the vessel were made in Washington. In 2000, Taxpayer constructed a boathouse for the vessel [in Washington]

² The vessel survey performed near the time of purchase estimates a value of [nearly double the value stated in the exchange contract]; . . . brokers had listed the Yacht for sale at [more than double the stated value in the exchange contract]. Taxpayer insured the Yacht for [over 50% more than the stated value in the exchange contract]. Because Taxpayer acquired the Yacht in an exchange, it is possible that the stated sales price is not the fair market value.

³ Taxpayer listed its Washington mailing address on its business license.

to house the Yacht.⁴ According to Taxpayer's representations, the Yacht was located in Washington approximately 63% of the time from purchase until Taxpayer registered the Yacht in Washington.⁵

Taxpayer reported \$. . . of rental income during the Audit period. All rental income was purported to be from half-day charters to [Mr. A] in Washington. Except for a May . . . , 1998 charter, Taxpayer has provided no evidence that it actually received the rental income and there are no bareboat charter contracts for these trips. Taxpayer's only other income during the Audit period came from the sale of [another] vessel, the . . . , in Washington.

Taxpayer provided the first page of two insurance policies obtained on the Yacht. The first policy (effective September 1998 through September 1999) lists Taxpayer as the insured. The second policy (effective September 1999 through September 2000) lists [Mr. A] and [his wife] dba . . . as the insured party. Taxpayer provided only the first page of the policies; we are unable to determine if there are any exclusions or limitations to the policy with regard to chartering.

After acquiring the Yacht in April 1998, Taxpayer had some repairs or maintenance done. On May 2, 1998, . . . , Taxpayer represents that [Mr. A] chartered the boat for a day cruise in Washington. Taxpayer contends that this charter was bareboat. As evidence, Taxpayer supplied a copy of the bareboat charter agreement, a check request form dated May 1, 1998, a check from . . . Inc. to Taxpayer dated August . . . , 1998, and the Taxpayer's Washington excise tax return filed in September 1998.

There is other evidence that suggests the May 2, 1998 charter was a crewed charter rather than a bareboat charter. Taxpayer's parent corporation hired a crew to bring the Yacht from California to Washington. The crew consisted of [captain], [chef], and two others. [Captain] and [chef] remained on [Company A]⁶ payroll for May, June and July of 1998. Invoices indicate that [captain] frequently represented himself to third parties as the captain of the Yacht. The boat log indicates that [captain] and [chef] piloted the vessel from May . . . through June . . . , 1998, on a cruise from [Washington] to [State A] and back. We note that there is no entry in the boat log on May 2, 1998 and Taxpayer has not explained who operated the boat on that day.

In addition, the activities of Taxpayer's agents, including its accountant, [Accountant] , cast some doubt on the evidence Taxpayer submitted with regard to the May 2, 1998 charter. On May . . . , 1998, Taxpayer's representative, [Accountant] , wrote to the Department's Taxpayer Information & Education Division (TI&E) for advice on the following fact pattern:

⁴ Assessed in the Audit.

⁵ Taxpayer brought the vessel [outside Washington] where it was moored from November 1999 through March 2000. Taxpayer also reports that the Yacht made five trips [outside Washington] each lasting up to four months (262 days over the 3½ year period). Taxpayer has no moorage records from these trips other than the 13 days moorage in [State A].

⁶ [Company A] is an entity that does payroll for companies owned by [Mr. A].

A nonresident corporation owned by a Washington resident purchased and took possession of a boat outside the state.⁷ The boat will be bare boat chartered primarily outside Washington, but may also be chartered in state. When not under charter, the boat will be moored in Washington. During that time, which may be anywhere from two to five months, there may be personal use by the corporate owner. However the owner will pay a charter fee to the corporation.

