

Cite as 11 WTD 169 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Refund of)	
)	No. 91-111
)	
. . .)	Unregistered
)	Notice of Use Tax Due
)	

- [1] RULE 178 AND RCW 82.12.0251: USE TAX -- EXEMPTION -- NONRESIDENT -- RESIDENCE -- DOMICILE. The Department recognizes a distinction between "residence" and "domicile." Thus, various use tax exemptions are available to nonresidents, but are not available to persons residing in Washington even though they may be domiciled elsewhere. A person who lives in both Alaska and Washington is not a nonresident of Washington for use tax purposes. Accord: Det. 87-174, 3 WTD 174 (1987).
- [2] RULE 178: USE TAX -- NONRESIDENT EXEMPTION -- VEHICLE NOT REQUIRED TO BE REGISTERED IN THIS STATE. The Rule 178(7)(b) exemption from the use tax for motor vehicles operated by a nonresident does not apply to a vehicle that is required to be registered in this state. WAC 308-99-040(5) provides that a person employed here who maintains a temporary residence in this state for more than six months in a continuous twelve-month period is a resident and required to register the vehicle in Washington.
- [3] RCW 82.44.020 -- MVET -- LICENSE. A person who is required to license a vehicle in Washington must pay motor vehicle excise tax on the vehicle. RCW 82.44.060 requires that the full tax be collected at the time of registration. A taxpayer who removes a vehicle from the state's jurisdiction before the registration expires is not entitled to a prorata refund of the motor vehicle excise tax paid.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

The taxpayer seeks a refund of use tax and motor vehicle excise tax paid on a 1989 Bouncer motorhome.

FACTS:

Heller, A.L.J. -- The taxpayer is the owner of a 1989 Bouncer motorhome purchased in . . . , Washington [in November 1988]. At the time of purchase the taxpayer claimed a nonresident exemption from the retail sales tax. Following an investigation, the Department of Revenue ("Department") issued a Notice of Use Tax Due in the amount of \$. . . and a Notice of Motor Vehicle Excise Tax Due in the amount of \$. . . for a total of \$. . . , including interest. The taxpayer has paid this amount and now seeks a refund equal to the tax paid.

The investigation conducted by the Department's Compliance Division reflects the following:

[In August of 1988], the taxpayer began employment with the . . . Construction Company based in . . . , Washington. The taxpayer worked for this company on a job for three weeks in . . . , Washington and was then assigned to a construction job in . . . , Washington.

[In September of 1988], the taxpayer opened a bank account with [a] Bank in [Washington]. The taxpayer's address imprinted on checks for this account was given as . . . , [Washington]. According to the taxpayer, he lived in an apartment at this address until he purchased the motorhome.

[In October of 1988], the taxpayer made application to . . . Finance Corporation for a loan to purchase the motorhome. The credit application gives the taxpayer's address as . . . in care of [the] Construction Co., . . . , Washington.

[In November of 1988], the taxpayer purchased the motorhome from . . . , . . . , Washington.

[In November of 1988], the taxpayer wrote a check for insurance on the motorhome. The check was drawn on the taxpayer's [bank] account with a check showing the [Washington] address.

[In November of 1988], the taxpayer applied for, and later received, a title and registration for the motorhome from the State of Alaska. The Alaska application for title and registration states that the motorhome has an estimated unladen weight of 14,840 pounds.

The motorhome was repaired by . . . in . . . , Washington [in November of 1988], [February of 1989], and [April of 1989].

During April of 1989, the taxpayer terminated his employment with the . . . Construction Co. and moved to Alaska.

The motorhome was observed by a Washington State Patrol officer parked adjacent to a public street near . . . , Washington [in October of 1989].

TAXPAYER'S EXCEPTIONS:

The taxpayer's claim for refund is based upon arguments contained in three letters to the Department. The following is a summary of the arguments raised by the taxpayer in these letters:

1. The taxpayer claims that he is not a resident of the State of Washington as he was only in this state a short period of time due to an economic downturn in Alaska. The taxpayer argues that he can support his claim that his residence was in Alaska and not in Washington because he owned several homes in Alaska cities over the past thirty years and paid utility bills to Alaska utilities. The taxpayer submitted copies of several years of utility bills in support of this position.

2. The taxpayer admits being employed in the State of Washington during the periods indicated, but states that he is unaware of any requirement that sets a period of time a nonresident can work in

Washington before the person is considered a resident.

3. The state began its investigation almost a year after the motorhome was purchased. Both the taxpayer and the motorhome had left the state by that time. The assessment of the motor vehicle excise tax was through October, 1989, but the taxpayer removed the motorhome from the state in April and should be entitled to proration.

