

Cite as Det. No. 07-0107, 27 WTD 93 (2008)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 07-0107
)	
... )	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .
)	

RCW 82.12.801; RCW 82.12.802 -- USE TAX -- VESSEL -- EXEMPTION FOR CERTAIN USES BY VESSEL DEALERS. A vessel owner who used a vessel while it was listed for sale in dealer inventory did not qualify for the use tax exemptions in RCW 82.12.801 and 82.12.802 relating to use of vessels by vessel dealers. The taxpayer was not a vessel dealer.

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.

Chartoff, A.L.J. – A Washington resident who purchased a yacht protests the assessment of use tax and watercraft excise tax contending the yacht was held for resale, and that intervening use of the yacht was either exempt use by a dealer under RCW 82.12.801 or limited to the fair rental value of personal use by a dealer under RCW 82.12.802. We conclude that RCW 82.12.801 and RCW 82.12.801 do not apply because the taxpayer is not a dealer, and deny the petition.<sup>1</sup>

ISSUE

Does the taxpayer’s use of the yacht qualify as exempt use by a dealer under RCW 82.12.801 or personal use by a dealer under RCW 82.12.802?

FINDINGS OF FACT

[Taxpayer] is a resident of Washington State. The taxpayer has never been licensed by the State of Washington Department of Licensing as a vessel dealer.

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

In 1999, the taxpayer filed articles of formation of [Taxpayer LLC] with the Washington Secretary of State. The LLC agreement states that the purpose of the LLC was to engage in marine industry investments. The taxpayer dissolved the LLC in 2001.

[Vessel Dealer] is a vessel dealer licensed and registered by the Washington State Department of Licensing, and located in . . . Washington.

On April . . . , 2003, the taxpayer entered into an agreement with [Vessel Dealer] to purchase a . . . Yacht . . . . The purchase agreement states that the sale is tax exempt.

On May . . . , 2003, the taxpayer signed a resale certificate for the yacht certifying that the purchase was for resale in the regular course of business without intervening use. The resale certificate states that buyer is in the business of “marine flooring” and that the UBI number is “applied for.”

On May . . . , 2003, the taxpayer obtained bank financing for the vessel . . . . The financing is in [taxpayer’s and spouse’s names]. The note provides for interest only payments in the first year followed by principal and interest payments for the next two years. The loan documents state that the primary purpose of the loan is for “Personal, Family, or Household Purposes or Personal Investment” rather than “business.”

On May . . . , 2003, the sale closed, as indicated by the closing documents and bill of sale. The taxpayer federally documented the vessel with the United States Coast Guard. The taxpayer did not register the vessel with the state of Washington.

Effective May . . . , 2003, the taxpayer obtained an insurance policy for the vessel from May . . . , 2003 through May . . . , 2004. The insurance covers personal and not commercial use. The mooring and storage location is listed as . . . Washington.

On May . . . , 2003, the vessel was taken to [taxpayer’s home] for installation of electronics, at the taxpayer’s direction. Invoices for parts and service include sales tax.

On June . . . , 2003, the taxpayer and [Vessel Dealer] executed a Purchase and Resale Agreement which states:

Whereas [Vessel Dealer] is an authorized dealer for [Vessel Brand A] and,

Whereas [Vessel Dealer] has in inventory a new [Vessel Brand A, hull #. . .]

Whereas said vessel has not been sold to a third party, retail customer since delivery . . .

Whereas [Vessel Dealer] is authorized to sell said vessel as new only in its authorized dealer region but with no such restriction if said vessel is used,

[Vessel Dealer] agrees to sell and [Taxpayer] agrees to purchase, for purposes of resale, said vessel for the sum of \$. . . .

[Taxpayer] agrees to list said vessel for resale with [Vessel Dealer] – see separate broker listing agreement to be executed after vessel is fully commissioned, electronics and tender installed, etc.

Furthermore, [Vessel Dealer] and [Taxpayer] agree as follows:

1. [Taxpayer] will be responsible for maintenance and insurance of said vessel.
2. [Taxpayer] will be responsible for typical “buyer provided options” such that vessel is competitively equipped for the resale market.
3. [Taxpayer] will allow display of said vessel at boat shows and promotional events requested by [Vessel Dealer], as well as demonstrations for potential buyers. All costs for boat shows, promotional events, demonstrations, sea trials, etc. will be paid for by [Vessel Dealer].

On June . . . , 2003, [Vessel Dealer] issued a Washington State dealer demonstration permit for the vessel listing the taxpayer as the operator.<sup>2</sup>

On July . . . , 2003, the taxpayer entered into a listing agreement with [Vessel Dealer] granting [Vessel Dealer] the exclusive right to sell the yacht. The agreement refers to the taxpayer as the “owner” of the yacht and refers to [Vessel Dealer] as the “broker.” The listing agreement is the standard form listing agreement used by [Vessel Dealer] except the commission is reduced . . . .

From late July through September 2003, the taxpayer personally used the boat as described in this . . . letter from the taxpayer to [the] State of Washington Department of Revenue, Compliance Division:

Towards the end of July, I took the boat on a shake down and personal cruise for approximately 10 days. . . . I had to return the boat to . . . in early August 2003 due to serious engine problems, see enclosed statement accompanying copies of maintenance records.

