

Cite as 11 Det. No. 91-167, WTD 349 (1992).

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 Refund of)	
)	No. 91-167
)	
. . .)	Unregistered
)	Retail Sales Tax
)	

[1] RULE 177: RETAIL SALES TAX -- SALES TO MILITARY PERSONNEL COVERED UNDER UNITED STATES TREATY WITH NATO MEMBER NATIONS. A military officer based in Washington by a nation which is a party to NATO treaty TIAS 2846 "Status of Forces" is entitled to purchase a motor vehicle exempt of sales tax under the treaty's language mandating that the officer does not lose nonresidency status during the term of service.

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:

Military officer petitions for refund of sales tax paid on purchase of vehicle.

FACTS AND ISSUES:

Adler, A.L.J. -- [Sergeant] is in the service of the British Royal Air Force. He is based in Washington state under the authority of a treaty between NATO-member nations, including the United States and Great Britain; Verification of this officer's status as an active member of a treaty-party's military force was confirmed by a telephone call to the British Embassy in Washington, D.C. and by a letter the officer provided to the automobile dealer from the Defence Administration Department, British Defence Staff at the British Embassy in Washington D.C.

The vehicle purchased is a right-hand drive . . . , which the officer will export upon his departure. The dealer supplied a

copy of the bill of sale and of its receipt for payment in full of the selling price, including \$. . . in sales tax.

DISCUSSION:

[1] TIAS 2846 governs the status of NATO-member armed forces ("sending state") during service in a member country (receiving state). 4 United States Treaties 1792 (dated 1951, effective in 1953; amendments in 1971 and 1981 did not affect the disposition of this question). The treaty states, in pertinent parts:

Article IX, §1. Members of a force or of a civilian component and their dependents may purchase locally goods necessary for their own consumption, and such services as they need, under the same conditions as the nationals of the receiving State. (Emphasis supplied.)

Article IX, §8. Neither a force, nor a civilian component, nor the members thereof, nor their dependents, shall by reason of this Article enjoy any exemption from taxes or duties relating to purchases and services chargeable under the fiscal regulations of the receiving State. (Emphasis supplied.)

Article X, §1. Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation. Members of a force or civilian component shall be exempt from such taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there. (Emphasis supplied.)

Article XI, §6. Members of a force or civilian component may import temporarily free of duty their private motor vehicles for the personal use of themselves and their dependents. There is no obligation under this Article to grant exemption from taxes payable in respect to the use of roads by private vehicles. (Emphasis supplied.)

Read together, Article IX declares that this officer is subject to sales tax on all purchases of goods and services for personal

consumption on which Washington residents would be taxable. However, the United States has agreed, under Article X, that any form of taxation based on residency shall be barred for tangible movable property located in the United States solely due to the fact of the officer's assignment here. No language limiting the exemption to federal taxes is contained in the provision.

Under WAC 458-20-177 (Rule 177), sales tax does not apply to vehicle purchases by armed services members temporarily stationed in Washington pursuant to military orders, because they are "presumed to be nonresidents" unless they were Washington residents upon induction.

Here, a foreign nation's military officer based in Washington state pursuant to a treaty between NATO-member countries would not lose nonresident status, because the treaty expressly states that his presence here shall not create a change of residence for taxation purposes. As a result, this officer is presumed to be a nonresident for purposes of importation of this vehicle both under Rule 177 and under the NATO treaty. As such, he is entitled to a refund of sales tax paid.

Please note, though, that Article XI, §6 limits entitlement to tax exemptions by stating that "there is no obligation under this Article to grant exemption from taxes payable in respect to the use of roads by private vehicles." If the officer licenses the vehicle in Washington, he will be liable for all licensing taxes, costs, and fees, because they are imposed for the privilege of operating motor vehicles on Washington roads. If he licenses the vehicle in the United Kingdom, these charges would not apply; and the registration would be honored here for as long as Great Britain remains his home of record. Pursuant to RCW 46.16.460, he may obtain a nonresident military temporary license, valid for up to forty-five days, while applying for license plates from his home of record.

DECISION AND DISPOSITION:

The petition is granted. Pursuant to requests by the officer and the automobile dealer, the Taxpayer Accounts Administration division will issue a refund to the officer directly in this case.

DATED this 19th day of June 1991.