4. At the time the taxpayer purchased the motorhome he held a valid Alaska driver's license and intended to return to the State of Alaska. The dealer that sold the taxpayer the motorhome was aware of all the facts surrounding the taxpayer's presence in Washington and chose not to collect the sales tax. If the taxpayer had known that he would be liable for the tax, he would not have purchased the motorhome as he had difficulty coming up with the down payment as it was.

5. The taxpayer benefited the State of Washington and its citizens through his purchases here, along with the payment of gasoline taxes and other expenditures. Given the short time the taxpayer was in this state to work, he argues the imposition of the tax is unfair.

DISCUSSION:

Use Tax. The use tax is imposed by RCW 82.12.020 which provides in part as follows:

There is hereby levied and there shall be 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 purchased at retail . . . (Emphasis supplied.)

The use tax does not depend upon the residence or domicile of the taxpayer, but rather upon the privilege of using tangible personal property in Washington. In other words, every person who uses tangible personal property in this state is subject to the use tax. However, there are certain exemptions from use tax which are granted based upon residency. RCW 82.12.0251.

[1] RCW 82.12.0251 grants an exemption to nonresidents who operate a motor vehicle in this state. This statute provides for the exemption in pertinent part as follows:

. . . the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington
. . . .

Id.

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax legislation. Rule 178(1) includes within the list of exempt uses:

(b) The use by a nonresident of a motor vehicle or trailer which is currently licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state,

The statute and the rule contain three requirements for entitlement to exemption from use tax. These are:

1. The use must be by a nonresident;
2. The vehicle must be currently licensed under the laws of the user's state of residence; and
3. The vehicle in question must not be required to be registered or licensed here.

As to the first requirement, the use tax statutes do not provide a definition for the terms "resident" or "nonresident." In the absence of a contrary statutory definition, words in a statute are given their ordinary and common meaning. John H. Sellen Construction Co. v. Department of Rev., 87 Wn.2d 878, 882 (1976). The American Heritage Dictionary, New College Edition defines "residence" to mean:

The place in which one lives; a dwelling; an abode.
. . . The act or a period of residing somewhere.

"Resident" is defined to mean "one who makes his home in a particular place. Id.

Under this definition, the taxpayer here literally "resided" in Washington for approximately eight months, albeit on a temporary basis. The taxpayer argues that he was not a resident of this state because he maintained a home in Alaska where he lived many years before coming to Washington and to which he returned after leaving Washington. The taxpayer confuses the concepts of residency with domicile.

In administering the Washington Revenue Act, the Department of Revenue has recognized the distinction between residence and domicile. Rule 178 in subsection (7)(c)(i) provides in part:

Use by a Nonresident. The exemption set forth in subdivision (a) and (b) of this subsection, do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time, . . .

This "use by a nonresident" provision takes into account the distinction between "residence" and "domicile." Though "residence" and "domicile" are usually in the same place, the terms are not interchangeable. "Residence" means living in a certain place whereas "domicile" refers to one's legal relation to that place after having made the choice to live there. A person may have more than one residence but only one domicile.

The distinction between residence and domicile was recognized by the Washington State Supreme Court decision in In Re Mullins, 26 Wn.2d 419 (1946). At page 444, the Court noted:

The terms "residence" and "home" are not synonymous with domicile, even though they may be and generally are included in the term. Domicile, then, is "residence" or "home" plus something more. That "something more" is a legal inference gathered from all the relevant facts, such as a physical presence, declared intention, conduct, etc.,--in reality, all the surrounding circumstances from which it can be determined that a domicile exists.

The taxpayer seeks an exemption from the use tax by arguing that he is a nonresident of Washington. In so doing, he attempts to define the term "nonresident" broadly. However, in deciding a claim of exemption from state taxation, we must be mindful of rules laid down on numerous occasions by the Washington Supreme Court: An exemption in a statute imposing

tax must be strictly construed in favor of the application of the tax and against the person claiming the exemption. Yakima Fruit Growers Association v. Henneford, 187 Wash 381, 60 P.2d 62; No person should be declared exempt unless it clearly appears that such exemption is required by law. North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P.2d 467 (571). Any claim for exemption is to be studied with care before depriving the state of revenue. Alaska Steamship Company v. State, 31 Wn.2d 328, 335, 196 P.2d 1001 (1948).

