Cite as Det. No. 22-0057, 44 WTD 033 (2025)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment of …	)	D E T E R M I N A T I O N No. 22-0057 Registration No. . . .

RCW 82.12.010, RCW 82.12.020, RCW 82.14.030, WAC 458-20-145, WAC 458-20-178: USE TAX – AIRCRAFT – FIRST TAXABLE USE – SPECIAL SOURCING RULE FOR PERSONAL AIRCRAFT: Use tax for personal aircraft purchased and delivered outside of the state is based on the combined state and local use tax rate for the location of first taxable use. First taxable use is generally where the aircraft is regularly hangared and used. The taxpayer argued that his brief landing in a certain county with a low local tax rate should have subjected him to the lower local rate. However, first taxable use did not occur there because the stop was fleeting and transitory, and use tax was instead based on where he received the substantial benefits provided by the locality where he regularly hangared and used the aircraft.

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.

LaMarche, T.R.O. – A taxpayer disputes additional use tax and penalties assessed on his use of an aircraft in Washington state, arguing that use tax on the aircraft should be based on the local tax rate at the location where he first briefly landed, rather than the higher local tax rate in the home location where he regularly hangars the aircraft. . . . We deny the petition.[1]

ISSUE

1. Under RCW 82.12.020, RCW 82.14.030, WAC 458-20-145, and WAC 458-20-178, did Taxpayer pay the proper amount of local use tax on an aircraft when he purchased it outside of Washington state without paying sales tax, landed the aircraft briefly in [County 1], Washington, and then regularly used and hangared it in . . . County [2], Washington?

. . .

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

FINDINGS OF FACT

. . . (Taxpayer) is an individual who purchased a . . . (Aircraft), from . . . (Seller) on August 1, 2020, for $. . . . This is shown by the copy of the purchase agreement (Aircraft Purchase Agreement) Taxpayer provided. Taxpayer indicates that he purchased the aircraft [out of state], without payment of sales tax.

Taxpayer says that on August 18, 2020, he first landed the Aircraft at . . . Airport in . . . unincorporated . . . County [1, Washington]. The Department of Revenue's (Department) Tax Rate Lookup Tool[2] indicates that the state sales/use tax rate for . . . [unincorporated areas of County 1] is . . . %, and the local tax rate is . . . %, for a combined total of . . . %.[3]

To prove location of first taxable use, Taxpayer provided a receipt from [a business] located at [County 1], dated August 18, 2020, for the purchase of a fuel tester and motor oil totaling $. . . . The [business] receipt shows a [combined state and local] sales tax rate of . . . %, and lists the FAA Tail No. of the Aircraft, ... There was no evidence provided showing Taxpayer had any other connections with . . . County [1].

Taxpayer hangars the aircraft in . . . County [2] at the . . . [County 2] Airport, . . ., which is located at . . . [City 2, Washington] . . . . The local sales and use tax rate for [City 2] . . . is . . . % for state tax and . . . % for local tax, for a combined tax rate of . . . %. Taxpayer provided a handwritten flight log for the period from August 29 through September 8, 2021, which shows regular flights from [County 2 Airport] and indicates that [County 2 Airport] is the home base of the Aircraft.

. . .

The Department's Taxpayer Account Administration Division (TAA) calculated use tax based on the $. . . value that was reflected in the Aircraft Purchase Agreement. TAA used the . . . % use tax rate for [City 2] where Taxpayer hangared the Aircraft, calculating total use tax liability of $. . . . In contrast, Taxpayer calculated the use tax to be $. . . , based on the . . . local rate in [unincorporated County 1], and disputes the extra $. . . assessed by the Department.

Taxpayer received a Notice of Balance Due on December 10, 2020, . . . , totaling $. . . The total consisted of $. . . in use tax; and a substantial underpayment penalty of 5%, or $. . . , on the unpaid tax of $. . . , less Taxpayer's earlier payment of $. . . . Taxpayer paid an additional $. . . , posted on January 6, 2021, with an effective date of December 28, 2020, leaving a balance of $. . . . Taxpayer did not pay the balance, but timely filed a petition for review.

Taxpayer does not dispute that he owes use tax on the Aircraft. However, he argues the . . . use tax rate for [City 2], consisting of . . . % state use tax and . . . % local use tax, does not apply. Instead, he argues, the rate should be . . . %, consisting of . . . % state tax plus . . . % local tax, based on his landing of the Aircraft in [unincorporated County 1].

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[2] The Tax Rate Lookup tool can be found at https://webgis.dor.wa.gov/taxratelookup/SalesTax.aspx (last accessed December 20, 2021).

[3] . . .

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ANALYSIS

1. Local use tax

Washington imposes a retail sales tax on every retail sale occurring within the state. RCW 82.08.020. Washington also imposes a use tax, which is a complementary tax applicable to each retail sale on which the sales tax was not previously paid. RCW 82.12.020(1)(a); *Glen Park Associates, LLC v. Dep't of Revenue*, 119 Wn. App. 481, 494 n.1, 82 P.3d 664 (2003). The primary purpose of the use tax is to compensate for Washington's inability to assess retail sales tax on property purchased outside the state then brought into the state and used, which would have been subject to retail sales tax if the property had been purchased within the state. WAC 458-20-178(2). The use tax applies only when the present user has not previously paid retail sales tax. RCW 82.12.020(2).

