

In the Matter of the Petition) F I N A L
For Correction of Notice of) D E T E R M I N A T I O N
Use Tax Due of)
) No. 86-172A
)
)
. . .) Unregistered
)
)

- 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: . . .
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. . .
. . .
. . .

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:

Sandi Swarthout, Assistant Director
Garry G. Fujita, Chief of Interpretation and Appeals
Edward L. Faker, Senior Administrative Law Judge

DATE OF HEARING: September 26, 1986

NATURE OF ACTION:

The taxpayer appeals the findings and conclusions of Determination No. 86-172 which was issued on May 23, 1986. The Determination sustains a Notice of Use Tax Due, dated June 27, 1985, in the amount of \$. . . upon the value of a 1984 Beaver 40 motor home. The Determination denied the use tax exemption provided by RCW 82.12.0251.

On December 18, 1986 the taxpayer sought to pay the use tax notice in full and to have this appeal converted to a petition for refund, which was granted by letter on December 19, 1986. The tax was paid in full by check dated December 31, 1986, received by the Department on January 2, 1987.

FACTS AND ISSUES:

Faker, Sr. A.L.J.--The factual background of the use tax notice is properly set forth in Determination 86-172. The factual occurrences of the case are not in dispute. However, the taxpayer takes exception to conclusory factual statements contained in the Determination. It is beyond dispute that the taxpayer owns and operates a business in this state and is an employee of that business, and that the taxpayer used the motor home in this state which was unregistered and unlicensed here, for both business and personal purposes. The taxpayer has an ownership interest in other real property in this state. The motor home was sometimes located and used as a self-contained traveling home at various places in this state, including at real property locations owned by or maintained for the benefit of the taxpayer on at least a temporary basis.

The taxpayer owns the business registered as . . . , Inc., located in [Washington]. The business operates an amusement center and the taxpayer, . . . , is its president. The taxpayer also owns a subsidiary business [out-of-state], and he regularly travels between [the states] in his motor home,

transacting business. The taxpayer claims to have an [out-of-state] State driver's license, to be registered to vote [out-of-state], and to have paid [out-of-state] income taxes. The taxpayer claims to reside in [out-of-state], if anywhere, but owns no property and rents no permanent residence or residential space [out-of-state]. His motor home is sometimes parked at a relative's residence [out-of-state]. The motor home was purchased [out-of-state] in February 1984 and was registered in that state.

The taxpayer testified that he was a permanent Washington State resident until late in 1982 when he moved [out-of-state]. He still spends approximately 45 percent of his time, with the motor home, in Washington. He spends approximately 35 percent of his time [out-of-state], and the remainder at various other places. The taxpayer owns a one-quarter interest in a cabin, referred to as a "hunting cabin" at. . . Washington. He also owns a one-third interest in a large home [in Washington}, which is leased to the . . . Church. This property is equipped with trailer hookups, one of which the taxpayer intermittently uses for his motor home.

TAXPAYER'S EXCEPTIONS:

The taxpayer asserts that the Administrative Law Judge refused to consider certain facts and evidence which go to establish his nonresidency in Washington and his entitlement to the use tax exemption provided by RCW 82.12.0251.

The taxpayer's original and supplemental petitions on appeal to the Director include the following pertinent statements:

The Administrative Law Judge erroneously concluded that [taxpayer] was not eligible for the use tax exemption contained in RCW 82.12.0251 because his 1984 Beaver Motor Home was required to be registered under the laws of the State of Washington. The basis of her determination was that:

- (1) Mr. . . . was "permanently" employed in the State of Washington; and
- (2) That Mr. . . . maintains at least a "temporary residence" in this state.

In the pertinent part, RCW 46.82.060(1), dealing with motor vehicle registration, provides:

Declarations of exemptions, benefits, and privileges issued by the Department shall include at least the following exemptions:

(1) Non-resident persons may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed 180 days in a calendar year, but a non-resident person employed in Washington for more than 180 days may operate a vehicle licensed in another jurisdiction as long as no permanent, temporary, or part-time residence is maintained in this state.