This suggests that initially, Taxpayer anticipated basing the vessel in Washington and also anticipated the owner would make personal use of the vessel in Washington. The statement about the owner's use does not specify whether the owner's use would be bareboat or crewed. On June 1, 1998, TI&E responded explaining Washington's use tax, generally, and enclosing informational brochures on the use tax.

On June 8, 1998, . . . charters brokered a boat charter to start July . . . , 1998 in Canada and to end August . . . , 1998 in . . . , Washington (the [ABC] charter). The charter was cancelled a week prior to the start date due to engine problems, and did not occur. Taxpayer argues that this was to be a bareboat charter. We do not agree. The broker charged [ABC] \$. . . , which was to include the boat rental and a crew. The broker's statement issued to Taxpayer provided that the \$. . . fee, less a broker's commission, would be paid to Taxpayer, and that the fee included the crew. There is a contract between [ABC] and Taxpayer stating that the charter is bareboat. There is also a separate crew agreement between [ABC] and . . . , but it provides that the crew will be paid only \$10 for their services. Because the crew's salaries were to be paid by the Taxpayer, we are not convinced that this charter was bareboat.

The Yacht maintenance log contains the following notes dated August 4, 1998:

CPA firm
Review with [Accountant]
- Bareboat Charter—no sales tax -
- Crewed Charter—subject to sales tax -
- nonbareboat charter service -
- prefer
 . . . be paid
 Skipper be paid by Charter people
-state has big problem with bareboat charter-
four categories
1.
2. lease/rent
3.
4. subject to sales tax—acquired outside Washington

⁷ Note that this statement is incorrect. . . . and . . . , both Washington residents, took possession of the Yacht outside Washington and brought the boat to Washington. Taxpayer took possession of the Yacht inside the state of Washington.

193A

174

The maintenance log contains the following notes from an in-person meeting with [Accountant] on August 5, 1998:

Rules to follow
... [8] – usage-
[May 2, 1998]-
personal use does not constitute
95% of boat use-
should a receipt be issued
-showed record of this through payment
of daily lease-
no-hired
What I must do—
agreement with ... to use
agreement with [captain] [9] to operate
Washington State Law
A-
Crew Solution-
*... can't supply crew
?-commercial documentation
personal property tax

On August 20, 1998, the maintenance log continues:

meet [Accountant] and ... [10]
here at the ... to discuss Tax and
Corporation Issues – outcome – vessel
is bareboat and managed by [captain] – Available for hire in the State
of Washington
A-check commercial doc with
... and
B- requirement of US coast guard
for commercial vessel operating
under ... for hire up to 12 persons

The same day, [Accountant] sent a second request for ruling to TI&E. This statement of facts states, inter alia:

⁸ Presumably, [Mr. A].

⁹ [Captain], Captain.

¹⁰ President, ...

The corporation will provide a captain and crew when the vessel is chartered in Mexico and [State A]. It will be chartered on a bareboat basis in the state of Washington.

...

When not under charter (which may be anywhere from two to five months), the vessel will be in Washington for repairs, maintenance and temporary moorage. To the extent that the vessel is in the state longer than 45 days, an extension will be filed on a Nonresident Out-of-State Vessel Repair Affidavit.

Three days later, [Company A]. issued a check to Taxpayer to pay for [Mr. A's] May 2, 1998 trip.¹¹ Taxpayer paid retailing B&O and retail sales tax with respect to this income to the Department in September 1998. On November 13, 1998, TI&E issued a letter ruling agreeing with Taxpayer's interpretation of the law.

After the May 2, 1998 trip, the Yacht remained in Washington until May . . . , 1998, when [captain] drove the boat to Canada for [Mr. A's] personal use. [Mr. A] and his guests met the boat in Alaska and stayed on board for several weeks. The Yacht returned to Washington on June . . . , 1998 having experienced engine problems. The boat log ends at this time.

