

Cite as 4 WTD 201 (1987)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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. 87-331
)	
. . .)	Unregistered
)	Use Tax -- 1984 Ford LTD
)	

[1] **RULE 178 AND RCW 82.12.035:** USE TAX -- CREDIT FOR TAX PAID TO ANOTHER STATE -- REGISTRATION TAX OF THE OTHER STATE. A credit is allowed for the amount of retail sales or use tax paid by the user or donor to any other state prior to the use of the property in this state. Where the "registration tax" on an automobile in the other state is in lieu of other state's sales tax and use tax, it qualifies for the credit. KThe "registration tax" was not a registration fee or license plate fee for which there is a separate charge.

[2] **RULE 178, RCW 82.12.035 AND RCW 82.56.010:** USE TAX -- CREDIT FOR TAX PAID TO ANOTHER STATE -- DEFINITION OF USE TAX. The Multistate Tax Compact, chapter 82.56 RCW, provides a definition of "use tax" in RCW 82.56.010 which clarifies the use tax credit to be granted in RCW 82.12.035. Under RCW 82.56.010, "use tax" is defined as a nonrecurring tax which is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property including any consumption, keeping, retention or other use, and is complementary to a sales 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: September 1, 1987

NATURE OF ACTION

Petition for partial refund of use tax paid on registration of an automobile in Washington based on credit for tax paid to another state by donor on prior registration of the automobile in the other state.

FACTS AND ISSUES

Krebs, A.L.J. -- [The taxpayer] is a resident of . . . , Washington. In June 1986, the taxpayer inherited from the Estate of . . . , deceased March 17, 1986, a 1984 Ford LTD automobile. The decedent had been a resident of . . . , South Dakota. The decedent had purchased the automobile for \$12,551 from a Ford dealership in Centerville, South Dakota in June 1984. The decedent registered the automobile in South Dakota and paid a "3% registration tax" of \$376.53 based on the purchase price of \$12,551.

In June 1986, when the taxpayer was in the process of registering the automobile in Washington, he sought from the Department of Revenue . . . a Declaration of Use Tax allowing a credit for the "registration tax" paid by the decedent-donor to South Dakota. The Department denied the credit on the basis that a "registration tax," not a sales or use tax, had been paid. Whereupon, the taxpayer paid on June 17, 1986 to the . . . County Auditor on registering the automobile a use tax of 7.8% on the taxable value of \$6,695 in the amount of \$522.22 without receiving any credit for tax paid to South Dakota.

The taxpayer seeks a refund of \$376.53, the amount of credit sought which had been denied by the Department.

The issue is whether South Dakota's "registration tax" qualifies as a retail sales or use tax paid to another state.

DISCUSSION

[1] As substantially repeated in WAC 458-20-178 (Rule 178), RCW 82.12.035 in its entirety provides:

A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property in this state in the amount that the present user thereof or his bailor or donor has paid a retail sales or use tax with respect to such property to any other state, political subdivision thereof, or the District of Columbia, prior to the use of such property in this state.

In this case, the donor (decedent) of the present user (taxpayer) paid a "registration tax" with respect to the automobile in question to South Dakota in the amount of \$376.53.

The decedent purchased the 1984 Ford LTD automobile in June 1984 in South Dakota. On the South Dakota application for title and registration of the automobile by the decedent, it states in pertinent part:

9. TAX COMPUTATION	
Taxable Value	\$12,551.00
Tax Rate	x 3%
3% Registration Tax	\$ 376.53
Credit for Similar Tax Paid in another State (if eligible)	\$.....
Balance of Tax Due and Payable	\$ 376.53

It should be noted that a "credit for similar tax paid in another state" is allowed against the "3% Registration Tax."

South Dakota statute, SDCL 32-5B-1 provides:

In addition to all other license and registration fees for the use of the highways, a person shall pay an excise tax at the rate of three percent on the purchase price of any motor vehicle, as defined by + 32-5-1, purchased or acquired for use on the streets and highways of this state and required to be registered under the laws of this state. This tax shall be in lieu of any tax levied by chapters 10-45 and 10-46 on the sales of such vehicles. Failure to pay the full amount of excise tax is a Class 1 misdemeanor. (Emphasis supplied.)

The "3% excise tax" is assessed on motor vehicles "required to be registered" and is the "3% registration tax" paid by the decedent. The tax is "in lieu of any tax levied by chapters 10-45" which deals with retail sales tax, "and 10-46" which deals with the use tax. It is not a registration fee or license plate fee for which there is a separate charge.

[2] Chapter 82.56 RCW, Multistate Tax Compact, provides at RCW 82.56.010 that:

The following multistate tax compact, and each and every part thereof, is hereby approved, ratified, adopted, entered into and enacted into law by the state of Washington.

This statute includes and sets forth the Multistate Tax Compact. Article II, Definitions, paragraph 8 provides:

"Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession

or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax. (Emphasis supplied.)

The significance of the definition of "use tax" in the Multistate Tax Compact, enacted into law by the state of Washington, is that it is directly related to the subject matter of RCW 82.12.035, supra, that is, use taxes paid to other states.

South Dakota's "registration tax" is a nonrecurring tax imposed on the exercise of the right or power to register the automobile incident to its ownership and incident to its use on the streets and highways of South Dakota. SDCL 32-5B-1 and RCW 82.56, Article II, par. 8. Furthermore, South Dakota's "registration tax" is in lieu of a sales tax and thus complementary to a sales tax. This analysis leads us to conclude that the amount (\$376.53) paid by the donor-decedent to South Dakota as "registration tax" qualifies for the credit granted in RCW 82.12.035 for a use tax paid to another state.

RCW 82.12.045 in pertinent part provides:

Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof ... Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it ...

The taxpayer paid use tax in the amount of \$522.22 without receiving any credit for tax paid to South Dakota in the amount of \$376.53. We have concluded that the tax paid to South Dakota qualifies for the credit granted in RCW 82.12.035. Accordingly, the taxpayer is entitled to a refund of \$376.53 plus statutory interest. RCW 82.32.060.

DECISION AND DISPOSITION

The taxpayer's petition for refund is granted. This matter is being referred to the appropriate section in the Department for issuance of a refund to the taxpayer in the amount of \$376.53 plus applicable interest.

DATED this 26th day of October 1987.