

Cite as Det. No. 15-0345, 35 WTD 472 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) D E T E R M I N A T I O N  
Assessment of ) No. 15-0345  
 )  
 )  
... ) Registration No. . . .  
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RCW 82.12.020; RULE 178; ETA 3029.2009: USE TAX – VESSEL – VALUATION. Audit reasonably valued the vessel when its valuation method was substantially similar to the taxpayer's depreciated book value. The taxpayer's expert's valuation did not include comparable sales or any other measure of value other than its actual, subsequent selling price as a basis for valuation.

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.

Sattelberg, A.L.J. – A sightseeing tour operator (“Taxpayer”) disputes the value the Department of Revenue (“Department”) used in a use tax assessment against its crew vessel (“Vessel”) arguing that the Department should have used the value listed on the appraisal it provided. We deny the petition.<sup>1</sup>

## ISSUE

Did the Department properly value the Vessel for use tax purposes under RCW 82.12.020 and WAC 458-20-178 (“Rule 178”)?

## FINDINGS OF FACT

Taxpayer owns the Vessel, named . . . .<sup>2</sup> Prior to July 1, 2011, Taxpayer operated the Vessel as a passenger-only ferry service between Washington and points [out-of-state]. On July 1, 2011, Taxpayer began operating the Vessel primarily for sightseeing tours exclusively within Washington waters.

In 2013, the Department's Audit Division ("Audit") began an audit of Taxpayer for the period January 1, 2010 through June 30, 2013. As a result of the audit, Audit made several adjustments to what Taxpayer owed during the audit period. The most significant adjustment in terms of dollars, and the sole subject of this appeal, was Audit's assessment of use tax on the Vessel as of

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

<sup>2</sup> The Vessel is a passenger ship built in 1981, which has a passenger capacity of 149 persons.

July 1, 2011, the date it began operating primarily for domestic sightseeing tours. Audit initially assessed use tax on the Vessel's orderly liquidation value of \$ . . . based on a March 2006 marine survey, or appraisal ("2006 Appraisal").<sup>3</sup> On March 4, 2014, Audit issued Taxpayer an assessment of \$ . . .<sup>4</sup>

Taxpayer conceded that use tax was due, but protested the Vessel's valuation method with Audit, providing additional information in support of its argument. One document it provided was a Purchase and Sale Agreement for the sale of the Vessel to new owners as of May 2014. The Purchase and Sale Agreement listed a selling price of \$ . . . , plus \$ . . . commission to [Selling Broker]. Taxpayer also provided a copy of an August 15, 2014, Market Valuation Appraisal ("2014 Appraisal") prepared by [Selling Broker]. The 2014 Appraisal valued the Vessel at \$ . . . as of July 1, 2011, the same value as the selling price in May of 2014. The 2014 Appraisal did not specifically list any comparable sales. The 2014 Appraisal discussed the efforts [Selling Broker] undertook to sell the Vessel over a decade-long period, the market for Vessels generally, as well as [Selling Broker's] extensive experience in vessel valuation. The 2014 Appraisal listed the various prices [Selling Broker] had listed the Vessel for sale at over the decade-long period: March 2005 at \$ . . . , later in 2005 at \$ . . . , jointly with [Vessel II] in 2008 for \$ . . . , and notably \$ . . . in 2011 through 2013.

Audit requested additional comparable sales information including the purchase and depreciation documents of a smaller and lesser equipped vessel, [Vessel III], which was sold by Taxpayer in March of 2010 for \$ . . . . After receiving the additional information, Audit considered three alternative methods for determining the market value of the Vessel as of July 1, 2011:

1. Audit compared the Vessel's \$ . . . selling price in May of 2014 to the projected depreciated book value of \$ . . . as of the same time period to arrive at a 21.78% selling price over depreciated book value percentage. Audit applied this percentage to the Vessel's depreciated book value as of July 1, 2011, to arrive at an estimated valuation of \$ . . . .
2. Audit used a straight-line method between the 2006 Appraisal's current market value of \$ . . . and the May 2014 selling price of \$ . . . to arrive at an estimated valuation of \$ . . . .
3. Audit used a similar methodology as number 2, except it started with the 2006 Appraisal's orderly liquidation value of \$ . . . to arrive at an estimated valuation of \$ . . . .

