Cite as 2 WTD 105(1986)

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

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 86-321
. . .	)	NOTICE OF USE TAX DUE

[1] **RULE 178**: USE TAX -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF AUTOMOBILE LICENSED IN OREGON -- USED IN WASHINGTON. Where there are dual residency owners (Oregon and Washington), any use of the auto by either joint owner within this state constitutes a taxable incident. The use tax is imposed on the use in this state as a consumer of any article of tangible personal property. Where Washington resident used a jointly owned auto in Washington that was licensed in her name and name of Oregon resident in Oregon, the first use of auto in Washington gives rise to the imposition of use tax.

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: . . .

DATE OF HEARING: October 7, 1986

NATURE OF ACTION:

Petition protesting assessment of use tax on an Oregon licensed motor vehicle jointly owned by taxpayer, resident of Washington, and her mother, resident of Oregon.

FACTS AND ISSUES:

Krebs, A.L.J.--A Notice of Use Tax Due was issued to . . . (hereafter taxpayer) on December 9, 1985. Use tax was

assessed in the amount of $810 because of the taxpayer's ownership and use in Washington of a 1985 Camaro automobile purchased in Oregon. The use tax has not been paid.

The taxpayer furnished the following information and explanation. Her mother, . . ., resided in Oregon for 75 years until May 1986 when she took up residence with the taxpayer in . . ., Washington. In September 1985, while the taxpayer was residing in . . ., Washington, the 1985 Camaro was purchased from a Chevrolet dealer in Salem, Oregon in the name of the taxpayer and [her mother]. The taxpayer traded in her car. The taxpayer's husband is making the payments for the purchase of the 1985 Camaro because [the mother] had loaned money to him to buy a business. The 1985 Camaro was registered in Oregon in the names of the taxpayer and [mother] residing at . . . [in], Salem, Oregon . . . . [An] Oregon license plate . . . was issued to them for the automobile. The automobile remained mostly in Oregon where [the mother] used it. [She] traveled frequently between Oregon and Seattle, and left the automobile with the taxpayer whenever [she] left from Sea-Tac Airport. Every few weeks, [she] visited the taxpayer, and the taxpayer drove the automobile in her . . . area because [the mother] wanted it that way as [she] was not familiar with the roads in that vicinity.

On July 28, 1986, the 1985 Camaro was registered in Washington in the names of the taxpayer and [the mother]. Washington license plate . . . was issued to them for the automobile. When they obtained the Washington registration, use tax was not paid.

The taxpayer asserts that because she is an only child and the "only future survivor," all of [her mother]'s financial property is listed jointly. The taxpayer believes that at the time she becomes sole owner of the automobile the tax will become due and she will pay it. The taxpayer asserts that the automobile was in Washington for less than three months (as of December 9, 1985 when the Notice of Use Tax Due was issued). The taxpayer points to WAC 458-20-178 . . ., copy attached, as covering these "two items" to grant an exemption from the use tax.

DISCUSSION:

The taxpayer was (and still is) a resident of Washington at the time of the purchase of the 1985 Camaro automobile. As such, she is and was fully within the taxing jurisdiction of

the state and not entitled to favored treatment under the use tax law.

Rule 178, . . ., directs why the taxpayer owes use tax upon the 1985 Camaro automobile. Rule 178 has the same force and legal effect as the Revenue Act and provides in pertinent part:

> NATURE OF THE TAX. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the sale to him of the property used.
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> In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the user or to his donor or bailor has been subjected to the Washington retail sales tax, and such tax paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.
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> WHEN TAX LIABILITY ARISES. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which the taxpayer takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person . . .

> PERSONS LIABLE FOR THE TAX. As has been indicated, the person liable for the tax is the purchaser, the extractor or manufacturer who uses articles produced by himself, the bailor or donor and the bailee or donee if the tax is not paid by the bailor . . .
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> . . .
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> 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 82.12.030 of the law:
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> 1. Any of the following uses:
>
> a. The use of tangible personal property brought into the state of Washington by a nonresident thereof for his 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 which is currently licensed under the laws of the state of his residence and is not used in this state more than three months and which is not required to be registered or licensed under the laws of this state, or . . . (Emphasis supplied.)

Because the taxpayer's name is the one used in purchasing the automobile in Oregon and licensing it in Oregon, we find that the automobile was "purchased at retail" and the taxpayer's use of the automobile in Washington resulted in use tax liability under Rule 178.

Even if we concede that [the mother] is the "owner" of the automobile with the taxpayer having a survivorship interest, the automobile was "acquired by bailment" when the taxpayer drove the automobile in this state at [the mother's] request. It is not essential to our Determination to find that the taxpayer drove the automobile continuously in Washington; use tax liability arises at the time the property is first put to use in this state and attaches to the bailor (mother) and the bailee (taxpayer) at the time the automobile is first put to use in this state.

An exemption is allowed for temporary use (less than three months) by a nonresident of a motor vehicle "licensed under the laws of the state of his residence." This exemption is not available to the taxpayer because she was not a "nonresident" when she drove the automobile.

Where there are dual residency owners (Oregon and Washington), any use of tangible personal property by either joint owner within this state constitutes a taxable incident. The operation of such property within this state and attendant benefits and liabilities realized therefrom spin off and attach to each registered owner of the property jointly and severally. The dual ownership subjected the automobile to use in this state by a consumer when it entered this state in its journey to the taxpayer's residence and when the taxpayer operated the automobile in this state.

Not to be ignored is the fact that the automobile has now been registered in Washington with the taxpayer as a joint owner and that the registration was done without payment of use tax at the time of registration although rightfully due also at the time of registration if not previously paid.

For the reasons and law set forth, we conclude that use tax was properly assessed.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. Use tax assessment in the amount of $810 is due for payment by January 2, 1987.

DATED this 12th day of December 1986.