From June 1998 through May 1999, the Yacht underwent repairs and upgrades. For example, the engine problems were repaired, the boat was extended to facilitate fishing, and the interior was completely renovated and redecorated. The maintenance log ends in December 1998. Taxpayer has provided invoices for the period under review. Taxpayer filed nonresident repair affidavits throughout this period. Nonresident repair affidavits are sworn statements that a nonresident owns the Yacht, that the Yacht is present in Washington exclusively for repair. Nonresidents who timely file these affidavits and comply with all the requirements are not liable for Washington use tax with respect to the vessel.

The following is a chronological list of events beginning May 1999:

- May . . . , 1999 – Yacht leaves [Washington City B] for Canada.¹²
- July . . . , 1999 – Yacht returns from Canada and arrives in [Washington].
- September . . . , 1999 – Taxpayer files a nonresident repair affidavit.
- September . . . , 1999 – Yacht leaves [Washington City B] bound for Mexico.
- April . . . , 2000 – Yacht returns from Mexico to [Washington].

¹¹ The check request is dated May 2, 1998.

¹² Taxpayer represents that all boat trips from May . . . , 1999 through September . . . , 2001 were half-day bareboat charters but has provided no evidence to substantiate this claim.

- April . . . , 2000 – Taxpayer files a nonresident repair affidavit.
- May . . . , 2000 – Taxpayer begins constructing a boathouse for the Yacht [in Washington City B]. Taxpayer pays no retail sales tax on the construction of the \$. . . boathouse.
- May . . . , 2000 – Taxpayer remits \$. . . tax on \$. . . of bareboat charter revenue on a Temporary registration certificate to the Department.
- May . . . , 2000 – Yacht leaves [Washington City B] for Canada.
- June 2000 – Audit begins a review of company related to Taxpayer and asks [Accountant] for list of all related companies. [Accountant] tells Audit that Taxpayer is a [State A] company with no business activity in Washington.
- September . . . , 2000 – Yacht returns from . . . to [Washington City B].
- September . . . , 2000 – Taxpayer states that the Yacht is “available for bareboat charter in Washington” through October . . . , 2000.
- October . . . , 2000 – Taxpayer files a nonresident repair affidavit
- January . . . , 2001 – Taxpayer files a nonresident repair affidavit.
- February . . . , 2001 – Taxpayer states that the Yacht is “available for bareboat charter in Washington” through June . . . , 2001.
- June . . . , 2001 – Yacht leaves [Washington City B] bound for Canada/[State A].
- July . . . , 2001 – Yacht returns from Canada to [Washington City B].
- July . . . , 2001 – Taxpayer states that the Yacht was “available for bareboat charter in Washington” through August . . . , 2001.
- August . . . , 2001 – Taxpayer states that the Yacht was under repair in Washington through August . . . , 2001.
- August . . . , 2001 – Yacht leaves [Washington City B] for Canada.
- September . . . , 2001 – Yacht returns from Canada to [Washington City B].
- September . . . , 2001 – Taxpayer states that Yacht was “available for bareboat charter in Washington” through September . . . , 2001.

- September . . . , 2001 – Taxpayer represents that [Mr. A] bareboat chartered the Yacht from [Washington City B] to [Washington City A]. Once in . . . , Taxpayer went to the Washington Department of Licensing and paid use tax on the Yacht. Taxpayer declared the value of the Yacht, including improvements, to be [56% of the value in the exchange contract] and paid use tax at the [Washington City A] rate of 7.6%. The [Washington City B] use tax rate is 8.8%. Taxpayer also remitted \$. . . in watercraft excise tax.
- October . . . , 2001 – Taxpayer remits \$. . . tax to the Department on \$. . . of charter income.
- September 2002 – Our review of United States Coast Guard Vessel Database found that the Yacht was registered to a new owner as of this date. We asked Taxpayer for a copy of the transfer documents and Taxpayer refused to provide them on the basis that this transfer occurred outside the audit period.

ANALYSIS:

Did Taxpayer use the Yacht as a consumer in Washington in May 1998 when it first acquired the Yacht?