RCW 82.12.020(1)(a) imposes the use tax and provides in relevant part:

> 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 . . . [a]rticle of tangible personal property acquired by the user in any manner . . . except as otherwise provided in this chapter. . . .

The total amount of use tax is the combination of the state portion of the tax addressed in RCW 82.12.020, and the local portion of the tax, which is addressed in a different statute, RCW 82.14.030[4]. Washington's portion of the use tax is a flat rate of 6.5%. The local portion of the use tax varies, depending on the county or municipality where the use of tangible personal property is sourced.

In 1970, the Legislature adopted new provisions under Chapter 82.14 RCW to allow local jurisdictions to impose local equivalents of the state's sales and use taxes.[5] The stated purpose of the new legislation was to "provide the means by which essential county and municipal purposes can financially be served." RCW 82.14.010.

The local use tax, which accompanies the state use tax, is . . . [authorized] by RCW 82.14.030,[6] which provides in relevant part:

> (1) The governing body of any county or city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, impose a sales and use tax in accordance with the terms of this chapter. Such tax must be collected from those persons who are taxable by the state under

[4 There are numerous other statutes in chapter 82.14 RCW authorizing various local sales and use taxes. However, the local sales and use taxes authorized under RCW 82.14.030 are the largest source of sales and use tax revenue for cities, towns, and counties.]

[5] Laws of 1970, ex. sess., ch. 94 § 1.

[6 *See* footnote 4.]

> chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city, as the case may be. [Emphasis added.]

The issue, therefore, is whether Taxpayer's brief stop in [County 1] was a "taxable event" under RCW 82.14.030(1) for local use tax purposes, that subjected him to [County 1's] local rate . . . , rather than the . . . local rate at the Aircraft's home base at [City 2]. Unlike the retail sales tax for sales of tangible personal property, which follows a strict sourcing hierarchy, the incidence of use tax is sourced according to RCW 82.32.730(10), which provides:

> In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property, . . . subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection. . . .

RCW 82.12.010 defines the term "use" and states in relevant part:

> (6) "Use,""used," "using," or "put to use" have their ordinary meaning, and 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 . . . .

For purposes of the local use tax, however, the terms "use," "used," "using," or "put to use" are not statutorily defined in Chapter 82.14 RCW. Instead, RCW 82.14.020 provides:

> (2) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, has full force and effect with respect to taxes imposed under authority of this chapter.

RCW 82.14.020(2) (emphasis added). Thus, the Legislature contemplates that not all provisions in Chapters 82.04, 82.08 and 82.12 RCW will be applicable to local use tax. This can occur when a locality does not have jurisdiction to impose the use tax.[7]

This issue was addressed in *G-P Gypsum Corp. v. Dep't of Rev.*, 169 Wn.2d 304, 311, 237 P.3d 256 (2010). In that case, [the] Washington Supreme Court addressed the term "use" when considering whether the city of Tacoma had jurisdiction to impose that city's brokered natural gas (BNG) tax on the taxpayer's use of the gas in its operations within the city.[8] The taxpayer

[7] Although our discussion here focuses on legislative intent, courts have addressed jurisdiction as a constitutional issue, requiring minimum contacts to establish taxable jurisdiction. *See, e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977); *Diamond Shamrock Refining and Marketing Co v. Nueces*, 876 S.W.2d 298, 302 (Tex. 1994) ("the circumstances which make the goods 'in transit' may inform a court's decision that the first and fourth nexus requirements of *Complete Auto* are not met"). The substantial nexus prong prevents states from taxing property that is merely passing through the state. *ETC Marketing, Ltd. v Harris County Appraisal Dist*., 528 S.W.3d 70, 78 (2017). *See also*, RCW 82.12.0255 (addresses exemption from use tax when taxation is prohibited by the United States and Washington State constitutions).

[8] Tax on BNG is addressed in RCW 82.14.230(1).

purchased BNG at stations outside of Tacoma before using it in its manufacturing activities in the city. The taxpayer asserted that no Tacoma BNG tax applied to its use of the gas, on the grounds that the taxpayer first took possession, dominion, and control of the BNG outside of Tacoma.

The Court of Appeals agreed with the taxpayer, declining to consider any expression of legislative intent, including the Legislature's enacted statement of legislative purpose, on the grounds that the statute was clear on its face. The Court of Appeals held that the plain meaning of the statutes indicated the Tacoma BNG tax did *not* apply, agreeing with the taxpayer that first "use" took place outside the city. The Department appealed the decision to the Washington Supreme Court.

