

Cite as 2 WTD 229 (1986)

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

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of)	
)	No. 87-46
)	
)	Re: Notice of Use Tax Due
. . . )	1985 Mercedes Benz
)	

**Rule 178:** USE TAX -- MARITAL PURCHASE OF AUTO IN WASHINGTON BY WASHINGTON RESIDENTS -- AUTO PICKED UP IN GERMANY -- AUTO USED IN WASHINGTON BEFORE REGISTRATION IN OREGON -- EVASION PENALTY -- MISLEADING INFORMATION FURNISHED ON SUBSEQUENT REGISTRATION IN WASHINGTON. The use tax is imposed on the use in this state as a consumer of any article of tangible personal property. Where Washington residents purchased an auto in Washington, received delivery in Germany, shipped auto to United States, and used auto in Washington, the first use of auto in Washington gives rise to use tax liability. One spouse separated and took auto to Oregon, established residence there and registered auto in Oregon. On reconciliation, the spouses later registered auto in Washington and claimed exemption from use tax based on misleading information. Evasion penalty is rescinded conditioned on timely payment of use tax. Benefit of doubt extended in favor of taxpayer.

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: June 18, 1986

NATURE OF ACTION:

Petition protesting assessment of use tax due on the use and/or registration of a 1985 Mercedes Benz automobile in Washington.

#### FACTS AND ISSUES:

Krebs, A.L.J.--A Notice of Use Tax Due was issued to . . . , husband and wife, on April 9, 1986. Use tax was assessed in the amount of \$2,788.80 and a 50 percent evasion penalty was assessed in the amount of \$1,394.40 for a total sum of \$4,183.20 which remains unpaid.

The use tax was assessed because of the purchase by [the husband and wife] of a 1985 Mercedes Benz automobile without payment of sales tax and use of the automobile in Washington. The 50 percent evasion penalty was assessed because information developed by the Department of Revenue indicated that they were engaged in an elaborate attempt to evade payment of the use tax.

A chronological detailed narration of the facts would be the most informative in understanding the background of what transpired relevant to the acquisition and use of the automobile.

December 6, 1984: [The husband] is invoiced by . . . Motors, Ltd., an auto dealer in . . . , Washington, for European delivery of a 1985 Mercedes Benz automobile with the European delivery price being \$36,846. [Husband] gave a signed purchase order to the auto dealer on October 18, 1984, at which time he also completed and signed an Application for Customs License Plate for issuance of an International Customs Plate. [Husband] would receive delivery of the automobile in Stuttgart, Germany on March 18, 1985.

March 1985: [The husband and wife] went to Europe. They paid for the automobile before going to Europe using money withdrawn from a joint bank account. They received delivery of the automobile in Germany and had it shipped via Amsterdam to the United States.

June 1985: The automobile was received by the auto dealer in . . . , Washington. It had taken a long time for the automobile to clear customs. The automobile had a European license plate. [The husband] went to the auto dealer, received the automobile and drove it home to . . . , Washington where he garaged it with the intention not to drive

the automobile for eight years. [The wife] explained that the automobile was bought for their retirement years. . . .

August 23, 1985: [The wife] separated from her husband and moved to . . . , Oregon ( . . . ) where she rented a mobile home. She drove the 1985 Mercedes Benz automobile to Oregon and took her personal belongings with her.

September 4, 1985: [The wife] obtained an Oregon driver's license.

September 12, 1985: [The wife] registered the automobile in her name in Oregon . . . .

November 30, 1985: [the wife] moved back to . . . , Washington after reconciling her differences with her husband.

December 24, 1985: The 1985 Mercedes Benz automobile was registered in Washington . . . . The automobile was registered in [their] names. The Application for Certificate of Title indicates that the husband's name was being added to the title. It further shows that an exemption from use tax was claimed on the basis that the automobile "was purchased, registered and used by me in another state for a minimum of 30 days while I was a bona fide resident thereof and before I entered Washington on 12/ /85."

[The wife] asserts that prior to licensing the automobile in Washington on December 24, 1985 she owned the automobile and lived in Oregon more than 90 days, specifically from August 23, 1985 to November 30, 1985. In support of the assertion, she submitted a letter from the mobile park owner who rented the mobile home to her and letters from four neighbors in the mobile park. Additionally, [she] submitted a copy of her Oregon income tax return filed April 6, 1986 for the 1985 tax year to show that she paid income tax to Oregon on income earned while residing in Oregon in 1985.

[The wife] was employed in 1985 by the . . . Co. located in . . . , Washington. While living at the mobile park in Oregon, she used the 1985 Mercedes Benz automobile to commute to work in Walla . . . .

[The wife] believes she is entitled to exemption from use tax. She stated that when she was registering the automobile in Washington, the county auditor's office only asked her how long she lived in Oregon and then did the calculations of the

amount due. They told her how much to pay. It was only the amount due for licensing and not for the use tax.

[The wife] seeks a finding that she did establish a residency in Oregon for 90 days and believes that such finding exempts her from use tax.

[The wife] further protests the assessment of the 50 percent evasion penalty on the grounds that there was no intention to evade any tax due.

#### DISCUSSION:

Use tax is imposed by RCW 82.12.020 which identifies the incidence of tax which gives rise to use tax liability. The statute in pertinent part provides:

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 . . . (Emphasis supplied.)

