

Cite as Det. No. 12-0104, 33 WTD 331 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

[1] RCW 82.08.020; RCW 82.04.200; CONST. ART. XXIV, § 1: RETAIL SALES TAX – SALE OF A MARINE VESSEL - WITHIN THIS STATE – NORTHERN BOUNDARY – STRAIT OF JUAN DE FUCA. The Washington State Constitution extends Washington’s northern boundary to the midchannel of the Strait of Juan de Fuca at a point equidistant between Vancouver Island in British Columbia and the lands of Washington State. The delivery of a marine vessel to a buyer who receives that vessel within the Washington State boundaries as set forth in the Washington Constitution is a sale “within this state” and the sale is therefore subject to retail sales tax.

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.

Weaver, A.L.J. – Taxpayer, a yacht broker from California, is in the business of manufacturing and selling seagoing vessels. Taxpayer sold a yacht to a [Washington] resident and delivered the yacht to the buyer three miles off the coast of Port Townsend, Washington at or near coordinates N 48° 13' 36" W 122° 3' 12". Taxpayer disputes the retail sales tax assessed against it by the Department of Revenue's Audit Division, claiming that it sold the yacht outside the borders of the State of Washington. We affirm the assessment and deny the Taxpayer's petition.¹

ISSUE

Whether, under RCW 82.08.020, RCW 82.04.200, and the Washington Constitution, a yacht sale takes place in the State of Washington when the seller transfers physical possession and title to the buyer at a point somewhere between three nautical miles off the western coast of Whidbey Island and the midchannel point of the Strait of Juan de Fuca.

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

FINDINGS OF FACT

[Taxpayer] is a yacht broker engaged in the business of manufacturing and selling boats to prospective buyers. On January 22, 2008, Taxpayer sold a . . . yacht . . . to a [Washington] resident (“Buyer”) for a total purchase price of \$. . . . The Buyer requested that delivery occur outside the State of Washington.

Upon completion of the yacht, the Taxpayer shipped the [yacht] to Seattle. Taxpayer hired a marine company to transfer the [yacht] to its dock in Elliot Bay where it was harbored for eight days until the Taxpayer’s commissioning team arrived from California to move the vessel to a marina in Anacortes, Washington. Buyer chartered a separate vessel in Port Townsend, Washington and traveled three hours to latitude N 48° 13' 36" and longitude W 122° 53' 12", where the Buyer boarded the [yacht], which was separately delivered to those coordinates from Anacortes by Taxpayer.

The Audit Division of the Department of Revenue (“Department”) audited the Taxpayer’s records for the period of January 1, 2007, through September 30, 2010. The Audit Division relied on WAC 458-20-193 and found the following:

In January 2008 you sold and transferred title to the . . . yacht, . . . , to a company incorporated in the state of Washington and owned by Washington state residents. The delivery of the vessel took place in Washington state waters at latitude N 48.13.36 and longitude W 122.53.12.

On May 17, 2011, as a result of this finding, the Audit Division issued Document No. 201119701, which assessed \$. . . in retail sales tax, \$. . . in retailing business and occupation (“B&O”) tax, \$. . . in interest, for a total of \$. . . . Taxpayer appeals this assessment.

ANALYSIS

The retail sales tax is imposed on retail sales of tangible personal property in this state. RCW 82.08.020. “In this state” or “within this state” includes all federal areas lying within the exterior boundaries of the state. RCW 82.04.200. The Washington State Constitution, ratified on October 1, 1889, defines the northern boundary, in pertinent part, as:

[T]hence following the boundary line between the United States and British possessions through the channel which separates Vancouver’s island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equidistant between Bonnilla point on Vancouver’s island and Tatoosh island lighthouse...

Const. Art. XXIV, § 1. Although Const. Art. XXIV, § 1 was amended in 1958, the original boundaries remained unchanged. *See Smith v. State*, 64 Wn.2d 323, 330, 391 P.2d 718 (1964). The state boundary described in the Washington Constitution is identical to the border between the United States and Canada as acknowledged in coordinates by the International Boundary

Commission.² Thus, according to the Washington Constitution, the state's northern boundary with British Columbia is an equidistant line between Washington State lands and Vancouver Island in British Columbia, beginning at the mouth of the Strait of Juan de Fuca.