The Administrative Law Judge erred factually and as a matter of law in her determination that [taxpayer] is permanently employed in this state and maintains a temporary residence herein. [Taxpayer] is employed by a Washington corporation but derives a substantial part of his income from services rendered to that corporation outside of this state. [Taxpayer] does not "maintain" any residence within this state. The Administrative Law Judge declined to consider evidence which would tend to establish my client's position on these matters. (Bracketed designations provided.)

. . .

Mr. . . . is seeking exemption from the use tax pursuant to RCW 82.12.0251 which, in pertinent portion, provides:

The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into this state by a non-resident thereof for his use or enjoyment while temporarily within the state unless such property is used in conducting non-transitory business activity within this state; or in respect to the use by a non-resident of this state of a motor

vehicle or trailer which is registered or licensed under the laws of the state of his residence, and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the Department of Licensing under RCW 46.85.010 . . . (Emphasis supplied.)

Although the term "non-resident" is nowhere defined in RCW 82.12.010, the chapter governing the use tax, RCW 46.04.360 defines "non-resident" as ". . . any person whose residence is outside the state and who is temporarily sojourning in the state."

Mr. . . . resides [out-of-state]. His 1984 Beaver motorhome is registered in [out-of-state]. He holds a driver's license in that state; is registered to vote in that state; and pays . . . income taxes [in that state].

Mr. . . . is President of . . . , Inc., a Washington corporation. The corporation has business interests [out-of-state] and Washington. Mr. . . . travels frequently between the two locations. He also travels to other parts of the county. When Mr. . . . travels, he resides in the 1984 Beaver motorhome.

When Mr. . . . is attending business interests in [Washington], he sometimes stays at A number of individuals reside at this location, although Mr. . . . does not. Mr. . . . owns a one-third interest in this property although the property is leased to the . . . Church. When Mr. . . . stays on the property, he uses a trailer hookup which is used in common with a number of other individuals.

The telephone number . . . is not the personal telephone number of Mr. . . . , although it was at one time. The telephone number was taken over by . . . , Inc. in 1982 when Mr. . . . moved [out-of-state]. It has been used exclusively as a business telephone since that time. The telephone bills for this telephone number are paid for by the corporation.

The Administrative Law Judge erroneously concluded that Mr. . . . was not exempt from the use tax because the 1984 Beaver motorhome is required by the provisions of the motor vehicle code to be registered in this state. In so concluding, the administrative law judge overlooked the provisions of RCW 46.85.060(1) . . .

. . .

Therefore, under the applicable provisions of the motor vehicle code, permanent employment in this state is not a sufficient condition by itself to cause a person to be subject to the registration requirement. There must be both permanent employment and the person must "maintain" at least a temporary residence within this state. The provisions of WAC 308-99-040(9) and 458-20-178, which are cited by the administrative law judge in her decision, require both permanent employment and at least temporary residence in order for registration or tax liability to arise.

Under WAC 308-99-020(1)(g), which is cited by the administrative law judge, a "resident" for purposes of the vehicle registration requirement is someone who is ". . . permanently employed within this state." However, WAC 308-99-040(9) permits a non-resident employed in Washington to operate a vehicle licensed in another jurisdiction so long as he does not maintain permanent, temporary, or part-time residence. These two sections should be construed so that they are consistent with one another. Therefore, so long as a vehicle is registered and/or licensed in another jurisdiction, a person may retain his exemption and be employed in this state, so long as he does not "maintain" a residence. Webster's New Collegiate Dictionary defines "maintain" as ". . . to keep in an existing state . . .". In Laurence v. Laurence, 451 P.2d 825 (1969), the Montana Supreme Court held that he who provides a home for his family and travels therefrom into other communities to earn a living, taking accommodations in various hotels, cannot be said to establish residence in such transitory quarters.

In her opinion, the administrative law judge concluded that Mr. . . . was at least a temporary resident because he maintained a hookup for his motorhome at . . . Redmond . . . and because he maintained a telephone in the State of Washington. The various affidavits which are included with this letter establish that the conclusions of the administrative law judge are factually incorrect.

