

Cite as 8 WTD 423 (1989)

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 Refund of)	
)	No. 89-526
)	
. . .)	Unregistered
)	Use Tax Assessment
)	

[1] RULE 178 - USE TAX - EXEMPTION - "HOUSEHOLD GOODS, PERSONAL EFFECTS, AND PRIVATE AUTOMOBILES" - AIRPLANE. Persons who move to Washington from another state will not be required to pay use tax on their "household goods, personal effects, and private automobiles" if they were acquired and used out-of-state more than ninety days prior to being brought into the State of Washington. An airplane does not come within this exemption.

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: Pro Se

NATURE OF ACTION:

Petition concerning the imposition of use tax on a privately-owned airplane brought into the state by previous residents of Alaska.

FACTS:

Bauer, A.L.J.-- The above-referenced taxpayers (a marital community) were billed and paid Washington use tax for a Cessna 172 airplane in the amount of \$1,106. The taxpayers brought the plane with them when they moved to Washington from Alaska more than three years after purchasing the plane and using it in that state.

TAXPAYERS' EXCEPTIONS:

The taxpayers take the position that since they purchased the airplane while residents in a state with no sales tax, used that item within that state for several years, and later brought it to Washington with them as a part of their personal (used) belongings, they should not have had to pay what amounted to a sales tax on the airplane when they later moved to Washington.

The taxpayers argue in their petition that the intent of the use tax is

to charge Washington residents a "use tax" on the purchase of goods that they bought as Washington residents, and bought outside the State of Washington for use in Washington, and for which Washington sales tax was not paid.

[Emphasis added.]

The taxpayers therefore reason that

since we purchased our airplane over three years prior to moving to Washington, as Alaskan residents, and flew the plane for over three years in Alaska, we were not subject to Washington sales tax at that time, nor should we be subject to a use tax at this time for a purchase over three years before entering the state of Washington. We did not evade Washington sales tax by purchasing the plane out of state, because we were not subject to Washington tax at the time of purchase. It was purchased in Alaska, with Alaskan earned money, and flown by Alaskan residents for over three years before ever bringing it to Washington.

The taxpayers also cite as supportive of their position the provisions in the law granting credit for sales taxes paid in certain other states, as well as the retail sales/use tax exemption for Alaskan residents who make purchases in this state for use in Alaska.

In addition, the taxpayers know of several other people who have brought airplanes into Washington after having owned and used them in other states, but have never been assessed a use tax.

DISCUSSION:

WAC 458-20-178 (Rule 178), which concerns the imposition of the use tax, provides in pertinent part as follows:

(1) 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, repossession, 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 property used.

(2) 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....

[Emphasis added.]

Thus, the general rule is that when property is first used in this state, use tax is owed by the "user" if Washington retail sales tax has not been paid. The rule does not provide that "user" includes only those who were Washington residents at the time they purchased property.

There are many exceptions to this general rule. One such exception is as follows:

(7)...(c) 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 ninety days prior to the time such person entered this state.

[1] Thus, persons who move to Washington from another state will not be required to pay use tax on their "household goods, personal effects, and private automobiles" if they were acquired and used out-of-state more than ninety days prior to being brought into the State of Washington.

Were the use tax intended to apply as the taxpayer suggests, there would be no need for this exemption.

Because an airplane is not a household good, a personal effect, or an automobile, tax was correctly assessed.

Other persons who have moved here from other states and have not paid use tax on their airplanes properly owe use tax, and should be so advised. Should the Department be made aware of their identities, assessments will be issued.

DECISION AND DISPOSITION:

The taxpayers' petition for refund is denied.

DATED this 4th day of December 1989.