

Cite as 11 WTD 149 (1991).

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

In The Matter of the Petition)	<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> <u>N</u>
For Correction of Assessment)	
of)	No. 91-106
)	
. . .)	UNREGISTERED
)	NOTICE OF USE TAX DUE
)	

[1] RULE 178: MILITARY EXEMPTION--USE TAX--BOAT--HOUSEHOLD ITEMS--PERSONAL EFFECTS. A non-resident military person stationed in Washington is not exempt from the sales and use tax unless he or she fits within the statutory exemptions provided. A boat is not with the exemption contained in RCW 82.12.0251. The definition in WAC 458-12-270 of household items and personal effects for the purposes of the property tax is equally applicable to the use tax. A boat is not a household item or a personal effect. Accord: Det. 88-432, 7 WTD 039 (1988).

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 ACTION:

Taxpayer protests the assessment of use tax on a boat owned by a nonresident member of the U.S. armed forces.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- Taxpayer was issued a Notice of Use Tax Due [in March 1990], on a boat and boat trailer in the amount of \$ Taxpayer protests the tax.

Taxpayer is . . . a legal resident of Alaska. He is assigned to duty in . . . , Washington, and has been since September, . . . He was transferred to attend the [educational program].

Taxpayer has nonresident student status at the university. Taxpayer is registered to vote in Alaska, and all his vehicles and trailers are licensed in Alaska.

Taxpayer was assessed use tax on his personal boat and boat trailer in March of 1990. Taxpayer argues as follows:

I am a nonresident temporarily assigned to duty in the State of Washington. Therefore, I qualify for exemption of use tax for "all tangible personal property brought into the State of Washington" by law. The subject boat and trailer were purchased two years ago and were properly titled and licensed. Under Washington State law I must relicense and title my boat in Washington not Alaska like my vehicles. The State of Washington is claiming I must then pay a "use tax in lieu of sales tax" for my boat and trailer.

I understand the intent of the use tax law for Washington State residents. I understand the need to protect the revenue sources of the State when adjacent States (Oregon and Idaho) have little or no sales tax. This law is intended for residents, those individuals that can vote and are domiciled, in the State of Washington not nonresidents. The intent of the law is to insure all residents of the State pay their "fare share" (sic) and not purchase articles in other states to avoid paying sales tax in their home state. I and all other members of the U.S. Armed Forces that are nonresidents who purchased personal property prior to receiving orders and being transferred to the State of Washington should not be subjected to this tax.

I feel the application of this law for purchases made prior to residing in the State of Washington is "unconstitutional and disproportional". The Soldiers and Sailors Relief Act does not prohibit states from collecting retail sales or use tax from nonresident members of the Armed Forces, Sullivan v. United States, however the ruling was for purchases made when a member was residing in the State in question not for purchases made prior to residing in the State in question. The "time frame" issue is very important. The State of Washington surely cannot contend I purchased my boat and trailer in Oregon to avoid Washington State sales tax because I

did not reside nor claim residency in the State of Washington at that time. . . .

DISCUSSION:

The use tax is imposed on the use of tangible personal property when Washington's retail sales tax has not been paid. RCW 82.12.020. RCW 82.12.0251 provides an exemption from the use tax for

the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington . . . or in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of Washington or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

WAC 458-20-178 (Rule 178) is an administrative rule of the Department of Revenue, and has the force and effect of law unless overturned by a court of record. Rule 178 provides, in relevant part:

(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or 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, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or

(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are stationed in this state pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.

(i) Use by a nonresident. The exemptions set forth in (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, nor do they extend to the use of property brought into this state by a nonresident for the purpose of conducting herein a nontransitory business activity.

Emphasis ours.

[1] The taxpayer cannot qualify for the exemptions provided under Rule 178 (7)(a) or (b), above, because he is currently residing in the state. Taxpayer cannot claim exemption under Rule 178 (7) (c) for the boat, either. The military exemption is limited to household items, personal effects, and private automobiles. Taxpayer's boat is neither. WAC 458-12-270 is the administrative rule defining the terms "household goods" and "personal effects" for purposes of the property tax. It defines the terms as follows:

Household goods and furnishings shall include movable items of necessity, convenience, or decoration, such as bedding, tables, chairs, refrigerators, stoves, freezers, food, clocks, radios, televisions, pictures, tools and equipment used to maintain the residence. It shall include all personal property normally located in or about a residence and used or held to enhance the value of enjoyment of the residence (including its premises). Those items of personal property constructed primarily for use independent of and separate from a

residence do not qualify for the exemption (i.e., boats, pickup campers, (pickup campers attached to the vehicle by the methods authorized in department of licenses bulletin, dated January 26, 1965 shall be considered a part of the vehicle and are not taxable as personal property) etc.).

* * *

Personal effects shall be construed to mean tangible property which usually ordinarily attends the person. Such articles as wearing apparel, jewelry, toilet articles and articles of similar nature would qualify for this exemption.

A boat and boat trailer do not fall within the definitions of either household goods or personal effects, and therefore do not qualify for the exemption.

Finally, taxpayer has argued that his situation is distinguishable from the situation explored by the U.S. Supreme Court in Sullivan v. United States, 395 U.S. 169, 23 L.Ed 2d 182 (1969), because he purchased his boat in Oregon before bringing it to Washington, and that the "time frame" issue is very important. . . . "

In Sullivan, the Supreme Court found that the Soldiers and Sailors Relief Act does not

relieve servicemen from every state tax which is somehow dependent on the presence of personal property within the state.

Sullivan, 23 L.Ed.2d at 192. Contrary to taxpayer's assertion, one of the situations before the Supreme Court involved the use tax on a vehicle by a Commander Roloff, whose home state was Wisconsin. He had purchased a used car in Florida and paid the 2% Florida sales tax. When he later registered the car in Connecticut, he was assessed use tax, with credit given for the Florida sales tax paid. That is a situation very similar to the one before us. The Supreme Court explicitly considered the question of whether use taxes could be imposed on military personnel, and decided that they could. The use tax is imposed, not simply on those whose domicile is in Washington, but all residents and nonresidents of Washington who use tangible personal property in this state and are not otherwise exempt. The reason for imposing the use tax is not simply to make sure that all those domiciled in

Washington pay their fair share of taxes and to avoid the problem of persons crossing into states with lower sales tax rates to make purchases, but to ensure that all persons who are receiving the benefit of services from the state on a long-term basis are subject to its taxing authority.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 29th day of April 1991.