The taxpayer submitted the sworn affidavits of seven persons, including himself, all of which reiterate the factual statements contained in the petitions, to the best knowledge of the affiants. These same factual statements were again stressed in the oral testimony given at the September 26, 1986 Director's level hearing. Beyond that, no additional facts or arguments were presented.

DISCUSSION:

We have thoroughly reviewed the record of this case, including all documents, affidavits, and written and oral testimony. In our view the taxpayer has failed to establish any entitlement to use tax exemption, under the law, for use of the motor home in this state. Specifically, the facts and evidence do not show that the taxpayer is a nonresident of Washington State, nor that the motor home is not required to be registered or licensed under the laws of this state.

[1] Determination 86-172 concludes, among other conclusions, that the taxpayer was permanently employed in this state and maintained temporary residence here during the period of use of the motor home. There is no prevailing evidence to the contrary. Moreover, the taxpayer has not established his "nonresidency" in Washington State which is a critical requirement for the exemptions of RCW 82.12.0251 and RCW 46.85.060(1). The best available evidence, supported by the respective affidavits, even when considered in a light most favorable to the taxpayer, fails to establish that the taxpayer is a resident of any state other than Washington.

We affirm the findings of fact inherent in the narrative discussion in Determination 86-172. Most pointedly:

1. The taxpayer owns and operates a business located and registered here;

2. He owns interest in two separate parcels of improved, residential real property in Washington where he routinely stays in his motor home;
3. He owns no residential property or any interest in such property outside of this state where he routinely stays;
4. He maintains a permanent, mobile telephone listing in [Washington]; and
5. The taxpayer's own testimony and factual history evidences an obvious intent to return to and reside at various locations in this state.

We conclude, as a matter of law, that the taxpayer is not a "nonresident" of this state. There is no evidence whatever supporting a finding of permanent or even temporary residency outside of Washington. At best, the taxpayer sometimes sojourns and stays outside of Washington for business and personal reasons. The taxpayer is permanently employed in Washington, notwithstanding that he derives some income from business activity transacted elsewhere. (See Determination No. 86-172, p. 3, last paragraph.)

[2] We have specifically reviewed the statutory reliances cited by the taxpayer which are said to have been disregarded in Determination 86-172. RCW 82.12.0251, RCW 46.04.360, and RCW 46.85.060(1) all require the condition of "nonresidency" for application. However, nonresidency is the vital requisite which the taxpayer has failed to establish. Under the law, tax exemptions are strictly construed against the person claiming exemption and in favor of the application. See Yakima Fruit Growers Association v. Henneford, 187 Wn. 252; no person should be declared exempt unless it clearly appears that such exemption is required by the law, North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563; any claim of exemption is to be studied with care before depriving the state of revenue, Alaska Steamship Company v. State, 31 Wn.2d 328.

The respective affidavits submitted¹, while friendly to the taxpayer's positions, are simply not of probative value in establishing the taxpayer's nonresidency here or his entitlement to tax exemption. At best, they merely establish that the taxpayer is widely traveled and generally does not settle at any single, physical residence in Washington for extended stays. The affidavits are self supporting of the taxpayer's arguments and are generally not supported by the facts of this case pertaining to nonresidency. It is simply not sufficient for the taxpayer to show that he sometimes possesses the trappings of residency elsewhere, viz: driver's license and voter's registration. Such trappings are not dispositive of residency. In fact, there are many such in-state contacts which preponderate for a finding of Washington State residency. However, the Department does not have the burden to establish the taxpayer's residency in this state. The taxpayer has the burden to establish his nonresidency in order to claim the statutory tax exemption. This he has failed to do.

Also, the other jurisdiction case law cited in the taxpayer's petition is not apposite here. The taxpayer is not simply sojourning in Washington or infrequently traveling here to make a living from some familial, residential base outside of this state.

We are satisfied that the taxpayer is not a nonresident of this state, is permanently employed in this state, and that, therefore, his motor home was required to be registered in this state. Accordingly, the use tax exemption of RCW 82.12.0251 was correctly denied.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 20th day of February 1987.

¹The affidavit of . . . is attached hereto as Exhibit A. It is representative of all such affidavits.