

Cite as Det. No. 18-0272, 39 WTD 175 (2020)

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

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 18-0272
)	
...)	Registration No. ...
)	

RCW 82.12.020; WAC 458-20-178: USE TAX – SHERIFF’S SALES. Use tax is imposed on the fair market value of tangible personal property purchased at a sheriff’s sale, not the price paid for the tangible personal property at the sheriff’s sale. A sheriff’s sale does not reflect fair market value since the seller is an unwilling party to the sale.

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.

NATURE OF THE CASE

Gabriella Herkert, T.R.O. – The purchaser of a hotel and furnishings at a sheriff’s sale protests the measure of tangible personal property subject to use tax using comparison sales prices instead of values reported by taxpayer on its Real Estate Excise Tax Affidavit. We deny taxpayer’s petition.¹

ISSUE

Did the Department of Revenue . . . properly value tangible personal property sold with real property at a sheriff’s sale for use tax purposes under RCW 82.12.020 and WAC 458-20-178 (Rule 178)?

FINDINGS OF FACT

On September 21, 2012, . . . (Taxpayer) purchased [a hotel], located in . . . Washington. The hotel was purchased through a sheriff’s sale. During a review by the Department’s Audit Division (Audit), it was identified that no sales or use tax had been paid on fixtures or tangible personal property acquired along with the hotel. On August 11, 2016, Audit visited the hotel. The owner of [the] hotel showed several rooms to the auditor. The owner explained that, except for a few items, all furniture, fixtures, and décor items were purchased along with the hotel. Taxpayer did not record fixed assets or tangible personal property purchased through the sheriff’s sale on its

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

depreciation schedules. Taxpayer provided no explanation as to why the personal property was not depreciated for federal income tax purposes. Audit requested Taxpayer provide a list and values of all assets purchased with the hotel. Taxpayer did not provide either the list or the value of the fixtures and tangible personal property acquired with the hotel.

Audit estimated the value of fixed assets and tangible personal property Taxpayer acquired. To estimate, Audit created a list of fixtures and tangible personal property based on observations made at the hotel, and on images available on [the] hotel's website. The hotel has 66 rooms. There were three types of rooms at the hotel. The rooms varied by the number of beds and furnishings. When estimating the value of personal property, Audit considered the number of beds and other furniture pieces located in each type of room.

Taxpayer provided a Real Estate Excise Tax Affidavit filed with the . . . County assessor's office by Taxpayer for the sheriff's sale on October 9, 2013. In the affidavit, Taxpayer listed the value of fixed assets and tangible personal property at \$ Taxpayer estimated the value of fixed assets, such as grills, lounge chairs, conference room and lobby furniture, at \$ Taxpayer allocated \$. . . of the \$. . . total to the tangible personal property. Divided among the 66 rooms available at the hotel, Taxpayer's Real Estate Excise Tax Affidavit reflected \$. . . in tangible personal property per room.

Business owners are required to annually complete a Personal Property Tax Listing form identifying all taxable property located in the county, date of acquisition and value, including fully-depreciated property.² Audit requested copies of the Personal Property Tax Listing forms filed by Taxpayer for 2012 as well as subsequent years. Taxpayer did not provide copies of the Personal Property Tax Listing forms [or] an explanation as to why they were unavailable. Audit requested Taxpayer provide a list of fixtures with values to ascertain if Taxpayer's allocation between fixtures and tangible personal property could be substantiated. Audit requested Taxpayer provide supporting documentation to show that the total value placed on fixtures and tangible personal properties in the Real Estate Excise Tax Affidavit resulted from consideration of all the property purchased at the time of the sheriff's sale and their value at that time. Taxpayer did not provide documentation as requested.

Audit estimated the value of most items using the lowest possible cost found online on various websites. Audit valued some items using vendor purchase orders from 2012 for furniture replaced immediately after the purchase of the hotel. Audit calculated the total value of each room type multiplied by the number of rooms in each category. Audit then calculated a total value for fixed assets and tangible personal property. Audit credited Taxpayer for retail sales tax paid on additional items purchased in 2012. Audit estimated the value of Taxpayer's tangible personal property acquired with the sheriff's deed and assessed Taxpayer \$³ Taxpayer timely requested review.

² Washington State Department of Revenue, Personal Property Tax, December 2012, https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/Prop_Tax/PersProp.pdf (Last visited October 3, 2018).

³ Document No. . . . includes \$. . . in retail sales tax, \$. . . in retailing business and occupation (B&O) tax, \$. . . in use tax and/or deferred sales tax, \$. . . in convention and trade center tax, \$. . . in special hotel/motel tax, \$. . . in interest. Taxpayer only disputes that portion (\$. . .) of the \$. . . in use tax and/or deferred sales tax related to use tax imposed on the furnishings included in its purchase at sheriff's sale.