RCW 82.12.020(1) imposes the use tax and provides that, when the retail sales tax is not paid, use tax is due on the use of personal property as a consumer in this state. The statute provides, in pertinent part:

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

RCW 82.12.010(3) defines “use” and provides, in part:

"Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, 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, distribution, or any other act preparatory to subsequent actual use or consumption within this state

RCW 82.04.190(1) defines “consumer” as:

Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person’s business . . . other than for purpose (a) of resale as tangible personal property in the regular course of business

If a person purchases a yacht solely for the purpose of leasing it to consumers in the ordinary course of business, no use tax is due. WAC 458-20-178(6) (Rule 178). However, if the owner asserts dominion and control over the yacht as a consumer, either for personal use or by operating a crewed charter, use tax is due. *See generally*, Det. No. 01-190R, 22 WTD 244 (2003); Det. No. 99-272R, 20 WTD 7 (2001). The taxable use need not be substantial. The tax is due on the first use in this state as a consumer. Rule 178(3) (“Tax liability imposed under the use tax arises at the time the property . . . is first put to use in this state.”)

In this case, Taxpayer admits using the Yacht as a consumer on September . . . , 2001. Taxpayer claims it initially acquired the Yacht in April 1998 for the purpose of bare charter in Washington and for use outside of Washington. Taxpayer contends that engine troubles made it impossible to charter the vessel and, on September . . . , 2001, Taxpayer made the decision to pay the tax and begin using the boat as a consumer.

Washington laws and state court rulings are clear that tax exemptions are to be narrowly construed. As stated in *Budget Rent-A-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171 , 174-75, 500 P.2d 764 (1972) :

Exemptions to the tax law must be narrowly construed. Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it. Exemptions to the tax laws must be narrowly construed.

See also Group Health Coop. of Puget Sound, Inc. v. Department of Revenue, 106 Wn.2d 391, 401-02, 722 P.2d 787 (1986); Det. No. 00-099, 20 WTD 53 (2000). Taxpayer must therefore clearly show that the purchase of the vessel was actually and exclusively for bareboat charter, and not for personal use. We find that Taxpayer falls short of carrying its burden.

It is undisputed that Taxpayer acquired the Yacht in Washington in April 1998 and that the Yacht remained in Washington waters for 63% of the days over the next several years. Taxpayer exercised dominion and control over the Yacht by authorizing repairs and improvements in Washington, using the Yacht as an office in Washington, and moving the vessel into and out of the State.

Taxpayer cannot prove it had a single charter, bareboat or otherwise, during the over three-year period it claims it held the Yacht for charter. Taxpayer has provided evidence that it chartered the Yacht bareboat to [Mr. A] on May 2, 1998. However, the notes in the maintenance log, the timing of the payment, and the lack of boat log entry on May 2, 1998 call the credibility of the documents presented into question.

In addition to the May 2, 1998 charter, Taxpayer claims that it chartered the Yacht on a bareboat basis to [Mr. A] for ten half-day trips in Washington.¹³ Taxpayer remitted \$. . . tax on \$. . . of

¹³ All of the alleged charters involved a US border crossing.

retailing income allegedly received during the audit period. Taxpayer however, has provided no financial records to indicate that the charter fees were actually paid (except for the May 2, 1998 charter), and Taxpayer provided no boat log records. We have requested copies of all bareboat charter agreements for the audit period, and Taxpayer has supplied only the May 2, 1998 charter agreement. Without more evidence, Taxpayer cannot prove that it acquired the Yacht actually and exclusively for bare charter, and not personal use.

Other evidence suggests that Taxpayer acquired the Yacht to engage in crewed charters. We note that Taxpayer entered into a crewed charter contract in June 1998, which was to occur partially in Washington. While this charter did not occur, we find that it casts doubt on Taxpayer's claim that it engaged solely in bareboat charters in Washington. We also question why Taxpayer's first letter to TI&E states that it acquired the Yacht for bareboat charters only, while the second letter states that it would engage in crewed charters outside the state.

