

Cite as Det. No. 04-0162, 24 WTD 194 (2005)

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. 04-0162
)	
...)	Registration No. . . .
)	Warrant No. . . .
)	Docket No. . . .
)	

- [1] RCW 84.40.065, RCW 84.56.440: PROPERTY TAX – SHIPS AND VESSELS – PENALTIES AND INTEREST – NOTIFICATION REQUIREMENTS – NOTIFICATION ACCOMPLISHED UPON PROPERLY MAILING – FAILURE TO RECEIVE NOTICES IMMATERIAL. RCW 84.40.065's requirement that the Department mail a taxpayer a notice showing the valuation of the ship or vessel assessed and a statement of the amount of tax owed are satisfied when the Department deposits the notices in the mail properly addressed and stamped. Failure of the taxpayer-addressee to receive the notices is immaterial regarding the question of whether the Department has properly assessed late payment penalties and interest.
- [2] RCW 84.56.440: PROPERTY TAX – SHIPS AND VESSELS – DELINQUENCY PENALTY – WARRANT PENALTY – INTEREST – DELINQUENCY NOTICES – FAILURE TO RECEIVE IMMATERIAL. Delinquency notices are only collection tools. Failure of a taxpayer to receive delinquency notices is not a defense to the assessment of a delinquency penalty, warrant penalty, or interest on past-due taxes.
- [3] CHAPTER 84.56 RCW: PROPERTY TAX – SHIPS AND VESSELS – WAIVER OF PENALTIES AND INTEREST. The Department has no authority to waive or cancel late payment penalties or interest assessed on past-due property taxes on commercial vessels.

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.

Prusia, A.L.J. – The former owner of a commercial vessel, who sold it in 1999, requests refund of late payment and warrant penalties and interest assessed on the personal property taxes due on the vessel for 1999, contending he did not receive notification of the taxes due until after the warrant was issued, he had assumed his buyer had taken care of any tax liability, and he would have immediately paid the taxes had he known they were due. We find the Department notified the taxpayer of the tax obligation. . . . We conclude the Department has no authority to waive penalties or interest properly assessed on delinquent personal property taxes. We grant the petition for refund in part, with respect to half the warrant penalty, but otherwise deny the petition.¹

ISSUES

1. Did the Department notify the taxpayer of the taxes owed?
- . . .
3. May the Department waive the late payment or warrant penalties or the interest?

FINDINGS OF FACT

This is a petition for refund of a twenty percent delinquency penalty, a ten percent warrant penalty, and interest on an assessment of commercial vessel property tax.

The taxpayer, . . . , owned a yacht charter business. He opened a tax reporting account with the Department of Revenue (Department) in April 1998, and regularly filed excise tax returns showing zero tax due. The taxpayer owned a commercial vessel, [“the Vessel”] that he used in the business. The taxpayer listed the vessel with the Department. The listing gave his home address as [West 1234 Alder, Washington city, WA 91234.] The taxpayer actually resided at [1234 W. Alder Avenue, Unit 1, Washington city, Washington 91234-1234.]

In early 1999, the taxpayer retired, with plans to sell his [Washington city] residence and move to [State A]. He put his [Washington city] home up for sale.

In December 1998, the Special Programs Division of the Department of Revenue had sent the taxpayer the annual charter vessel decals for [Vessel], with a cover letter stating the purpose of the decals, and stating that if the recipient had sold the vessel or was no longer using it commercially, he should return the decals and provide the name and address of the new owner, along with the date of sale and sales price. The letter was addressed to the taxpayer at [W 1234 Alder, Washington city, WA 91234-0000.] The taxpayer received the letter at his [Washington city] home.

¹Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

On January 9, 1999, the Special Programs Division sent the taxpayer a 2000/1999 Commercial Watercraft Personal Property Notice of Value. The notice stated the value listed on the notice would be used to determine the taxpayer's tax liability for 1999, and stated that the Department would collect the tax in 2000. The notice also was addressed to [W 1234 Alder,] but was delivered to the taxpayer's home. The taxpayer completed the notice, stating the vessel was still used for commercial purposes, and returned it on February 17, 1999.

