

Cite as Det. No. 87-50, 2 WTD 249 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
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. 87-50 ¹
)	
)	Re: Use Tax
...)	1986 Mazda RX-7 Washington
)	...

[1] **RULE 178:** USE TAX -- AUTO PURCHASED IN MASSACHUSETTS BY RESIDENT THEREOF -- AUTO BROUGHT INTO WASHINGTON BY PURCHASER WITHIN NINETY DAYS OF PURCHASE -- CREDIT FOR SALES TAX PAID. The use tax is imposed on the use in this state as a consumer of any article of tangible personal property. Where Massachusetts resident purchased auto in Massachusetts, paid sales tax there, and brought auto into Washington within ninety days of purchase and commencement of residence in Washington, use tax applies. However, there is a credit against the amount of the use tax due for the amount of sales tax paid to Massachusetts.

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: December 11, 1986

NATURE OF ACTION:

Petition for refund of use tax paid on the registration of an automobile in Washington.

FACTS AND ISSUES:

Krebs, A.L.J.-- ... (taxpayer) is the owner of a 1986 Mazda RX-7 automobile which she purchased on April 12, 1986 in ... , Massachusetts where she had resided for over a year. She paid \$18,249 plus five percent Massachusetts sales tax in the amount of \$912.45. The taxpayer bought the

¹ The reconsideration determination, Det. No. 87-50A, is published at 2 WTD 443 (1987).

automobile in anticipation of beginning a new job on May 12, 1986 in . . . , Connecticut. However, on April 17, 1986, a Seattle, Washington firm, . . . , telephoned her and discussed employing her. On April 19, 1986, the taxpayer flew to Seattle for further discussion. On April 21, 1986, she accepted the job in Seattle. She returned to Massachusetts to get her automobile and then drove to Seattle, arriving there about May 31, 1986. She has resided in Seattle since then. She had never resided previously in Washington State.

The automobile, when purchased in April 1986, was registered in Massachusetts and Massachusetts license plate . . . was issued to the taxpayer for the automobile. In July 1986, the taxpayer obtained a Washington driver's license.

On December 8, 1986, the taxpayer registered the automobile in Washington . . . was issued. At that time, the taxpayer paid use tax of \$529 (\$18,249 x .029) after receiving a credit for the sales tax paid to Massachusetts pursuant to RCW 82.12.035.

Initially, when the taxpayer petitioned the Department of Revenue on October 23, 1986 for a waiver of the requirement that tax is owed to Washington, she stated her appeal in these words:

I wish to appeal the requirement that I owe 3% Washington State sales tax on my car which was purchased on April 12, 1986, . . . in Massachusetts where I paid a 5% sales tax.

Now that the use tax, which supplements and complements the sales tax in a like amount, has been paid by the taxpayer, her petition is being deemed as a petition for refund of the amount paid to Washington.

The tenor of the taxpayer's petition was to establish that her purchase of the automobile in Massachusetts "was not to avoid sales tax," and to establish her honesty in the matter.

The issue in this case is whether use tax is rightfully and legally owed to Washington.

DISCUSSION:

The statute, RCW 82.12.020, imposes the use tax and provides that:

there is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail . . .

WAC 458-20-178 (Rule 178), . . . , implements the imposing statute and has the same legal force and effect as the law itself (RCW 82.32.300). The rule in pertinent part provides:

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 . . . where the user . . . has not paid

retail sales tax under chapter 82.08 RCW with respect to the sale to him of the property used.

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.

WHEN TAX LIABILITY ARISES. Tax liability imposed under the use tax arises at the time the property purchased . . . is first put to use in this state . . . Tax liability arises as to that use only which first occurs within the state . . .

PERSONS LIABLE FOR THE TAX. As has been indicated, the person liable for the tax is the purchaser . . .

...

EXEMPTIONS. Persons who purchase . . . tangible personal property for their own use . . . 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:

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 . . . 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 licensed under the laws of this state, or

the use of household goods, personal effects, and private automobiles by a bona fide resident of this state 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 thirty days** prior to the time he entered this state. (Emphasis supplied.)

Effective April 18, 1983, the language "and is not used in this state more than three months" was removed from the time was increased from 30 days to 90 days that a Washington resident must have used household goods, personal effects and private automobiles in another state as a bona fide resident of that state in order to claim use tax exemption when they are first brought into Washington. Chapter 353, Laws of 1985.

In this case, the taxpayer purchased at retail the 1986 Mazda RX-7 on April 12, 1986 in . . . , Massachusetts. She came to Washington to reside in Seattle at the end of May 1986 because she had secured employment there. She drove the automobile to Washington and has used it in Washington since at least May 31, 1986. She is not entitled to the exemption in Rule 178's 1a, *supra*, because she did not come to Washington "temporarily." She had employment and she obtained a Washington driver's license in July 1986.

The taxpayer is not entitled to the exemption in Rule 178's 1b, *supra*, because she established residency in Washington and can no longer be considered a "nonresident" of Washington.

The taxpayer is not entitled to the exemption in Rule 178's 1c, because she did not acquire the automobile more than "ninety days prior to the time she entered this state."

We have researched the law and found no Washington use tax exemption available to the taxpayer based on the facts in this case. Accordingly, we must sustain the use tax (with credit as allowed for sales tax paid to Massachusetts) as imposed at the time of the registration of the automobile in Washington. Actually, the use tax was due as of the time, in May 1986 when the automobile was "first put to use in this state." Rule 178.

The facts in this case establish that the taxpayer's purchase of the automobile in Massachusetts was not done to avoid Washington sales tax and we so conclude.

It is ironic that on the day of the conference the taxpayer was notified by her employer that she would be transferred to . . . , Massachusetts in March 1987 to be in charge of sales on the east coast. However, this transfer does not have any bearing on the Washington use tax paid.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied

DATED this 20th day of February 1987.