

Cite as Det. No. 13 WTD 147 (1993).

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

In the Matter of the Request)	<u>F I N A L</u>
For Reconsideration of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 92-251R
)	
. . .)	Registration No. . . .
)	Notice of Use Tax Due/MVET
)	

[1] RCW 82.04.050 -- SALES TAX -- USE TAX -- EXEMPTION -- RESALE -- INTERVENING USE. The purchase of tangible personal property for resale in the ordinary course of business, without intervening use, is not a retail sale. Intervening use by the purchaser, however, triggers deferred sales/use tax. Accord: Det. No. 87-298, 4 WTD 87, (1987); Det. No. 89-337, 8 WTD 59 (1989); Det No. 89-461, 11 WTD 21 (1989).

[2] RULE 178: USE TAX -- MEASURE OF. The measure of use tax is the value of the article used. Such value is the consideration, including money and credits, paid to acquire the article. There is no provision for reducing that value when it is alleged that property traded in on the article acquired is worth less than the amount reflected in documents of sale. Partial Accord: Det. No. 92-156, 12 WTD 195 (1992).

[3] RULE 228: EVASION PENALTY -- MOTOR HOME -- OREGON LICENSE -- EFFECT OF. Washington residents who misrepresent the truth in applying for and obtaining Oregon license plates are liable for the evasion penalty.

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:

Request for reconsideration of determination which upheld use tax, motor vehicle excise tax, and the evasion penalty on a motor home.

FACTS AND ISSUES:

Dressel, A.L.J. -- [The taxpayers] sell boats. They were assessed use tax, MVET, and the tax evasion penalty by the Department of Revenue (Department). That assessment was affirmed in its entirety in Det. No. 92-251. In the present action, taxpayers request reconsideration of the determination.

The facts are as stated in the determination and will not be repeated here. There are three issues raised in the taxpayers' request for reconsideration. They are: 1) Does a person claiming a sales/use tax exemption because (s)he purportedly purchased a motor home for resale have to be a licensed motor home dealer? 2) Is the registration in Oregon of a motor home by a Washington boat dealer tax evasion? 3) If use tax is, indeed, applicable to taxpayers' motor home, was it based on an incorrect value in that the value of an airplane given in trade was overstated?

DISCUSSION:

[1] Taxpayers suggest that there should be no requirement that they be licensed as motor home dealers in order to be eligible for the resale tax exemption.¹ We agree.² However, had taxpayers been so licensed, their argument that they purchased the subject motor home for resale would have been much stronger. Whether they did or did not purchase for resale, however, is irrelevant in this case because they used the motor home for their own personal purposes. As stated in the original determination, "Taxpayers used the motor home in Washington." That statement has not been controverted. The resale exemption applies only when the article acquired is not put to intervening use. RCW 82.04.050(1)(a). Thus, sales tax or its complement, use tax, is owed by taxpayers on the motor home. RCW 82.12.020.

Having decided that, we now entertain the question of what the measure of the use tax should be. According to RCW 82.12.020, it

¹ Per RCW 82.04.050, the purchase of tangible personal property for resale in the regular course of business, without intervening use, is not a retail sale.

² See Determination No. 87-36, 2 WTD 183 (1986).

should be the "value of the article used." That phrase is defined at RCW 82.12.010(1), thusly:

"Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter.

[2] The consideration given for the motor home, as listed on the retail order form³ from the Oregon auto dealer, is \$[A]. Of that, \$. . . credit was given for the . . . airplane which taxpayers traded in on the motor home. The "value of the article used" includes "credit." Id. There is a provision in WAC 458-20-178(13) under which value may be adjusted for use tax purposes if the article was sold under conditions where the purchase price did not represent the true value of the article. There is, however, no companion provision under which the value of the article under consideration may be adjusted based on the overvaluation or undervaluation of property traded in for the article under consideration. Further, there is no evidence that \$[A] is not the "true value" of the motor home. Therefore, the Department was correct in using that figure as the measure of use tax.

Last of the issues to be confronted is the evasion penalty. In registering the motor home in Oregon, taxpayers signed an application form which said, among other things, ". . . I certify that I am domiciled in Oregon or the vehicle is subject to registration in Oregon under Oregon law . . . I certify that the information contained on this application is true and correct."

[3] As stated in the original determination⁴, taxpayers were not Oregon residents, the Oregon address they listed on the registration application was that of a friend, and they admitted they licensed the motor home in Oregon because they didn't want to pay taxes on it. The conclusion we draw from this combination of facts is that they misrepresented the truth to Oregon authorities so they could license the motor home there and not have to pay the much more expensive Washington taxes and fees.

The statutory authority for the evasion penalty is RCW 82.32.050 which states in pertinent part, "If the department finds that all or any part of the [tax] deficiency resulted from an intent to

³ The retail order form was signed by taxpayers.

⁴ Determination No. 92-251,

evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added." (Bracketed inclusion ours.) The taxpayers knew that it was much less expensive to license a motor home in Oregon than in their home state. They knowingly falsified their license registration application by listing an address other than their own. Their action is made even more egregious by fact that they signed the form directly below the very large and prominent printed statement that the information listed was true and correct. We do not need more than this to find an "intent to evade." We find that the taxpayer deliberately misrepresented the truth for the purpose of obtaining the cheaper registration. The language on the form speaks for itself, and in light of that language we are not at all persuaded by the taxpayers' explanation. As we said in part in sustaining an evasion penalty in Det. No. 86-223, 1 WTD 43 (1986):

In an attempt to evade this state's sales and use taxes and to take advantage of Oregon's lower cost of licensing, many Washington residents have registered their motor vehicles with the state of Oregon using spurious Oregon addresses. This Department has routinely assessed the evasion penalty in addition to the use tax in cases where an attempt to evade the tax is apparent.

The taxpayer was a Washington resident. He gave the Oregon authorities an address that was not his when he applied for the Oregon license.

We find no material difference between the instant case and the one quoted. Moreover, we find the evidence of evasion to be clear, cogent, and convincing. The only connection these people had with Oregon is the fact that they purchased the subject vehicle in that state. We do not believe that these experienced business people were so naive as to think that was a legitimate basis for an Oregon license.

The evasion penalty is affirmed.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 28th day of July 1993.