When selecting which method to choose, Audit considered the depreciated book value of the Vessel on Taxpayer's books of \$ . . .<sup>5</sup> Since method 3 most closely approximated this amount, Audit selected it as the most reasonable methodology. In its response to Taxpayer's petition,

<sup>3</sup> The marine survey showed a replacement cost of \$ . . . , a current market value of \$ . . . , an orderly liquidation value of \$ . . . , and a forced liquidation value of \$ . . . .

<sup>4</sup> The assessment consisted of \$ . . . in use tax, \$ . . . in retail sales tax, \$ . . . in retailing B&O tax, a tax credit of \$ . . . for other public service B&O tax paid, a small business tax credit adjustment of \$ . . . , a substantial underpayment penalty of \$ . . . , and \$ . . . in interest.

<sup>5</sup> Audit states that it "may" consider [Vessel II] as a comparable sale, but looked primarily to the Vessel's depreciated book value in trying to determine the Vessel's fair market value as of the date it became subject to use tax.

Audit stated that it considered the difference between these amounts immaterial and did not assess tax on the difference. Audit issued a post-assessment adjustment to Taxpayer for \$ . . . on December 3, 2014.<sup>6</sup>

Taxpayer timely appealed the post-assessment adjustment contesting Audit's use of method 3 to value the Vessel as of July 1, 2011. Taxpayer argues that the 2014 Appraisal's valuation of \$ . . . should be used because [Selling Broker] has extensive vessel valuation experience, had a decade-long history with the Vessel, and did in fact use comparable sales when reaching its valuation. In support of its appeal, Taxpayer provided additional documentation. Taxpayer supplied the 2014 Appraisal, a declaration by the [Selling Broker's agent] who wrote the 2014 Appraisal, . . . [(Agent)] , [Selling Broker's] February and August 2011 [Boat Market Reports] as referred to in [Agent's] declaration,<sup>7</sup> a comparison chart listing Audit's three valuation methods alongside the 2014 Appraisal, and two emails from Taxpayer's representative to Audit manager John Rapp.<sup>8</sup>

[Agent's] declaration discusses [Selling Broker's] decade-long history with the Vessel, including its physical inspection prior to its sale in May of 2014. The declaration discusses the fact that [Selling Broker] was tracking over 16,000 vessels and had an archive of an additional 10,000. The declaration states that the 2014 Appraisal "in respect to potential comparable sales simply directed attention to [Selling Broker's] website . . . and presumed interested parties would examine and evaluate the many available reports."

## ANALYSIS

There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property acquired by the user in any manner, also known as use tax.<sup>9</sup> RCW 82.12.020. Use tax applies to the use of watercraft in this state, whether for pleasure or for business, and whether by a resident or a nonresident, unless the use is statutorily excepted or determined to be otherwise exempt. *See* Det. No. 87-105, 3 WTD 1 (1987). Liability for the use tax arises at the time the property is first put to use in this state. Rule 178(3). The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.020(4)(a); Rule 178(4). "Value of the article used" is defined in RCW 82.12.010(7)(a) as:

[T]he purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the

<sup>6</sup> The post-assessment adjustment consisted of \$ . . . in use tax, \$ . . . in retail sales tax, \$ . . . in retailing B&O tax, a tax credit of \$ . . . for other public service B&O tax paid, a small business tax credit adjustment of \$ . . . , a substantial underpayment penalty of \$ . . . , and \$ . . . in total interest.

<sup>7</sup> The [Boat Market Reports] both list the number of crew boats [Selling Broker] had for sale, the crew boat market generally, and list the specifics of several of the vessels for sale.

<sup>8</sup> The emails discuss Taxpayer's position as presented to Audit.

<sup>9</sup> The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased or otherwise acquired where the user has not paid retail sales tax under chapter 82.08 RCW with respect to the property used. *See* WAC 458-20-178(1).

purchase price does not represent the true value thereof, 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.

Here, as of July 1, 2011, there was no purchase price, as the Vessel was not sold until May of 2014. Similarly, none of the other alternatives discussed in RCW 82.12.010(7)(a) apply. [I]t was not acquired by lease or by gift, it was not extracted, produced, or manufactured by the person using the same, [and] it was not sold under conditions wherein the purchase price [did] not represent the true value thereof. Therefore, we look to Rule 178 for guidance as to the method for determining the value as of the date the Vessel became subject to use tax.