[2] Even if we were convinced that the temporary nature of the taxpayer's stay was such that for use tax purposes the taxpayer was a nonresident of this state, the remaining requirements for exemption under RCW 82.12.0251 must still be satisfied. As to the second requirement, we assume that the taxpayer was entitled to license the motorhome in the State of Alaska and that the licensing was proper. In fact, we find ample evidence exists that the taxpayer was in fact a resident of Alaska. However, the third requirement was not met. We conclude that the taxpayer was required to license the motorhome in Washington.

For licensing purposes, RCW 46.16.030 provides that vehicles are not required to be licensed in Washington if the owner has complied with the licensing law of the state of his residence subject to the rules adopted by the Department of Licensing. Those rules are found in WAC 308-99-040. Subsection (5) of this rule sets forth an exemption from registration requirements for vehicles operated in this state by a person temporarily employed here. This subsection provides as follows:

(5) Nonresident employed in Washington:
Nonresident persons employed in this state may operate vehicles not to exceed 12,000 pounds registered gross vehicle weight that are currently licensed in a another jurisdiction if no permanent, temporary, or part-time residence is maintained in this state for a period greater than six months in any continuous twelve-month period.

WAC 308-99-040(5) (Emphasis supplied.)

As indicated, the facts demonstrate that the taxpayer maintained a temporary residence in this state for approximately eight months. This is more than six months in any consecutive twelve-month period. According to this rule, the taxpayer was required to register the motorhome in

Washington. Moreover, we note that the Alaska title application states that the estimated weight of the motorhome was in excess of 12,000 pounds. If true, the taxpayer would not have qualified for the exemption had he been in Washington for less than six months. We find that the taxpayer is not entitled to exemption from the use tax and that the assessment was proper.

[3] MVET. The motor vehicle excise tax is imposed on the privilege of using a motor vehicle in this state. RCW 82.44.020. This statute contains certain exemptions from the motor vehicle excise tax for vehicles licensed in other states that have reciprocal agreements with Washington. Id. The tax is payable to the Department of Licensing at the time a vehicle is licensed. RCW 82.44.060. The reciprocal agreements referred to in RCW 82.44.020 pertain to the registration requirements for vehicles operated by nonresidents on the highways of Washington. See RCW 46.16.030. This is the same exemption that applies to the registration of a vehicle by a nonresident which is discussed in detail above. Because the taxpayer was required to register the motorhome in this state, the taxpayer was also required to pay the motor vehicle excise tax.

According to RCW 82.44.060, the motor vehicle excise tax is to be collected in full based on the number of months remaining in a registration year. The statute does not provide for a proration and refund of a portion of the tax if the vehicle does not remain in the state throughout the balance of the registration year. We find that the assessment of the motor vehicle excise tax was proper.

Next, we turn to the taxpayer's argument that he should be excused from the tax because he was not instructed as to his liability by the dealer, or that it was the dealer's responsibility to ascertain the facts and collect the tax due. Under Washington law, the liability for the retail sales tax falls on the purchaser. RCW 82.08.050. Failure to collect the sales tax does not relieve the purchaser's liability for the use tax. The Department has the authority to seek collection of the sales tax directly from the purchaser. Id.

While it is true that the dealer has an obligation to collect the sales tax, this obligation extends only so far. WAC 458-20-177 requires a dealer to obtain an affidavit from a purchaser seeking an exemption from tax. The affidavit states that the vehicle is being purchased for use outside the State of Washington and will not be used in the State of Washington

for more than three months. The dealer is relieved of the duty to collect the tax provided the affidavit is accepted in good faith and the dealer obtains some other proof of nonresident status such as an out-of-state driver's license.

Here, the taxpayer signed this affidavit while employed at a job in Washington that would take over three months to complete. The taxpayer used the motorhome as his temporary residence in this state for over five months. From the facts it appears that at the time the taxpayer gave the affidavit he was not entitled to the exemption. Even if the dealer was aware of these facts and had a duty to collect the tax, we will not permit a taxpayer to escape a tax liability by his own incorrect representations.

As to the fairness of the assessment, we agree that the taxpayer has in some measure benefited the citizens of the state by his expenditures here. However, these are expenditures which all persons make who live in this state and keep property here. Unlike the taxpayer, these other persons also pay retail sales tax or use tax for the privilege of using their property here. The fact remains that the property in question has been subjected to extensive and continuous use in this state. It is for the privilege of this use that the Washington State Legislature has enacted the use tax. As an administrative agency, the Department does not have the discretion to excuse a proper tax liability on the grounds that in the taxpayer's opinion the tax is unfair.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is denied.

DATED this 29th day of April 1991.