

Cite as Det. No. 00-208, 20 WTD 402 (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. 00-208
)	
...)	Use Tax Assessment

RULE 178; RCW 82.12.020: USE TAX – DOMINION AND CONTROL --
MOTOR VEHICLE – OWNERSHIP. Use tax was properly imposed on
Washington residents, who were co-owners of a motor home licensed in the State
of Oregon, when they assumed dominion and control over the motor home by
using it to transport the taxpayers' property in Washington, even though they
were not driving the vehicle at the time of its use in Washington.

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. – Taxpayers who were Washington residents and listed on the title of a motor
home protest the assessment of use tax on the use of the motor home in Washington.¹

ISSUE

Can use tax be imposed on Washington residents that are registered as co-owners of a motor
home when that motor home is used in Washington by a brother-in-law to transport the
taxpayer's property into Washington and the motor home is insured and maintained by the
taxpayers?

FACTS

The taxpayers, husband and wife, relocated from California and became Washington residents in
1996. On September 4, 1996 one of the taxpayers acquired a Washington drivers' license and
the other acquired a Washington license on April 4, 1997. They have owned property in
Washington for many years and, by their own admissions, have resided there since at least
November of 1996. They also licensed several vehicles in Washington (a flatbed truck licensed
on September 3, 1996 and a pickup licensed on October 1, 1996).

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

On November 9, 1993, a . . . motor home was purchased in California from a nephew of the taxpayer husband. The California “Application for Transfer by New Owner” listed the new owner as the husband. In December of that year, this husband’s sister, who resided in Oregon, and the taxpayers registered the motor home in Oregon. The taxpayers and the sister were listed as co-owners.

On March 7, 1997, a Washington State Patrol trooper observed this Oregon licensed motor home being operated in Washington and towing the taxpayers’ pick-up truck, which was licensed in Washington. In a subsequent investigation by a Department of Revenue (Department) revenue officer, the taxpayers stated that the sister was the “primary” owner and that the taxpayers had the right to use the motor home three months a year in exchange for providing insurance and maintenance. According to notes maintained by the revenue officer, on August 19, 1997, the husband also stated that he was on his last trip of moving up to Washington on March 7, 1997. At that time, the motor home was being driven by his brother-in-law, and he was following behind in his flat bed truck (registered in Washington). Accordingly, the husband does not believe he was using the motor home and, therefore, use tax cannot be imposed. The revenue officer further notes that, when asked about subsequent use of the motor home, the husband “became agitated, evasive, and did not fully answer the question.”

Following its investigation, the Department issued a use tax assessment in the amount of \$. . . . In seeking a refund of the amount assessed, the taxpayers submitted two, brief statements that, although signed, did not otherwise identify the person making the statement. One stated as follows: “I . . . was the driver of the [motor home] on or about March 20, 1997 with the permission of the legal owner Said vehicle as used for one day in the state of Washington.” The other one was signed by . . . and stated: “. . . has my permission to drive my motor home, Oregon Lic. . . .”

In a telephonic hearing, the husband again claimed that he did not have control over the operation of the motor home and did not give permission to his brother-in-law to use the motor home (permission was from his sister). In contradiction to earlier statements, he stated that his brother-in-law was moving his own property to Washington, not the taxpayers’ property. When asked for copies of purchase documents, insurance contracts, and maintenance records, the husband said those records were not available. When asked about the possibility of testimony from his sister, he stated, in an evasive manner, he did not have her telephone number and would have to get back to me. The husband has not been forthcoming with any further evidence.

ANALYSIS

Use tax is imposed by RCW 82.12.020(1), which reads, in 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: (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or

extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7)

The term “using” is broadly defined at RCW 82.12.010(2) to include both its ordinary meaning and a special statutory meaning, as follows:

"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

Under this statutory framework, the issue is whether the taxpayers acquired the motor home and whether they took or assumed dominion or control over the motor home in Washington.

Based on the evidence we conclude the taxpayers were owners or co-owners of the motor home. In general, “[t]itle and registration certificates are only rebuttable prima facie evidence of automobile ownership.” *Heinrich v. Titus-Will Sales*, 73 Wn. App. 147, 162, 868 P.2d 169 (1994); *Crawford v. Welsh*, 8 Wn. App. 663, 664, 508 P.2d 1039 (1973). Other evidence of ownership includes possession, *Crawford* at 664, *Wildman v. Taylor*, 46 Wn. App. 546, 557, 731 P.2d 541 (1987) and who paid the consideration, *Wildman* at 557, and *Gams v. Oberholtzer*, 50 Wn.2d 174, 178, 310 P.2d 240 (1957).

The taxpayers have not presented evidence to overcome the prima facie evidence of ownership. To the contrary, the record indicates that the taxpayers had the right to possession of the motor home for at least part of the year. In the absence of any other evidence, it also appears that the taxpayers purchased the motor home from a nephew in California prior to registering it in Oregon.

We also do not find credible the claim that the taxpayers, as owners of the motor home, did not have actual or constructive dominion and control over the motor home when a brother-in-law used it to tow the husband’s pickup to the taxpayers’ Washington residence, while being followed by the taxpayers in another vehicle. The fact that another co-owner may have given permission to the brother-in-law to drive the motor home does not negate the assertion of dominion and control by the taxpayers.

Based on the record before us we find: (1) the taxpayers were residents of Washington prior to 1997; (2) they were owners or co-owners of a motor home that they licensed in the State of Oregon; and (3) they took or assumed dominion and control over the motor home when it was used to transport the taxpayers’ property to their home in Washington on March 7, 1997, even though they were not driving the vehicle at the time. Under RCW 82.12.020, use tax became due on such use in Washington by the taxpayers.

DECISION AND DISPOSITION:

The taxpayers' petition for a refund is denied.

Dated this 19th day of December, 2000.