Rule 178 is the Department's administrative rule implementing RCW 82.12.020, and it provides that "products of like quality and character" generally refers to "the fair market value of the property." [Rule 178(4)(b).] *See also* Det. No. 90-298, 11 WTD 67 (1990). The term "fair market value" is not specifically defined in Rule 178. However, the Washington Supreme Court has attempted to address fair market value in the context of use tax, acknowledging that "fair market value is a matter of opinion." *Northwest Chemurgy Securities Co. v. Chelan Cty.*, 38 Wn.2d 87, 94, 228 P.2d 129 (1951). In *Northwest Chemurgy*, the court considered a number of valuation methods for determining fair market value of tangible personal property, and stated the following:

A number of factors may appropriately be considered in determining fair market value. Among these are original cost, estimated cost of reproduction less depreciation, and rental income, capitalization of income, the uses to which the property is adaptable, the sale price of other properties, and the burdens and benefits attaching to the property.

*Id.* at 91 (internal citations omitted).<sup>10</sup> The court went on to caution that "it is important to bear in mind that the ultimate question for determination is always the same-what is the reasonable market value of the property at the time the assessment is made?" *Id.* Thus, these various methods, including cost less depreciation "may be considered, but only as an aid in arriving at the market value" of the property in question. *Id.* (quoting *Bellingham Community Hotel Co. v. Whatcom Cty.*, 190 Wash. 609, 70 P.2d 301 (1937)).

As another guide to determining value for use tax purposes, the Department issued Excise Tax Advisory 3029.2009 ("ETA 3029"). ETA 3029 states, in pertinent part:

A taxpayer's own records are an admission of the minimum value of tangible personal property set up as a capital asset. The Department may use, but is not necessarily bound by the taxpayer's records. However, if the entry does not reflect the true purchase price or does not fairly represent the asset's value, the Department may obtain additional evidence for use in determining value.

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<sup>10</sup> In *Northwest Chemurgy*, the court considered valuation for both real property and personal property. The court made no distinction between these two classes of property when it identified the various valuation methods.

Both Audit and Taxpayer argue that they have more reasonably valued the Vessel, or approximated its fair market value, as of the date it became subject to use tax. Audit started with an amount based on an appraisal from 2006, ended with the sale price in 2014, and calculated the 2011 value using a straight-line depreciation method. The amount reached under this method, \$ . . . , was highly similar to the depreciated book value of the Vessel on Taxpayer's books of \$ . . . . Here, since the Department may rely on the taxpayer's books under ETA 3029, and Audit's adjusted value is not materially different from the depreciated book value in the Taxpayer's own records, we find that Audit's adjusted value of \$ . . . is a reasonable measure of fair market value as of the date the Vessel became subject to use tax.<sup>11</sup>

Taxpayer obtained an appraisal from [Selling Broker], the broker it has used to try and sell the Vessel . . . for a decade, and had actually sold the Vessel three months prior to the appraisal date. The appraisal used the 2014 selling price of \$ . . . as the appraised value for a date nearly three years prior, when it had listed the Vessel for sale for \$ . . . . While [Selling Broker] certainly has more expertise in valuing vessels than Audit, it is not the expertise of the one determining value that is dispositive, but the reasonableness of the valuation of fair market value itself.<sup>12</sup> [Selling Broker] did not list any comparable sales, or identify any other information other than the actual selling price as a basis for its valuation. As such, we find that Audit determined the Vessel's fair market value as of the date it became subject to use tax, and deny Taxpayer's petition.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 15th day of December, 2015.

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<sup>11</sup> Taxpayer cites to Det. No. 05-0115, 25 WTD 102 (2006) for the proposition that five year-old appraisals are of little evidentiary value to attempt to impugn Audit's use of the 2006 Appraisal. We note that Audit originally used the 2006 Appraisal solely as its valuation basis, but later modified the valuation to use the 2006 Appraisal only as a starting point for valuation. By depreciating over straight line starting with the 2006 Appraisal, Audit is not relying solely on a five year-old appraisal value.

<sup>12</sup> Taxpayer cites to Det. No. 90-298, 11 WTD 67 (1990) for the proposition that third-party appraisals constitute objective evidence. We do not disagree with this proposition.