Federal authorities also recognize Washington's midchannel border with British Columbia. For example, the United States Supreme Court, [stated] in *United States v. Locke*, 529 U.S. 98, 120 S.Ct. 1135 (2000):

Passage from the Pacific Ocean to the quieter Puget Sound is through the Strait of Juan de Fuca, a channel 12 miles wide and 65 miles long which divides Washington from the Canadian Province of British Columbia. The international boundary is located midchannel.

United States v. Locke, 529 U.S. at 95, 120 S.Ct. at 1151; see also *Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region*, 32 U.S.T 377, T.I.A.S. No. 9706.

Washington assesses retail sales tax on sales of tangible personal property occurring within the state. WAC 458-20-145 (“Rule 145”). Rule 145 states, in pertinent part:

(2)(a) **Sales of tangible personal property, retail services, and extended warranties.** ...If the seller ships or delivers tangible personal property to a customer who receives that property outside Washington, the sale is deemed to have taken place outside Washington and is not subject to Washington state or local retail sales tax.

(2)(a)(ii) **Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.** If the purchaser receives tangible personal property . . . at a location other than the seller's place of business (and sourcing Rule 1 therefore does not apply), then the sale must be sourced to the location where the purchaser . . . receives such property

Rule 145.

Taxpayer's argument on appeal is that the transfer occurred further than three miles from the Washington State coastline and is therefore outside Washington's territory and exempt from the retail sales tax. Taxpayer cites the Submerged Lands Act of 1953 in support of its argument that the Washington State boundary only extends three miles into the Strait of Juan de Fuca. See 43 U.S.C. § 1301, *et seq.* (hereinafter, the “SLA”). Taxpayer argues:

At the most fundamental, however, it is important to note that absent an express declaration by Congress or ruling of the Supreme Court, the waters beyond the three-mile line are presumptively outside the territory of the state...

² See generally Definition of Boundary between Canada and United States, <http://www.internationalboundarycommission.org/coordinates/Ngeorgia.txt> (last visited April 23, 2012).

Washington's territorial claims to the Strait of Juan de Fuca primarily rest on the description of the state's boundaries codified in the state constitution...

Congress may determine how far its regulation of interstate commerce shall go, and when it circumscribes its regulation, and occupies only a limited field, state regulation outside that limited field or otherwise admissible is not forbidden or displaced. *Kelly v. State of Washington ex rel. Foss Co.*, 302 U.S. 1, 58 S. Ct. 87, 82 L.Ed. 3 (1937). There necessarily remains to the state, until Congress acts, a wide range for the permissible exercise of powers appropriate to their territorial jurisdiction, although interstate commerce may be affected. *Id.* at 9-10.

The SLA recognized, confirmed, established, vested in and assigned to the respective states the "title to and ownership of the lands beneath navigable waters within the boundaries of the respective state and the natural resources within such lands and waters." 43 U.S.C. § 1311(a). The SLA grants states the power to extend their seaward boundaries:

Any state admitted subsequent to the formation of the Union which has not already done so **may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries.** Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed without prejudice to its claim, if any it has, that its boundaries extend beyond that line. **Nothing in this section is to be construed as questioning the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union,** or if it has been heretofore approved by Congress.

43 U.S.C. § 1312 (as cited by *United States v. State of California*, 381 U.S. 139, 85 S. Ct. 1401, 14 L.Ed.2d 296 (1965)) (emphasis added).

As stated above, the Washington State Constitution extends Washington's northern boundary to the midchannel of the Strait of Juan de Fuca at a point equidistant between Vancouver Island in British Columbia and the lands of Washington State. See Const. Art. XXIV, § 1. Because Washington set its northern boundary at the midchannel border with Canada in the Strait of Juan de Fuca in its constitution prior to its admission into the Union,³ the SLA permits the State's boundary to extend to the international boundary line.

We conclude that Taxpayer transferred the vessel within the Washington State boundaries as set forth in the Washington State Constitution. The SLA's "three-mile rule" cited by the Taxpayer may apply to Washington's Pacific coastline but, by the SLA's own terms, the three-mile rule does not apply to the State's international seaward boundary in the Strait of Juan de Fuca.

³ The State of Washington was admitted into the Union on November 11, 1889.

Because the transfer occurred on the Washington side of the Strait of Juan de Fuca, the transfer occurred within the state of Washington and is subject to the retail sales tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 25th day of April 2012.