

Cite as 11 WTD 51 (1991).

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	
For Correction of Assessment)	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
<u>N</u>)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
)	
. . .)	No. 90-164A
)	
)	Registration No. . . .
)	

[1] RULE 178 -- RCW 82.12.0251 -- USE TAX -- BUSINESS
VEHICLE -- EXEMPTION -- NOT REQUIRED TO BE LICENSED.
An out-of-state business is not liable for use tax
on vehicle properly licensed out-of-state and not
required to be licensed in Washington.

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: . . .

DEPARTMENT OF REVENUE REPRESENTED BY DIRECTOR'S DESIGNEE:
Anne Roys, Sr. Administrative Law
Judge

DATE OF HEARING: July 29, 1991

NATURE OF ACTION:

The taxpayer appeals to the Director for a reversal of
Determination 90-164 which sustained an assessment of use tax
on a vehicle.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- The facts of this case were set out in
Determination 90-164 as follows:

Taxpayer received a notice of use tax due [March of 1989] for a 1984 Chevrolet pickup. The pickup is licensed in Oregon. According to taxpayer, the pickup was purchased in Oregon, while the taxpayer's domicile was in Oregon. The taxpayer has been headquartered in Oregon.

The pickup is used by an employee, . . . , to commute to the taxpayer's headquarters in Oregon and kept nightly at his home in . . . , Washington. According to the taxpayer, the pickup was not used at any Washington construction site. The employee worked at the taxpayer's administrative headquarters office in Oregon.

The administrative law judge sustained the assessment of use tax. He concluded the taxpayer was not using the vehicle as a nonresident of Washington for use tax purposes. In upholding the tax, the Determination relied on subsections (7)(c)(i) and (7)(j) of Rule 178. The Determination concluded:

The vehicle clearly is not garaged in another state, but kept in Washington. It is operated from the employee's Washington residence, not the taxpayer's Oregon headquarters. Since the taxpayer is also a resident of Washington for the purpose of Rule 178, the exemption for nonresidents is not available to it. The taxpayer was correctly assessed use tax on the full value of the vehicle.

The taxpayer seeks a reversal of the Determination for the following reasons:

1) The vehicle is owned by the taxpayer, a "resident" of Oregon, not the taxpayer's employee; and

2) The vehicle was dispatched, serviced, maintained, and primarily operated from the taxpayer's place of business in another state.

DISCUSSION:

RCW 82.12.0251 grants an exemption from the use tax for:

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

This statutory exemption is repeated in WAC 458-20-178 (Rule 178) at subsection (7)(b).

The taxpayer contends that the vehicle is a business vehicle and not required to be licensed in Washington. The taxpayer relies on WAC 308-99-040(6) which states:

A vehicle or a combination of vehicles, not exceeding a registered gross or combined gross weight of 12,000 pounds, which is properly base licensed in another jurisdiction and registered to a bona fide business in that jurisdiction is not required to obtain Washington vehicle license registration except when such vehicle is owned or operated by a business or branch office of a business located in Washington.

Subsection (7)(j) of Rule 178 states: In the Determination at issue, the administrative law judge relied on Subsection (7)(j) of Rule 178 and concluded that the taxpayer was not entitled to the "nonresident" exemption. That subsection states:

For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state, and;

In this case, the only use in Washington was by the taxpayer's employee who used the vehicle to commute to work. We agree with the taxpayer that this does not constitute "use" by the taxpayer.¹ If the employee did not use the vehicle to conduct any business in Washington, any use that occurred in Washington was personal use by the employee. If any use tax

¹For Federal tax purposes, the use by an employee of a company vehicle to commute to work is personal use rather than business use. The personal use of the vehicle is a taxable noncash fringe benefit. 1990 IRS Publication 17, Your Federal Income Tax, p. 44.

is owing, it would be the liability of the employee using the vehicle.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 6th day of August 1991.