

Cite as 4 WTD 319 (1987)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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 Ruling of Tax Liability of)	No. 87-356
)	
)	
. . .)	Unregistered
)	
)	

[1] **RCW 82.12.0251 AND RULE 178:** USE TAX -- EXEMPTION -
- AUTO PURCHASED IN OREGON BY RESIDENT THEREOF --
AUTO BROUGHT INTO WASHINGTON WITHIN NINETY DAYS OF
ESTABLISHING RESIDENCE IN WASHINGTON. The use tax
is imposed on the use in this state as a consumer of
any article of tangible personal property. Where an
Oregon resident purchased an auto in Oregon and
brought auto into Washington within ninety days of
purchase and commencement of residence in
Washington, the exemption from use tax in RCW
82.12.0251 is not applicable.

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:

The taxpayer requests a ruling that he is exempt from use tax
on an automobile purchased in Oregon one month before he moved
to Washington.

FACTS:

Krebs, A.L.J. -- . . . (taxpayer) has resided in Seattle,
Washington since at least September 14, 1987.

On August 6, 1987, the taxpayer purchased an automobile in Oregon while a resident in Oregon. Approximately one month later, the taxpayer moved to Seattle to attend graduate school and brought the automobile into Washington for his use.

While in Oregon, the taxpayer had full use of a company car for business and personal transportation. After resigning from his employment in Oregon to move to Washington, the taxpayer felt it necessary to purchase a car of his own.

TAXPAYER'S POSITION:

The taxpayer's position, as stated in its September 14, 1987 letter, is as follows:

The law, as I understand it, is designed to prevent an individual from evading sales tax on a car purchased in another state during a time frame (90 days) in which the person might reasonably know he was moving to Washington. Therefore, Washington would collect tax for a car that would be used substantially in this state. Under these usual circumstances, this is entirely reasonable.

However, the irony in my particular situation is the primary factor in this appeal. If I had chosen to purchase my car 90 days prior to actually needing it, I would have avoided the intent but satisfied the letter of the law. However, since I purchased the car only when I needed it, I think I satisfied the intent but not the letter of the law. As I understand the law making process, the written law should support, not subvert the underlying intention of the legislature.

Due to the mitigating circumstances in this case, I believe an exemption from the use tax would be both equitable and consistent in relation to the state's revenue objectives. I ask you for your careful consideration of this matter.

DISCUSSION:

The taxpayer seeks a ruling exempting him from use tax when he registers the automobile in Washington. The automobile was purchased by him on August 6, 1987 in Oregon while he was a resident in Oregon. About one month later, he moved to Seattle, Washington and became a resident of Washington.

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

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 in Washington. However, exemptions from use tax are granted based upon residency. See RCW 82.12.0251, infra.

[1] RCW 82.12.0251 in pertinent part provides:

The provisions of this chapter [Use Tax] shall not apply . . . in respect to the use of . . . private automobiles by a bona fide resident of this state . . . if . . . acquired and used by such person in another state while a bona 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.)

RCW 82.12.010(2) provides:

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

In this case, the taxpayer is using an automobile in this state purchased at retail. Use tax applies. RCW 82.12.020. The exemption available in RCW 82.12.0251 would be available to the taxpayer if he had acquired and used the automobile in Oregon while a bona resident thereof more than ninety days prior to his moving to Washington. However, the taxpayer moved to Washington about a month after acquiring the automobile. Accordingly, the exemption is not available to him.

The taxpayer reasons that he satisfied the intent of the law to prevent evasion of sales tax by those persons who might reasonably know that they would be moving to Washington within a ninety day time frame but not the letter of the law.

The taxpayer feels that the letter of the law should not apply to him but rather the intention of the legislature as he perceives it to be.

The primary objective of statutory construction is to carry out the intent of the legislature. The intent must be determined primarily from the statutory language itself. Christie-Lambert v. McLeod 39 Wn. App. 298 (1984). What the legislature intended is to be deduced, as far as possible, from what the legislature said. St. Paul & Tacoma Lumber Co. v. State, 40 Wn. 2d 347 (1952). An administrative agency may not interpret the statute it implements in a manner which has the effect of amending them. In re Meyers, 105 Wn. 2d 257 (1986).

The legislature clearly and unambiguously said "ninety days." For us to grant an exemption based on acquisition of the automobile for any period less than "ninety days," that is the taxpayer's thirty days, would in effect be amending the statute which we cannot do. Accordingly, we rule that the exemption requested by the taxpayer cannot be granted.

The motor vehicle licensing regulation, WAC 308-99-040, in pertinent part provides:

(10) New resident: New Washington residents shall be allowed sixty days from the date of establishing residency to procure Washington registration for their vehicle.

Accordingly, it is incumbent upon the taxpayer to procure Washington registration for his automobile.

RULING:

Where the taxpayer as an Oregon resident acquired an automobile in Oregon within ninety days before establishing residence in Washington, the exemption from use tax is not applicable.

DATED this 7th day of December 1987.