

Cite as Det. No. 01-190R, 22 WTD 244 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>F I N A L</u>
Assessment of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-190R
)	
...)	Registration No. ...
)	FY ...
)	FY ...
)	Docket No. ...

RCW 82.12.0254: USE TAX – WATERCRAFT – INTEREST OR FOREIGN COMMERCE – PRIMARY USE. When a vessel is used in Washington for extended periods of time for live aboard and other non-exempt purposes, it does not qualify for the use tax exemption for vessels used “primarily” to transport persons or property for hire in interstate or foreign commerce.

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.

Mahan, A.L.J. – Owner of yacht used for crewed charters in Alaska and Washington seeks reconsideration of a decision that sustained the imposition of use tax on the value of the yacht.¹

ISSUES:

1. Does the use tax exemption for vessels primarily used in interstate commerce apply to a vessel used for crewed charters in Alaska?
2. To the extent the exemption applies, was the vessel used primarily in interstate commerce?

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

FACTS:

The taxpayer, a Delaware corporation, owns a 60 foot . . . Trawler, the . . . (hereinafter vessel). In 1994 [owner] and his wife purchased all shares in the taxpayer. [Owner] operates the vessel. No sales tax was paid on the acquisition.

In 1995, the Owner began chartering the vessel on the East Coast. In 1996, the Owner decided to charter the vessel in Alaska. On or about March . . . , 1996, the vessel, with the Owner and his family aboard, arrived in Washington waters. The vessel remained in Washington for approximately two months while it was being outfitted for Alaska. During that time, the family resided on the vessel. On May . . . , 1996, the family moved to a rental home, and the Owner took the vessel to Alaska. According to the taxpayer, it chartered the vessel to friends at a reduced rate for the trip to Alaska.

While in Alaska, the Owner typically charters the vessel with a crew on a weekly basis. According to the taxpayer, the charters in Alaska involve leaving Alaska's territorial waters, entering federal waters, and reentering state waters.

On September . . . , 1996, the vessel returned to Washington after the first season in Alaska. The Owner's family moved back on board and lived there until they located a rental home in Washington. Commencing May . . . , 1997, they rented a house in Washington.

While the boat is in Washington, it is advertised as being available for crewed charters. According to the taxpayer, because the vessel is in Washington only during the off-season, it has not been chartered for use in Washington (other than for short term as a charitable donation). For a period of time, the taxpayer also advertised the vessel as a "dockside bed & breakfast" in Washington. Because this business venture did not generate sufficient income (less than \$1,000), the taxpayer no longer offers the vessel for use as a bed and breakfast (B&B) while it is in Washington.

The taxpayer is licensed to do business in both Alaska and Washington. Its principal place of business is in Alaska. The vessel's home port is in Alaska for United States Coast Guard documentation purposes.

The Department of Revenue (Department) issued two use tax assessments to the taxpayer. One assessment, issued on November 27, 2000, was for use tax on the value of the vessel. The amount of the assessment, with interest and a delinquency penalty, is \$ The other use tax assessment is for repairs completed in Washington for which no sales tax was paid. The amount of this assessment, with interest and penalties, is \$

ANALYSIS:

Washington imposes both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on each retail sale in this state. RCW 82.08.020; RCW 82.04. The use tax supplements the retail sales tax, and where the user has already paid retail sales tax no use tax is due. RCW 82.12.0252. It 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. . . ." RCW 82.12.020. RCW 82.12.010(2) broadly defines "use":

"Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean 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, or any other act preparatory to subsequent actual use or consumption within this state

RCW 82.04.190 defines "consumer" to mean:

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 the purpose (a) of resale as tangible personal property in the regular course of business

See also WAC 458-20-178 (Rule 178).

In general, operating a crewed charter business in Washington would subject a taxpayer to use tax on the vessel to the extent retail sales tax had not been paid on the purchase of the vessel. *See generally* Det. No. 99-272R, 20 WTD 7 (2001); Det. No. 91-151, 11 WTD 193 (1991). Use of the vessel as a home in Washington would also constitute taxable use in Washington. Det. No. 99-287, 19 WTD 660 (2000). The use of a vessel for a dockside B&B in Washington would also be use of the vessel as a consumer, subjecting a taxpayer to use tax on the vessel to the extent retail sales tax had not been paid on the purchase of the vessel. *See generally* Rule 178. Such business activities and personal uses in Washington would subject the vessel to use tax. *Id.*

The taxpayer contends that the use tax exemption provided by RCW 82.12.0254 applies. RCW 82.12.0254 exempts from use tax any

watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire. . . and in respect to use of tangible personal property which becomes a component part of any such . . . watercraft. . . .