On March . . . , 1999, the taxpayer traded-in [Vessel] on a new pleasure boat.

On March 25, 1999, the taxpayer returned the Special Programs Division's December 1998 letter, with a note that he had traded [Vessel] on a new pleasure boat on March . . . , 1999, and a statement of the trade-in allowance and the entity to which he traded the vessel.

In May 1999, the taxpayer sold his [Washington city] home at [1234 W. Alder Avenue]. The closing and possession date was May . . . , 1999. Taxpayer owned an apartment in [Washington city] where he stored some belongings, but moved to [State A]. He notified creditors to send mail to his [State A] address, and gave the [Washington city] post office the [Washington city] apartment address as a forwarding address.

When he traded-in [Vessel], and for several years thereafter, the taxpayer assumed that the purchaser of the vessel had taken care of all closing costs and any taxes owing on the vessel.

On June 11, 1999, the Special Programs Division sent the taxpayer a letter, also addressed to [W 1234 Alder, Washington city, WA 91234-0000], stating his excise tax account was closed as of March . . . , 1999, and stating he was responsible for the 1999 personal property taxes, since the sale did not take place until after January 1, 1999. Enclosed with that letter was another letter stating the amount of personal property tax due on [Vessel] for 1999 was \$ The enclosed letter stated the taxes were due by April 30, 2000. The taxpayer states he did not receive the June 11, 1999 letter at his forwarding address. The Department has no record that the post office returned the letter.

On May 19, 2000, the Special Programs Division sent the taxpayer a 5% delinquency letter, also addressed to [W 1234 Alder] address. Taxpayer states he did not receive the letter. At that time, the taxpayer's forwarding from his former residence address had expired. The Department has no record that the post office returned the letter.

On May 23, 2003, the Special Programs Division sent the taxpayer a 20% delinquency letter, addressed to [1234 W. Alder Ave. #1] in [Washington city], which was the correct address of taxpayer's former residence. The letter demanded full payment of taxes, interest, and penalty by June 6, 2003. The taxpayer states he did not receive the letter. His forwarding at the post office had long ago expired. The Department has no record that the post office returned the letter.

On November 4, 2003, the Department's Compliance Division issued a warrant against the taxpayer for collection of the delinquent commercial vessel property tax on [Vessel]. The amount of the warrant was \$. . . , consisting of \$. . . tax, \$. . . delinquency penalty, \$. . .

warrant penalty, and \$. . . interest. The Special Programs Division sent the warrant to the taxpayer at [1234 W. Alder Ave Apt 1] in [Washington city]. The post office returned the warrant undelivered on November 18, 2003.

The Compliance Division then obtained [an address in a different Washington city (“city B”)] for the taxpayer, and re-sent the warrant to the taxpayer at the [city B] address. The taxpayer received the warrant. On December 15, 2003, the taxpayer paid the warrant plus additional accrued interest.

The taxpayer petitions for refund of the interest, delinquency penalties, and warrant penalty paid, contending he had no notice or knowledge of the taxes due before receiving the warrant in early December 2003.

ANALYSIS

Commercially operated vessels exempted from the Watercraft Excise Tax are subject to the state school levy portion of the personal property tax. WAC 458-17-110. It is not disputed that the [Vessel] was subject to personal property tax.

Personal property taxes are assessed annually. The assessment year commences on January 1 and ends on December 31. RCW 84.04.040. Taxes on commercial ships and vessels are due and payable to the Department before April 30 of the year following the assessment year. RCW 84.56.440. Listing of property, and valuation procedures, are set out in statutes and rules. For the convenience of the vessel industry, the Department publishes a summary of tax laws and rules applicable to vessels, entitled “Guide for Vessel Brokers and Dealers.” The guide published in June 1998 explained the personal property tax imposed on commercially-operated vessels, as follows, at pages 62-63 (footnotes added):