In August 2003, after the warranty repairs, I took the boat to [Washington Location] and put it in a slip rented by a principal of [Vessel Dealer] and the [Vessel Brand A] factory representative (jointly). They rented the slip to display new and used [Vessel Brand A] boats or yachts. At the time we secured [Vessel Dealer] listing signs on the boat and left it there through early 9/03. We made several weekend trips back to [Washington

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<sup>2</sup> The dealer’s demonstration permit appears to be used by the taxpayer in violation of RCW 88.02.023, which states that a vessel display decals shall only be used: “(1) to demonstrate vessels held for sale when operated by a prospective customer holding a dated demonstration permit . . . (2) on vessels owned or consigned for sale . . . and being used only for vessel dealer business purposes by an officer of the corporation, a partner, a proprietor, or by a bona fide employee of the firm . . . .” The taxpayer was not a prospective customer nor an owner or employee of [Vessel Dealer] when he used the dealer’s demonstration permit.

Location] to check on the boat, wash it, sleep on it, and use the tender for crabbing. I believe we took another trip to . . . Canada, again a note in my marina listing note book indicates report # . . . . After the [Vessel Brand A] owner's rendezvous in September 2003, we brought the boat . . . for display . . . . Subsequent to [this], I used the boat on two other occasions for a total of about 5 days.

At this point, occasional personal use stopped. . .

The letter explains that the personal use stopped due to personal health issues and because the yacht needed to be available to dealer demonstrations and boat shows. The letter also discusses the taxpayer's and [Vessel Dealer's] substantial efforts to sell the vessel. The vessel was finally sold to a third party. . . .

On June 27, 2005, Compliance issued an assessment of use tax, watercraft excise tax, delinquent and assessment penalties, and interest. . . . The taxpayer appealed contending that the use of the boat was exempt under RCW 82.12.801, which exempts dealer use related to marketing of vessels. To the extent that the boat was subjected to uses which do not qualify as exempt under RCW 82.12.801, the taxpayer contends the measure of the use tax is limited to the fair rental value of the use under RCW 82.12.802, which applies to personal use by vessel dealers. The taxpayer contends he qualifies for the dealer exemptions because he and [Vessel Dealer] worked together in financing and marketing the boat. Compliance responds that the taxpayer was the purchaser and owner of the vessel, not a dealer, and that RCW 82.12.801-802 applies only to use by dealers.

#### ANALYSIS

RCW 82.12.020(1) imposes the use tax and provides that, when the retail sales tax is not paid, use tax is due on the use of personal property as a consumer in this state.

RCW 82.12.010(3) defines "use" and provides, in part:

"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:

Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property . . . other than for purpose (a) of resale as tangible personal property in the regular course of business . . . .

In this case, it is undisputed that the taxpayer purchased the yacht, and assumed dominion and control over the yacht in Washington well before July 21, 2003, the date of first use stated on the assessment. The taxpayer admits he used the boat as a consumer by taking a 10 day personal cruise in late July 2003, followed by three other trips. In addition, the taxpayer admits he slept on the yacht and used the tender for crabbing. Because the taxpayer used the yacht as a consumer in Washington, the taxpayer is liable for use tax on the yacht, unless an exemption applies.

The taxpayer argues that the exemptions in RCW 82.12.801 and RCW 82.12.802 apply to reduce or eliminate use tax owed. RCW 82.12.801 states, in relevant part:

(1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.010, *by a vessel dealer* registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

...

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel that it is, in fact, for sale and the identification of the registered vessel dealer offering the vessel for sale is also displayed on the vessel;

...

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

...

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

RCW 82.12.802 states in relevant part:

If a vessel held in inventory is *used by a vessel dealer* or vessel manufacturer for personal use, use tax shall be due based only on the reasonable rental value of the vessel used, but only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. The department may by rule require dealers and manufacturers to provide vessel logs or other documentation showing that vessels are truly held for sale.

In other words vessel dealers who are registered with the Washington State Department of Licensing are exempt from use tax on a vessel if their use of the vessel is limited to the activities listed in RCW 82.12.801. The activities listed are directly related to marketing the vessels for sale. To the extent a vessel dealer (or manufacturer) uses a vessel for personal use, the use tax is based on the reasonable rental value of the yacht used rather than the full fair market value of the yacht.

The exemptions do not apply in this case because the facts do not establish that the taxpayer is a vessel dealer. The taxpayer is not registered as a vessel dealer with the Washington Department of Licensing. Nor is the taxpayer registered to do business with the Department of Revenue or any other state agency. There is no evidence that the taxpayer holds himself out to the public as a vessel dealer. The resale certificate provided by the taxpayer with respect to this sale states that the taxpayer was in the business of “marine flooring” which means providing inventory financing to dealers. The taxpayer’s defunct LLC had a stated purpose of marine industry investments. Since RCW 82.12.801-802 apply only to use of a vessel by a vessel dealer, we conclude they are not applicable here.

We note that the taxpayer does not argue that the taxpayer is a dealer. Rather, he argues that the exemptions apply because [Vessel Dealer] is a dealer and the yacht was in [Vessel Dealer’s] inventory and held for sale. The taxpayer argues that the taxpayer’s use of the yacht was as a limited agent of [Vessel Dealer] in helping [Vessel Dealer] to sell the yacht. Thus, the taxpayer argues that the criteria for the exemptions are met.

A party claiming an exemption from taxation has the burden of proving he or she qualifies for the exemption. *Group Health Coop. of Puget Sound, Inc. v. Department of Rev.*, 106 Wn.2d 391, 401-02, 722 P.2d 787 (1986); Det. No. 00-099, 20 WTD 53 (2000). We see no merit to the argument that the taxpayer acted as a limited agent for [Vessel Dealer]. The relationship of the taxpayer and [Vessel Dealer] is clear from the contracts, and from the conduct of the parties which was consistent with the form. The taxpayer purchased the yacht from [Vessel Dealer], and then hired [Vessel Dealer] to market and sell the yacht on his behalf. To the extent the taxpayer used the yacht, it used the yacht on its own behalf, and not as an agent of [Vessel Dealer]. Because the exemption applies only to use by a dealer, the exemption does not apply.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of April, 2007.