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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 20-0019
)	
...)	Registration No. . . .
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Rule 17802; RCW 82.12.010: USE TAX – PURCHASE PRICE. The purchase price of a sailboat was found to be the true value thereof where the taxpayer produced an independent, written appraisal that valued the sailboat at a similar amount.

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.

Ryan A. Johnson, T.R.O. – An individual disputes the Department of Revenue’s (“Department”) denial of a partial refund of use tax the individual paid to the Department of Licensing (“DOL”) to title and register a sailboat in his name. The individual asserts that the price at which he purchased the sailboat, which is less than one quarter of DOL’s valuation, is the proper basis for calculating the use tax and he is entitled to a refund of use tax paid in excess of this. We grant the petition.¹

ISSUE

Did the Department properly value a sailboat for use tax purposes under RCW 82.12.010 and WAC 458-20-178?

FINDINGS OF FACT

. . . (“Taxpayer”) is an individual who resides in . . . Washington. . . . Taxpayer became aware of a . . . sailboat (“the Boat”) that was located at [a] marina and posted for sale at the price of \$[6,000].^[2] Taxpayer offered the seller of the Boat \$[4,500] for the Boat and the seller accepted. The sale was completed [in] 2019.

Shortly thereafter, Taxpayer went to one of the DOL’s field offices to title and register the Boat in his name. In the process, Taxpayer showed DOL the certificate of title, which included the sale

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

² [The numbers used in this published determination are not the actual numbers. The numbers provided should make the determination easier to read without revealing identifying information about the transactions at issue.]

price and date of sale. DOL told Taxpayer that in order to register the Boat, he would have to pay use tax based on the fair market value of the Boat according to industry standards, which DOL determined to be \$[15,000], rather than the \$[4,500] purchase price. Taxpayer paid as required by DOL in protest and [in] 2019, filed an application for refund of use tax with the Department.

In his refund application, Taxpayer states that the Boat was in poor condition at the time he purchased it and that he had already put in 200 hours of his own time toward its repair. Taxpayer also asserts that the Boat required further repairs in several of its systems, including the marine stove, hot water heater, sump pump, shower, and the electrical system through the hull and mast. Attached to his refund application, Taxpayer included a copy of the bill of sale. The bill of sale, signed only by the seller, lists a number of interior and exterior repairs that allegedly must be done to the Boat. These include replacing and recovering interior cushions and linings, resealing windows and hatches, updating instruments, repainting the bottom of the hull, replacing the bilge pump, repairing exterior handrails, and refinishing all woodwork.

On June 24, 2019, the Department denied Taxpayer's refund request because Taxpayer did not include any third-party materials to support his claimed value of the Boat, such as an industry guide valuation, retail appraisal, or estimate of repairs. That same day, Taxpayer filed a petition for review of the denial. In the petition, Taxpayer asserts that the use tax he paid on the Boat does not represent its true value, and that the bill of sale is sufficient to establish that its true value is the \$[4,500] he paid for it. Taxpayer submitted the petition along with an email that included the following:

. . . I paid \$[4,500] for a boat that needed a good deal of time, effort and repair. \$[4,500] was a fair market value at that time due to the boats [sic] condition and needs to be truly seaworthy (or fit for use to which "use tax" is tied). I paid taxes with a value assessment of [\$15,000] because the Washington State requires title transfer to be done quickly and the licensing agent I went to, to file for transfer, informed me that I could file for a refund of use tax at a later date.

If the boats [sic] value is in question, a simple look at its previous sales records will show that it sold as a derelict vessel for about \$[1,900] in late 2017. Between October 2017 and when I purchased the boat in early 2019 the boat sat in sea water, leaking water into the bilge and wiring, eating away at bottom paint, and growing a great deal of mold; if anything it lost value.

Taxpayer submitted an invoice from the previous sale of the Boat. The invoice shows that the seller purchased the Boat in 2017 through an online auction of abandoned boats for \$[1,900]. Taxpayer also submitted a written appraisal of the Boat that had been performed by a yacht broker. The broker listed a number of significant repairs needed for the Boat and appraised the value of the Boat at \$[4,000]. The list of needed repairs included replacing the sails, repairing the motor, cleaning and waxing the hull, and painting the bottom. Subsequent to the filing of the petition, Taxpayer listed the Boat (after he had performed substantial work on the Boat) for sale at the price of \$[7,000].

ANALYSIS

Washington imposes both a retail sales tax and a use tax. Retail sales tax is imposed on the sale of tangible personal property and certain services in this state. RCW 82.08.020; RCW 82.04.050. The use tax complements the retail sales tax and is imposed “for the privilege of using within this state as a consumer . . . [a]ny article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment . . .” on which Washington retail sales tax has not been paid unless there is an applicable statutory exemption, deduction, or exclusion. RCW 82.12.020(1).

RCW 82.12.010(6) broadly defines “use”:

“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 “[a]ny person who purchases, acquires, owns, holds, or uses any article of tangible personal property . . . other than for purpose of (a) resale as tangible personal property in the regular course of business” RCW 82.12.010(1) adopts RCW 82.04.190’s definition of “consumer.” Use tax liability arises at the time the property is first put to use in this state. RCW 82.12.010(6)(a); *see also* WAC 458-20-178.

Use tax is levied in an amount “equal to the value of the article used . . . multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.” RCW 82.12.020(4)(a). “Value of the article used” is generally defined in RCW 82.12.010(7)(a) as “the purchase price for the article of tangible personal property, the use of which is taxable under this chapter” For purposes of use tax, “purchase price” means the same as “sales price” in RCW 82.08.010(1)(a)(i), which is defined as the:

[T]otal amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. . . .

However, when the article in question is sold for a price that does not represent its true value, “the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.” RCW 82.12.010(7)(a); *see also* WAC 458-20-17802 (“Rule 17802”).

Rule 17802 is the Department’s administrative rule that explains the measure of use tax on boats and vehicles. Under Rule 17802(5), a taxpayer may submit certain types of documentation to contest DOL’s valuation of a boat, when DOL finds that the purchase price does not represent the

true value. These types of documentation include an industry-accepted pricing guide, a declaration signed by both the buyer and seller, a written appraisal, a declaration of use tax completed by a Department employee, or a repair estimate. *Id.*

Here, the purchase price was \$[4,500]. About 18 months prior, the Boat had sold at an abandoned boat auction for \$[1,900]. After Taxpayer purchased it, the Boat was appraised by an independent third-party at a value of \$[4,000] due to its need for significant repairs. Currently, after significant labor and repairs, Taxpayer has the Boat listed for sale at the price of \$[7,000]. Based upon these facts, we find that the purchase price of \$[4,500] represents the true value of the Boat at the time Taxpayer first used it within the meaning of RCW 82.12.010(6)(a) by taking possession of the Boat in this state. As such, we find that the DOL incorrectly determined the Boat's fair market value, and we grant Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 23rd day of January 2020.