Commercially operated vessels exempted from the Watercraft Excise Tax are subject to the state school levy portion of the personal property tax. Vessels used exclusively for commercial fishing purposes and U.S. Coast Guard documented vessels used primarily for commercial purposes such as charter and time-share boats, tugs and barges are subject to this tax. The tax rate is limited to no more than \$3.60 per one thousand dollars (\$1,000) of market value.²

Vessels subject to the personal property tax are listed with and assessed by the Special Programs Division of the Department of Revenue. All vessels are taxable for the entire year unless they are apportionable. Through apportionment, an owner may deduct those days the vessel is out of state. They may also deduct those days that the vessel is in state *exclusively* for repairs. The tax is a personal property tax and is based on the status of the vessel in the state. It is not based on use, like the Watercraft Excise Tax for pleasure craft.

² RCW 84.52.065.

Each January, the Department sends a *Watercraft Personal Property Notice of Value* to the vessel owner of record. This documents the market value, and asks each apportionable vessel to report how many days the vessel was in the state the previous year.³

The Department of Revenue bills and collects personal property tax. The tax is based on who owns the vessel as of January 1st of a given year. This is the assessment year.

In the year following the assessment year, the vessel owner is mailed a tax statement in mid-February. Full payment is due April 30th.⁴

Example: Commercial vessel Z is purchased on August 14, 1995. The new owner's first taxable year is 1996, as January 1, 1996 is his first January 1 of ownership. The 1996 tax will be collected by April 30, 1997, and the tax is based on the number of taxable days the vessel was in the state in 1995.

If the vessel is sold or converted to pleasure use in the middle of the year, the personal property tax is still the responsibility of the owner of record on January 1 of that year. If selling the boat, include the tax responsibility in the contract and contact the Commercial Vessel Tax unit, at (360) 753-1520, for the amount of tax due. If converting the vessel to pleasure use, contact the Commercial Vessel Tax unit for guidance. Payment in these instances can be made two ways: either wait for the bill next year or pay in advance.

RCW 84.56.440 imposes late payment penalties and interest when payment of property tax on vessels is not received by the Department by the due date. Specifically, RCW 84.56.440(2) and (3) provide:

(2) If payment of the tax is not received by the department by the due date, there shall be imposed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be imposed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be imposed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than five dollars.

(3) Delinquent taxes under this section are subject to interest at the rate set forth in RCW 82.32.050 from the date of delinquency until paid. Interest or penalties collected on delinquent taxes under this section shall be paid by the department into the general fund of the state treasury.

When personal property taxes on commercial vessels are more than fifteen days delinquent, the Department may issue a warrant to collect the unpaid taxes plus penalties and interest. RCW

³ Notice required by RCW 84.04.065(3).

⁴ Notice required by RCW 82.04.065(3).

82.32.310; RCW 84.56.440(5). When a warrant is issued, the Department is required to add a penalty of five percent of the amount of the unpaid tax. RCW 84.56.440(5).⁵

Under the applicable statutes and rules, the taxpayer owed personal property tax on the [Vessel] for the year 1999 because he was the vessel's owner on January 1 of 1999. The tax was due and payable on or before April 30, 2000. The Department was required to mail the taxpayer a notice, in January 1999, showing the valuation of the vessel, and subsequently mail the taxpayer a tax statement showing the valuation for 1999 and the amount of tax for 1999 payable in 2000. If the taxes owing for 1999 were not paid by the April 30, 2000 due date, the Department was required to assess penalties and interest on the delinquent taxes, and authorized to issue a warrant to collect the delinquent obligation.

[1] The taxpayer contends the penalties and interest should be waived, because he was not notified of the taxes due for 1999 until he received the warrant in early December 2003. This raises an issue of whether the penalties and interest were properly imposed in the first place. Unlike excise taxes, which are levied by statute, personal property taxes must be levied by the state in each year, and in the specific case of commercial ships and vessels, the Department is required to assess the vessels, mail the owner a notice showing the valuation for the current year, and subsequently mail the owner a "tax statement" showing the valuation and the amount of tax owed. RCW 84.40.065(3).

The taxpayer asserts he did not receive notice of the tax owed, specifically that he did not receive the June 11, 1999 tax statement of valuation and amount of tax due, the May 19, 2000 delinquency letter, or the May 22, 2003 delinquency letter.