In summary, we find Taxpayer has not shown that its use of the Yacht in Washington was for bareboat charter. Instead we find that Taxpayer's use of the Yacht was either personal in nature or for crewed charter. We conclude that the Department properly assessed tax on the purchase value of the Yacht.¹⁴ We also conclude that Taxpayer was not eligible to give a resale certificate when purchasing repairs and improvements for the Yacht because the Yacht was not used exclusively for resale. Accordingly, we conclude that the Department properly assessed deferred sales tax on those amounts.¹⁵

Does Taxpayer qualify for the exemption in RCW 82.12.0251 for use of a tangible property by a nonresident while temporarily in the state?

There are several exemptions from use tax based on non-residency. As we explained, *supra*, a Taxpayer claiming an exemption has the burden of showing its qualification for the exemption. *Group Health*, 106 Wn. 2d at 401-02; *Budget Rent-A-Car*, 81 Wn. 2d at 174-75. Also, the exemption must be construed narrowly. *Id.*

The first exemption we will consider is an exemption for nonresidents using property temporarily in this state. The exemption is found in RCW 82.12.0251¹⁶ which provides, in part:

¹⁴ We note that even if we were to accept Taxpayer's argument that the first use was on September 14, 2001, the assessment would be sustained. WAC 458-20-145 provides that use tax would be due at the [higher Washington City B] rate rather than the [lower Washington City A] rate. Furthermore, we believe that Taxpayer undervalued the Yacht. We discovered that USCG records indicate that Taxpayer transferred the boat to another person in September 2002. If this were a bonafide sale to a third party, the value at the time of sale would be strong evidence of value on September 2001. We have requested information on this transfer and Taxpayer has refused to provide it. We can only conclude that the sale documents demonstrate a fair market value significantly higher than the value asserted. We believe it is reasonable to assume that the fair market value of the Yacht on September 14, 2001 equaled the purchase price plus the cost of improvements.

¹⁵ Taxpayer has shown that it paid retail sales tax on a portion of its receipts. Taxpayer disputes Audit's calculation of receipts for which retail sales tax had not been paid. Taxpayer however, has not proposed an alternative amount or methodology.

¹⁶ Version in effect 1998; the statute has been amended effective 2003.

The provisions of this chapter shall not apply in respect to the use of any article of tangible personal 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;

This nonresident exemption applies to temporary presence for personal use (including pleasure use), repair, and transitory business use. *See* Det. No. 87-105, 3 STD 1 (1987). In order for Taxpayer to claim the benefit of this exemption, it must prove:

1. Taxpayer is a nonresident,
2. the Yacht is “temporarily within the state of Washington,” and
3. the Yacht is not used in conducting a nontransitory business activity.

In this case, we find that Taxpayer is unable to prove any of these factors.

Is Taxpayer a nonresident for purposes of the use tax?

The terms “resident” and “nonresident” are not explicitly defined in Washington’s revenue laws. In Det. No. 96-049, 16 WTD 177 (1998), we held that a “resident” is defined as “as person who manifests an intent to live or be located in this state on more than a temporary or transient basis.” We also held that a person may have more than one residence. *Id.* A finding of residency or nonresidency is made on a case-by-case basis by considering various objective factors which indicate an intent to be located in Washington on more than a temporary basis. *Id.*

In applying the above principles to the facts at issue, we find that Taxpayer has not shown it is a nonresident of Washington. While Taxpayer is a [State A] corporation, its ties to [State A] are slim, at best. Taxpayer used . . . corporation as its resident agent, and has no other employees or agents in [State A]. Taxpayer has a post office box in [State A]. Taxpayer moored the vessel in [State A] for a total of 13 days, and then only in daily public moorage. Taxpayer has no [State A] business activity during the audit.

