

Cite as Det. No. 01-003, 20 WTD 406 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-003
)	
...)	Use Tax Assessment
)	Docket No. . . .

RULE 178; RCW 82.12.0251: RETAIL SALES TAX -- USE TAX -- EXEMPTION -- SOLDIERS' AND SAILORS' CIVIL RELIEF ACT. Each monthly lease payment represents a separate taxable transaction for retail sales or use tax purposes. Section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. § 514, does not prohibit the state from collecting from nonresident members of the armed forces retail sales or use tax on motor vehicle lease transactions.

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.

Mahan, A.L.J. – Nonresident member of the armed forces appeals an adverse interpretive ruling and seeks a refund of sales or use tax on lease payments on a motor vehicle that was purchased in his home state and used in Washington.¹

ISSUES

1. Does retail sales or use tax become due on lease payments for a vehicle used in Washington by a nonresident member of the armed forces when that vehicle was purchased in that person's home state?
2. Does the Soldiers' and Sailors' Civil Relief Act exempt retail sales or use tax from being imposed on the lease of a vehicle by a nonresident member of the armed forces?

FACTS

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer is a nonresident member of the armed forces. He appeals a March 3, 2000 interpretive ruling issued by the Department of Revenue's (Department) Taxpayer Information and Education Section. The facts relevant to this appeal are not in dispute.

The taxpayer is in the United States Navy and was stationed under orders in the state of Washington. His home of record is located in the state of Oregon. He has a valid Oregon driver's license.

In August 1999 while on leave, he leased with an option to purchase a motor vehicle from an Oregon dealer. Oregon does not impose a sales tax, and the taxpayer did not pay any sales tax on entering into the lease. He secured financing through a Washington lender. Shortly after leasing the vehicle, the taxpayer returned to Washington and has used the vehicle in Washington since that time. The Washington lender began collecting a sales or use tax on the monthly lease payments. The taxpayer objected to this imposition of tax on his lease payments.

In response to a ruling request and a request for a refund of taxes paid, the Department concluded that the taxpayer owed the use or sales tax at issue, and the collection of such tax was not excluded by the Soldiers' and Sailors' Civil Relief Act. The taxpayer timely appealed that ruling.

ANALYSIS

As a general matter, retail sales tax becomes due on the purchase of tangible personal property in Washington. This includes leases of tangible personal property. *See* RCW 82.04.040. Use tax is imposed on the use of tangible personal property in Washington when retail sales tax has not been paid. RCW 82.12.020.

RCW 82.12.0251 provides an exemption from the use tax for:

[T]he use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington . . . or in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of Washington or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, 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 or she entered Washington.

An administrative rule, WAC 458-20-178(7)(c) (Rule 178), similarly provides a use tax exemption for motor vehicles brought into this state by nonresident members of the armed forces stationed in Washington who acquired and used the vehicle more than ninety days prior to entering Washington. Under these provisions, use tax would be due in Washington on the value of the property used by the taxpayer in Washington, because he did not acquire and use the vehicle more than ninety days prior to entering Washington.

Because the transaction involved a lease rather than an outright purchase, tax is imposed on each lease payment, rather than the full purchase price. Under WAC 458-20-211(6) [Rule 211], “[p]ersons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.” In general, a lease is a contract whereby one party gives to another, usually for fixed payments, the right to the use and possession of property for a specified time. The right to continued possession under a lease is conditioned upon rental payments and performance of other covenants. *Gandy v. State*, 57 Wn. 2d 690, 359 P.2d 302 (1961). It is this possession for which the lessee contracts and for which the periodic consideration is given. Viewed in this light, a lease is not a single transaction, but a contract for a series of transactions. *Id.* at 695. As such, each monthly lease payment represents a separate taxable transaction for tax purposes. Det. No. 87-305, 4 WTD 127 (1987); Det. No. 88-258, 6 WTD 141 (1988). In this case, tax would be due on the lease payments unless they are otherwise exempt from taxation.

RCW 82.08.0264 and WAC 458-20-177 (Rule 177) provide for an exemption from retail sales tax for sales of motor vehicles to nonresidents, including nonresident members of the armed forces. One of the requirements for this exemption is that the vehicle will not be used more than thirty days in Washington. Because the taxpayer used the vehicle for more than thirty days in Washington following each lease payment, this exemption would not be available to exempt the lease transactions from tax.

The Soldiers’ and Sailors’ Civil Relief Act, as amended, also provides nonresident members of the armed forces with an exemption for “licenses, fees, or excises imposed in respect to motor vehicles or the use thereof” if such levies have been paid in the serviceman’s home state. 50 U.S.C. § 514(2).

The United States Supreme Court, in *Sullivan v. United States*, 395 U.S. 169, 192 (1969), determined that the legislative history of Section 514 “reveals that Congress intended the Act to cover only annually recurring taxes on property--the familiar ad valorem personal property tax.” *Id.* at 176. Further, “Congress evidently decided in 1944 to extend the exemption of § 514 to motor vehicle registration fees as well as property taxes.” *Id.* at 182. However, the Court expressly held that “§ 514 of the Soldiers’ and Sailors’ Civil Relief Act does not exempt servicemen from the sales and use taxes” *Id.* at 184. *See also* Det. No. 87-174, 3 WTD 171 (1987) (use tax imposed against nonresident member of the armed forces on the use of an airplane upheld); Det. No. 91-106, 11 WTD 149 (1991) (use tax imposed against nonresident member of the armed forces on the use of a boat upheld); Det. No. 93-019, 13 WTD 233 (1993) (nonresident member of armed forces denied a refund of sales tax when he did not have orders to leave state permanently within three months of a vehicle purchase).

Washington’s use or sales tax on lease payments is a transaction tax, not a property tax. *See Black v. State*, 67 Wn.2d 97, 406 P.2d 761 (1965). In that case, Black was subjected to a \$17,000 sales tax on a \$425,000 ship lease payment because it was a “tax on the transaction of leasing tangible personal property. It is not a tax on property.” *Id.* at 99.

In support of your petition, you refer to *California v. Buzzard*, 382 U.S. 386 (1996). That case involved a 2 percent "license fee" that the serviceman was required to pay in California upon registering his vehicle in California. This fee was in addition to a registration fee. The court concluded that the license fee constituted a personal property tax, and it was prohibited under Section 514. *Id.* at 460. Unlike *Buzzard*, the present case does not involve a property tax, but a sales or use tax. In further support of your petition, you submitted a letter to Congressman DeFazio from the Department of the Navy, Navy Personnel Command. For the reasons discussed above, we believe that letter was in error when it characterized the tax at issue as a "personal property tax" upon a leased motor vehicle. Had the tax at issue been a personal property tax, rather than a transaction tax, the outcome would be different here.

Because the tax assessed in this case involved a tax on leasing transactions, not property tax, motor vehicle excise tax, or license fee, the exemption provided by the Soldiers' and Sailors' Civil Relief Act does not apply. In the absence of any available exemption, we must sustain the prior interpretive ruling issued to the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of an interpretive ruling and a refund of sales or use tax is denied.

Dated this 17th day of January, 2001.