Whether the taxpayer received the June 11, 1999 tax statement is immaterial. RCW 84.40.065 only requires that the Department mail the tax statement to the owner or other person listing the ship or vessel. It is a general rule of law that when mailing of a notice is authorized as a mode of service, "service is accomplished by depositing the notice in the mail properly addressed and stamped. Failure of the addressee to receive the notice is immaterial." 58 Am. Jur. 2d Notice § 32. RCW 82.32.130 expressly sets out this general rule in the case of excise taxes.⁶ We

⁵ RCW 84.56.440(5) states:

Delinquent taxes under this section, along with all penalties and interest thereon, shall be collected by the department according to the procedures set forth in chapter 82.32 RCW for the filing and execution of tax warrants, including the imposition of warrant interest. In the event a warrant is issued by the department for the collection of taxes under this section, the department shall add a penalty of five percent of the amount of the delinquent tax, but not less than ten dollars.

⁶ RCW 82.32.130 states: ". . . but if the order or notice is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department of revenue, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served or mailed shall not release the taxpayer from any tax or any increases or penalties thereon." *See also Det. No. 87-344*, 4 WTD 261 (1987).

Moreover, we find that the taxpayer did receive notice of the tax. It is not disputed that he received the Department's January 9, 1999 notice, which notified him of the value on which his personal property tax liability for 1999 would be based, and notified him that the Department would collect the tax in 2000. We also must find that

understand that the address to which the tax notice was mailed, [West 1234 Alder], was not the correct format for the taxpayer's address. However, it was the address the taxpayer provided the Department on his personal property listing, and the taxpayer received earlier notices at that address. Because the Department mailed the tax notice to the address provided by the taxpayer, the taxpayer will not be allowed to claim lack of notice at this time.

We find the taxpayer's statement that he did not receive the May 19, 2000 delinquency notice, or the May 22, 2003 delinquency notice, credible. Objective evidence supports the assertion. He no longer resided at the address to which the notices were mailed. His forwarding had expired. The fact that the taxpayer promptly paid the warrant after receiving it bears positively on his credibility.

[2] However, the fact that the taxpayer did not receive the two delinquency notices also is immaterial. The Department is not required to send such notices in order to establish an obligation. They are simply collection tools. Moreover, the taxpayer cannot be heard to complain that he did not receive the notices, because he failed to keep the Department informed of his current address. Being on notice that he had a tax liability that would be payable in the following year, the taxpayer should have kept the Department informed of his current address, if he wanted to receive any further communications from the Department regarding the liability.⁷

...

[3] The final issue is whether the Department can waive the remaining penalties or interest assessed. In the case of excise taxes, the Department has some, limited, authority to waive penalties and interest. RCW 82.32.105; RCW 83.32A.020. However, there is no statutory authority for waiver or cancellation of late payment penalties, warrant penalties, or interest provided in Chapter 84.56 RCW. RCW 84.56.025 provides for waiver in certain instances, but only for penalties and interest assessed for delinquencies on real property taxes. We conclude we have no authority to waive or cancel late payment penalties or interest assessed on past-due personal property taxes on commercial vessels. *Det. No. 88-189*, 5 WTD 333 (1988).

DECISION AND DISPOSITION

The petition for refund is . . . denied.

Dated this 26th day of July 2004.

the taxpayer received the June 11, 1999 tax statement. There is a presumption that the mails proceed in due course and that a letter is received by the person to whom it is addressed. *Avgerinion v. First Guar. Bank*, 142 Wash. 73, 78, 252 P. 535 (1927); *Automat Co. v. Yakima County*, 6 Wn. App. 991, 497 P.2d 617 (1972).

⁷ We have no reason to doubt the taxpayer's assertion that, had he received the penalty notices, he would have realized that his purchaser had not taken care of taxes owed on the vessel, and would have promptly paid them, avoiding additional penalties. However, his misunderstanding about what his purchaser had done, and his failure to receive the delinquency letters, are circumstances the taxpayer could easily have avoided.