Thus, for a vessel to be exempt from use tax, it must be used primarily in interstate or foreign commerce by a private or common carrier in the business of transporting persons or property for hire. In order for a vessel to be considered to be primarily used in interstate or foreign commerce,

such foreign or interstate use must constitute more than 50% of the vessel's usage. Det. No. 91-323ER, 13 WTD 39 (1992); Det. No. 94-226, 15 WTD 65 (1995); *see also* WAC 458-20-175.

In considering this exemption, the Department reviewed the taxpayer's charter records for each year of the audit. It identified each charter that began and ended in Alaska without crossing a state or foreign boundary as being an intrastate activity. Only the travel between Alaska and Washington was identified as being interstate commerce when such travel involved a charter. Based on this review, the Department concluded that the majority of the activity involved intrastate rather than interstate commerce. In response, the taxpayer contended that the entire season in Alaska should be considered interstate use because the activity began in Washington. Alternatively, it contended that its activities in Alaska involve leaving the territorial waters in Alaska and, therefore, such activity is interstate rather than intrastate in nature.

Undefined terms in a statute, like the term "interstate or foreign commerce," are to be given their usual and ordinary meaning. *See, e.g., Garrison v. Washington State Nursing Bd.*, 87 Wn. 2d 195, 196, 550 P.2d 7 (1976). Undefined terms are given their "plain, ordinary and popular" meaning, and courts look to English language dictionaries to determine the ordinary meaning of such terms. *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wn. 2d 869, 877, 784 P.2d 507 (1990) (quoting *Farmers Ins. Co. v. Miller*, 87 Wn. 2d 70, 73, 549 P.2d 9 (1976)). In general, the term "interstate commerce" is commonly understood to mean "commerce between a point in one State and a point in another State. . . ." *Black's Law Dictionary* 735 (5th ed. 1979).

The interstate transportation of persons to Alaska ended upon coming into port in Alaska, and the subsequent charters in Alaska were not a continuation of such interstate commerce. *See, e.g., Manlowe Transfer & Distributing Co., Inc. v. The Department of Public Service*, 18 Wn.2d 754, 761, 140 P.2d 287 (1943) and the cases cited therein. In the initial appeal, the taxpayer neither presented any evidence that the charters conducted in Alaska involved leaving territorial waters and entering federally regulated waters, nor any authority that such activity involved interstate and foreign commerce.

On reconsideration, the taxpayer provided charts that indicate the charters in Alaska involved carrying persons and property for hire through federally regulated waters in traveling between ports in Alaska. Such travel may involve interstate and foreign commerce. *See, e.g., Sales Tax District No. 1 of Lafourche Parish v. Express Boat Co., Inc.*, 486 So.2d 947 (La. App. 1986) (and cases cited therein).

We must then address whether the use in Alaska, to the extent it involved interstate and foreign commerce, was sufficient to constitute primary use of the vessel in interstate and foreign commerce for Washington use tax purposes. The vessel was first used for two months in Washington as a family home while it was being prepared for use in Alaska. The vessel then spent less than six months in travel to Alaska, in weekly charters in Alaska, and in returning to Washington from Alaska. The vessel was then used in Washington as a family home for almost seven months. Under such circumstances, we cannot find the vessel to have been primarily used in interstate and foreign commerce.

In general, tax exemptions are narrowly construed, and the burden is upon the taxpayer to show the exemption applies. *See, e.g., Simpson Inv. Co.*, 141 Wn.2d 139, 149-50 (2000); *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967). In narrowly construing and applying the exemption statute in this case, we sustain the Department's conclusion that the vessel was not primarily used in interstate or foreign commerce. The use of a vessel for over six months as a family residence shows the vessel to not have been primarily used in interstate and foreign commerce. Accordingly, the vessel is subject to use tax based on the taxpayer's non-exempt use of the vessel in Washington.

DECISION AND DISPOSITION:

The taxpayer's petition for reconsideration is denied.

Dated this 24th day of September 2002.