ANALYSIS

RCW 82.12.020 provides that use tax shall be collected from every consumer for the privilege of using, within Washington, any article of tangible personal property. The use tax supplements retail sales tax by imposing use tax of like amount upon every consumer within this state on any article of tangible personal property purchased at retail where the user has not paid retail sales tax on the purchase. Chapter 82.12 RCW; Rule 178. Thus, the use tax applies upon the use of tangible personal property where the sale or acquisition has not been subject to retail sales tax. Rule 178(2). Use tax liability arises at the time the purchased property is first put to use in this state. RCW 82.12.010(6)(a); Rule 178(5)(a). Use tax is imposed on “the value of the article used.” RCW 82.12.020(4)(a).

RCW 82.12.010(7)(a) defines the “value of the article used” as follows:

“Value of the article used” is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. . . . In case the article used is . . . sold under conditions wherein the 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.

RCW 82.12.010 defines the value of the article used to generally be the purchase price of the article. However, there are a number of specific situations where the value of the article used may be different than the amount of consideration paid or given by the buyer to the seller. *See* RCW 82.12.010(7). When an article is sold under conditions in which the purchase price does not represent the true value, 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. RCW 82.12.010(7)(a); Rule 178(4)(b). This is frequently referred to as the fair market value of the property.

Rule 178(4)(b) addresses the measure of tax used when the article is sold under conditions in which the purchase price does not represent the true value. A comparison . . . of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest. *Id.*; *see also Cascade Court Limited P.S. v. Noble*, 105 Wash. App. 563, 568, 20 P.2d. 997, 1002 (2007) (“Market value means the amount of money which a purchaser willing, but not obliged, to buy would pay an owner willing, but not obligated, to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.”).

The . . . County Sheriff's Department conducted a sale of the property to Taxpayer. A sheriff's sale is one of several methods that may be used to foreclose liens on property. *See* Chapter 60 RCW. In such a foreclosure, the owner is obligated to sell. Because the owner is obligated to sell the property, the transaction is not arm's length and the sales price does not represent the true value of the article used under RCW 82.12.010(7)(a). Restatement Third of Property §8.3 (1997). The value of the article sold under these conditions is determined as nearly as possible according to the

retail selling price at place of use of similar products of like quality and character. RCW 82.12.010(7)(a); Rule 178(4)(b).

Taxpayer contends that its Real Estate Excise Tax Affidavit correctly reported the fair market value of the personal property included in the sheriff's sale. We disagree. In Det. No. 13-0237R, 33 WTD 349 (2014), we held that the Department had the authority to rely on a taxpayer's books and records to adjust the taxable value of motor vehicles, even after the Department of Licensing had accepted lower reported vehicle values and collected use tax on those lower values. In that case, the value of the vehicles recorded in the taxpayer's books, records, and federal depreciation schedules was higher than the value reported to the Department of Licensing when the vehicles were licensed. In Det. No. 99-132, 19 WTD 255 (2000), we noted that personal property tax rolls may not be appropriate evidence of fair market value for use tax. In both cases, the Department was not, for use tax purposes, bound by values placed on personal property for the application of other taxes. Furthermore, even were we to accept the total value of the property as the amount paid in the sheriff's sale as the fair market value of the transaction, Taxpayer did not provide documentation substantiating its allocation of value between real property, fixtures and tangible personal property beyond the Real Estate Excise Tax Affidavit. Taxpayer did not enter the fixtures and tangible personal property in its books. Taxpayer could not provide the personal property list required to be annually filed since the acquisition of those items.

RCW 82.32.100(1) authorizes the Department to "proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax" when a taxpayer does not provide complete documentation. In the absence of the personal property tax list required to be filed, assessors will estimate the value of the property based on the best information available.⁴ Audit based its estimate on a physical review of the inventory at the hotel. Photographs from Taxpayer's website provided additional information as to the furniture and fixtures available at the hotel. Audit then reviewed online availability and pricing for similar items. Audit also used invoices for replacement furniture bought contemporaneously with Taxpayer's purchase of the hotel. While Taxpayer contends that Audit's calculation overstates values for items based on condition and other factors, Taxpayer did not provide alternative information with respect to the fair market value of the tangible personal property at the time of the sheriff's sale. We conclude that Audit estimated the value of the property on the best information available. We deny Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 12th day of October 2018.

⁴ See generally Washington State Department of Revenue, Personal Property Tax, December 2012, https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/Prop_Tax/PersProp.pdf (Last visited October 3, 2018).