

Cite as Det. No. 93-019, 13 WTD 233 (1994).

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. 93-019
)	
. . .)	Unregistered
)	Retail Sales Tax
)	

[1] RULE 177: RETAIL SALES TAX -- NONRESIDENT MILITARY MEMBER STATIONED IN WASHINGTON -- WASHINGTON VEHICLE PURCHASE. RCW 82.08.0264(2) allows nonresidents to purchase a motor vehicle, trailer, or camper for use outside this state without payment of retail sales tax, but only if three requirements are satisfied: the motor vehicle, trailer, or camper will be registered immediately under the laws of the state of the purchaser's residence; it will not be used here more than three months; and it will not be required to be registered and licensed under the laws of this state.

This headnote is provided as a convenience for the reader and is 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:

Petition concerning the retail sales tax liability of a soldier purchasing a vehicle in Washington.

FACTS:

Bauer, A.L.J. -- Taxpayer is a soldier assigned to [Washington] under permanent change of station ("PCS") orders. His home of record is [out-of-state]. In May 1992, Taxpayer purchased an automobile in [Washington]. The dealership required him to pay Washington retail sales tax . . . , licensing fees, and insurance costs before taking possession of the vehicle. The dealer

advised Taxpayer that, if he were to leave the state within three months of the purchase, he would be entitled to a refund of the sales tax.

[In August 1992], temporary duty orders ("TDY orders") were issued ordering Taxpayer [out-of-state in August 1992] for 160 days, after which he was to return to his [Washington State] unit. Upon receiving his TDY orders, Taxpayer asked the dealer to return the sales tax he had paid. The dealer referred Taxpayer to the Department of Revenue, and this petition for refund ensued.

TAXPAYER'S EXCEPTIONS:

Taxpayer bases his claim of refund on his leaving the state of Washington within three months of the purchase date of his vehicle.

DISCUSSION:

Generally, members of the armed forces who purchase vehicles in Washington are required to pay retail sales tax if they intend to remain here more than three months.¹ This is true even if they claim a home of record in a state other than Washington, and even if they register the vehicle under the laws of their home state. See WAC 458-20-177.

[1] RCW 82.08.0264(2) allows nonresidents to purchase a motor vehicle, trailer, or camper for use outside this state without payment of retail sales tax, but only if three requirements are satisfied: (1) the motor vehicle, trailer, or camper will be registered immediately under the laws of the state of the purchaser's residence; (2) it will not be used here more than three months; (3) and it will not be required to be registered and licensed under the laws of this state.

To meet the first requirement, license plates from the military purchaser's home state must be affixed to the vehicle at the time of sale. WAC 458-20-177. In the alternative, the military purchaser of a motor vehicle may apply for such license plates at the time of sale and remove the vehicle from the dealer's

¹ The United States Supreme Court in Sullivan v. US, 395 U.S. 169, 23 L. Ed. 2d 182 (1969) determined 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. Explicitly considered in this case was the question of whether use taxes could be imposed on military personnel. The Court determined that they could be lawfully imposed.

premises under the authority of a 45-day nonresident military temporary license (45-day permit) issued by the Department of Licensing. RCW 46.16.460.

To meet the second requirement, the purchaser must sign an affidavit declaring that the vehicle, trailer, or camper will not be used in this state more than three months (WAC 458-20-177), and must provide the dealer one of the following:

- a. A copy of military orders (e.g., TDY orders) showing that the purchaser is only temporarily stationed in Washington and will leave Washington to return to his/her permanent duty station or home within three months of the vehicle's purchase; or
- b. If the purchaser is permanently stationed in Washington (i.e., PCS orders), a copy of military orders (i.e., "PCS" orders) which will permanently reassign the purchaser to a new duty station outside this state within three months of the date of purchase.²

The third requirement is that the nonresident military purchaser must not be required to license and register the vehicle under the laws of this state. RCW 82.08.0264(2) specifies that if, in addition to the first two requirements, "said motor vehicle . . . will not be required to be registered and licensed under the laws of this state," then the sale is exempt of retail sales tax.

In the vast majority of instances a nonresident military purchaser is not required by law to register and license the car in this state, since it can be registered and licensed in the soldier's home of record state, and so this third requirement is not normally a problem. See RCW 82.44.010(2), WAC 308-96A-050, and WAC 308-57-140(3).

In this case, documentation submitted by the taxpayer indicates that he purchased his car [in May 1992]. Pursuant to temporary duty orders, taxpayer proceeded [out-of state in August 1992] for a temporary period of 160 days, after which he was to return to his permanent unit in Washington. Since Taxpayer did not have orders to leave the state permanently within three months of the purchase of his vehicle, he was not exempt from payment of retail sales tax.³

² This is the element of the exemption upon which the taxpayer bases his refund claim.

³ This decision does not address the issue of whether the Department has authority to grant a refund when a soldier receives military orders permanently transferring him from Washington within 90 days of the purchase of his/her vehicle, and

We note, however, that even though Taxpayer has Washington plates, he is exempt from payment of the annual excise tax pursuant to RCW 82.44.010(2)(e).

DECISION AND DISPOSITION:

The taxpayer's petition for refund of retail sales tax is denied.

DATED this 26th day of January 1993.

such orders are received after the vehicle's purchase and payment of sales tax.