On the other hand, Taxpayer clearly manifested an intent to be located in Washington on more than a temporary or transient basis. Taxpayer’s officers and employees were all located in Washington. Taxpayer built a boat house for the Yacht in Washington. Taxpayer obtained repairs and improvements in Washington. Taxpayer held meetings in Washington. Taxpayer used a Washington address and phone number for most purposes, including the address on its [State A] business license. During the audit period, Taxpayer’s sole assets were primarily located in Washington. During the audit period, Taxpayer’s principal place of business was in Washington. Based on these facts, we find that the Taxpayer is not a nonresident of Washington.

Was the Yacht “temporarily in the state of Washington”?

We find that during the audit period, the Yacht was based in Washington. Taxpayer’s letters to TI&E demonstrate that Taxpayer intended to use Washington as the Yacht’s home port. Taxpayer moored the Yacht here for the majority of the audit period and constructed a boat house here. When the Yacht left the state, it always returned here. In comparison, Taxpayer is unable to show that the Yacht spent any significant length of time in any other place except Mexico, where it rented a slip for four months. Accordingly, we find that the Yacht was based in Washington, and therefore not here temporarily.

Was the Yacht used in a non-transitory business in Washington?

The temporary use exemption applies only to personal use or transitory business use. The exemption does not apply if the Yacht is used in a non-transitory business in Washington.

The term “non-transitory business use” is defined in Rule 178(7)(c)(i), which provides:

The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(Emphasis ours).

Taxpayer claims it was engaged in the business of renting the Yacht in the state of Washington. All of Taxpayer’s alleged charters occurred in the state of Washington. In addition to our finding that the taxpayer is not a nonresident, we find that Taxpayer’s business use of the Yacht in Washington was not merely transitory. Accordingly, the exemption for a nonresident temporarily using property in this state does not apply.

Does Taxpayer qualify for the exemption in Rule 238 for vessels owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction?

There is a second nonresident exemption found in Rule 238(4)(c) which exempts vessels bought into this state exclusively for repair. Rule 238(4)(c) provides:

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.

We find that Taxpayer has not shown it is eligible for this exemption. First, we find, based on the analysis above, that Taxpayer was not a nonresident within the meaning of the exemption. Second, we find that the Yacht was not in this state exclusively for repairs, alterations or reconstruction.

While the Taxpayer has shown that the Yacht underwent numerous repairs and improvements while in Washington, the facts show that the Yacht was not in Washington exclusively for repairs. Taxpayer states that it intended to use the boat in a charter business in Washington. Taxpayer purports to have chartered the Yacht to [Mr. A]. Although we have found that Taxpayer has not proved this charter, the assertion indicates that the Yacht was not in this state exclusively for repairs. Further, we have found from the evidence submitted that the Yacht was based in Washington. Taxpayer had permanent moorage here and even built a boathouse for the Yacht here, as we discussed above. Accordingly, we find that the exemption for vessels in Washington exclusively for repair does not apply.

Did Taxpayer detrimentally rely on written instructions from the Department?

The Taxpayer bill of rights is found in RCW 82.32A.020, which provides, in pertinent part:

The taxpayers of the state of Washington have:

...

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

Taxpayer argues that it sought written advice from the Department and should be allowed to rely on that advice. Taxpayer argues it sought written advice first in May 1998, and again in August 1998. It argues that it complied with each condition of the ruling it received from the Department in November 1998 and therefore the assessment should be cancelled.

We find no merit in the assertion that the tax should be cancelled. First, Taxpayer made both requests for written advice after Taxpayer had already acquired and used the Yacht in Washington. Therefore, the Taxpayer could not have relied on the rulings in acquiring and using the Yacht in Washington. Second, as addressed in detail above, some of the factual assertions which are pivotal to the ruling provided in November, 1998, have been shown to be inaccurate.

Thus the factual circumstances to which the ruling applies are not the facts of this case and so do not provide a basis for canceling the assessment.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 27th day of May 2004.