On appeal, the Washington Supreme Court reversed the Court of Appeals, stating that the lower court had failed to consider the statutory scheme as a whole, including "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *G-P Gypsum*, 169 Wn.2d at 309 (citing *Dep't of Ecology v. Campbell & Gwinn, LLC,* 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). The Supreme Court determined that for purposes of the local tax in Chapter 82.14 RCW, "use" is relevant to the local BNG tax only "insofar as applicable." *Id.* at 308; RCW 82.14.020(2) (definitions). The Court went on to state:

> The portion of the "use" definition that confounded the Court of Appeals—"the first act within this state by which the taxpayer takes or assumes dominion or control"—plainly has limited application: it is addressed to the State's taxing authority insofar as it speaks to the first act of dominion and control "within the state." Former RCW 82.12.010(2).[9] This definition is not applicable to RCW 82.14.230(1)[10] because it contemplates a taxable event that does not relate to a municipality's taxing authority, which is necessarily limited to uses within its jurisdiction.

G-P Gypsum, 169 Wn.2d at 311-12 (emphasis added). The Washington Supreme Court concluded that the only definition of the term "use" in RCW 82.12.010(6) that applied to local use tax in Chapter 82.14 RCW was its "ordinary meaning," which the Court, under the facts in that case, determined to mean "consume." *Id.* at 312. Because the taxpayer's actual consumption/use of the BNG occurred at its manufacturing plant in Tacoma, where the taxpayer received the substantial benefits provided by the city, the Court held that the Tacoma BNG tax applied. *Id.* at 313-14.

Although BNG tax is not the subject matter in the case here, the term "use" as the Court defines it in *G-P Gypsum*, is equally applicable to the local use tax at issue here, because both this case and *G-P Gypsum* relate to "use" as it is defined in RCW 82.12.010(6).

[The Department has developed a "special sourcing rule" addressing the situation in this case in WAC 458-20-145 (Rule 145). For aircraft that do not qualify as transportation equipment, Rule

[9] The Court refers to "former RCW 82.12.010(2)," which pertains to Laws of 2009, ch. 535, § 304. On June 10, 2010, the Legislature added provisions specifically pertaining to use tax on natural gas and manufactured gas, and renumbered the statute, which moved the definition of "use" to RCW 82.12.010(6). Laws of 2010, ch. 127, § 4. Amendments thereafter maintained the current version of RCW 82.12.010, Laws of 2017, ch. 323, § 519, in effect during the examination period of the case and maintained the same language as in the earlier version. None of the amendments have a bearing on this case.

[10] RCW 82.14.230(1) pertains to the local use tax imposed on use of natural or manufactured gas.

145 directs that the local tax be determined by the "location of the customer." Rule 145(2)(b) (2018).[11] Thus, under Rule 145, the "use" of the aircraft for local use tax purposes was at City 2 in County 2.]

Under these authorities, Taxpayer's use of the Aircraft in . . . County [1] was not a taxable event because the Aircraft's presence within the county was fleeting and transitory. There is no evidence in the record that Taxpayer had any substantive business ties to [County 1] or any purpose for landing there other than to avoid use tax at the rate in [City 2]. It is clear that Taxpayer intended to use the Aircraft for flights originating and terminating at [City 2]. The Department correctly determined Taxpayer's transitory use of the Aircraft in [County 1] did not give . . . County [1] taxing jurisdiction. Instead, [City 2] and . . . County [2] are the local governments that first acquired taxing jurisdiction over Taxpayer's use of the Aircraft in Washington.

Finally, we also note that under the canons of statutory construction, statutes should be construed to affect their purposes. *State v. Stannard*, 109 Wn.2d 29, 742 P.2d 1244 (1987). Statutes are construed so as to avoid strained or absurd consequences. *Wright v. Engum*, 124 Wn.2d 343, 351-52, 878 P.2d 1198 (1994). "Strained, unlikely or unrealistic" statutory interpretations are to be avoided. *Bour v. Johnson*, 122 Wn.2d 829, 835, 864 P.2d 380 (1993).

Here, if we were to assume Taxpayer's position, solely for purposes of argument and without deciding, that "taxable use" necessarily occurs at the first contact with Washington state, this would lead to the absurd result that only bordering cities and counties effectively could ever impose local use taxes on goods brought into the state by car, boat, or other means. Thus, Taxpayer's interpretation goes contrary to the State's tax policy. The whole purpose of the local tax statutes is to allow *all* counties and cities of this state to raise revenues that support the provision of public goods and services to their residents, such as the provision of roads, police and fire protection, airports, and many other local benefits. RCW 82.14.010.

As we have discussed, Taxpayer's only ties to . . . County [1] . . . were de minimis and transitory, and thus they did not trigger . . . [County 1's] taxing jurisdiction. Instead, the "taxable event" was Taxpayer's use of the Aircraft at [City 2], where Taxpayer regularly hangars and uses his Aircraft. RCW 82.14.020(3).

Based on the foregoing, we must deny the petition as to this issue.

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DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 30th day of March 2022.

[11 Rule 145 was amended effective January 2023, with a specific example provided. Rule 145 (502), Example 31 (use of a personal aircraft in Washington by a Washington resident where possession was taken outside Washington).]