The use tax does not depend upon residence or domicile but rather upon the privilege of using tangible personal property, such as an automobile, in Washington. However, exemptions from use tax are granted based upon residency.

The exemption statute relevant to [the wife]'s claim for exemption in connection with the registration of the automobile in Washington on December 24, 1985 is RCW 82.12.0251 which in pertinent part provides:

The provisions of this chapter [Use Tax] shall not apply in respect to use of any article of tangible personal property brought into this state by a nonresident thereof for his use or enjoyment while temporarily within this state . . . or in respect to the use of . . . 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 ninety days prior to the time he entered this state. (Bracketed words and emphasis supplied.)

Obviously the exemption in RCW 82.12.0251 is not available to [the wife] because she did not acquire the 1985 Mercedes Benz

automobile "in another state (Oregon) while a bona fide resident thereof." At the time of the acquisition, whether in Germany in March 1985 or in Washington in June 1985 or on August 23, 1985 when she separated in Washington from her husband to go to Oregon, she was a bona fide resident of Washington as evidenced by her voter registration in . . . commencing in October 1978, her last voting there on November 5, 1984, her ownership with her husband of their residential property in . . . with utility services there in their name since September 1978, and her Washington driver's license in effect until she secured an Oregon driver's license on September 4, 1985. Thus, a finding as sought by [the wife] that she did establish a residency in Oregon for 90 days before registering the automobile in Washington would not by itself establish a use tax exemption for her. She simply did not acquire the automobile while a bona fide resident of any other state.

WAC 458-20-178 (Rule 178), . . . , which implements the use tax statutes, directs why [the husband and wife] owe use tax upon the 1985 Mercedes Benz automobile. Rule 178 has the same force and legal effect as the Revenue Act and in pertinent part provides:

Use tax. 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.

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, 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 . . . (Emphasis supplied.)

The operative facts in this case are:

1. [The husband] placed the order for the automobile in this state in October 1984 and accepted delivery in Germany in March 1985.
2. [The husband and wife] paid the auto dealer in Washington with joint funds.
3. [The husband and wife] went to Germany, received the automobile and had it shipped to the United States where it was received by the Washington auto dealer in Kennewick, Washington.
4. [The husband] went to the auto dealer in June 1985, received the automobile and drove it home to Walla Walla.

It was at this point in time in June 1985 that use tax liability arose because the automobile was "first put to use in this state." Rule 178. The automobile was stored in the [their] garage "preparatory to subsequent actual use . . . within this state." The automobile was withdrawn from storage and actually used within this state when [the wife] drove the automobile to Oregon on August 23, 1985. Clearly, the requirements of the use tax statute and Rule 178 for imposition of the use tax have been met. The assessment of

use tax liability on . . . Kelso was proper and must be sustained.

However, use tax liability of \$2,788.80 was assessed on a purchase price of \$39,840 whereas the purchase price was actually \$36,846. The Department's Tax Discovery Officer, relevant thereto, has reported the following:

Because the actual amount paid for the vehicle was obtained after the Notice of Use Tax was issued, the amount of use tax due should be changed to . . . determined as follows:

Purchase	Price
	\$36,
	846.00
Use Tax Unincorporated Walla Walla Co.	<hr/>
	7%
Use Tax Due	\$
2,579.22	

Accordingly, the use tax due is \$2,579.22 (not \$2,788.80).

We now turn to the matter of the assessment of 50 percent evasion penalty.

The statutory authority for the assessment of a 50 percent evasion penalty is contained in RCW 82.32.050 which in pertinent part provides:

If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

In order to sustain the evasion penalty, it must be found that [the husband and/or wife] intentionally acted to avoid paying the tax. Their purchase of the 1985 Mercedes Benz automobile, receipt thereof in Germany and shipment of it to the United States is a normal, routine transaction carried on by purchasers to gain benefit of a lower purchase price. The limited use of the automobile (driving from the auto dealer to the residence and subsequently from the residence to Oregon), while giving rise to use tax liability, does not in and of itself show an intent to evade use tax.

However, an examination of the Application for Certificate of Title, . . . , signed by both . . . , shows that incorrect or misleading information was furnished in order to get a waiver of the use tax. Specifically:

1. The "previous plate no." was reported to be "foreign" whereas it was actually Oregon plate number . . . .
2. [The husband] had not "purchased, registered and used" the automobile in another state while a "bona fide resident thereof" before entering Washington. He had purchased and used the automobile in Washington.

The foregoing can be construed as submitted intentionally to avoid paying the use tax at the time of Washington licensing of the automobile.

In this instance, with due regard to all of the circumstances involved, we are willing to resolve the matter of the evasion penalty authorized by statute for intent to evade tax liability by . . . in their favor because of reasonable doubt as to their intentions. The evasion penalty of \$1,289.61 (50 percent of the use tax due in the amount of \$2,579.22 as revised) will be rescinded provided the use tax assessment (as revised) is timely paid.

#### DECISION AND DISPOSITION:

The petition of . . . is denied in part and conditionally sustained in part as indicated in this Determination. Use Tax in the amount of \$2,579.22 is due for payment by March 2, 1987. The evasion penalty in the amount of \$1,289.61 is rescinded conditioned upon timely payment of the use tax by March 2, 1987.

DATED this 10th day of February 1987.