

Cite as Det. No. 01-061, 20 WTD 451 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 01-061
)	
...)	Registration No. . . .
)	Docket No. . . .
)	Use Tax Assessment

- [1] RULE 178; RCW 82.12.0251: USE TAX -- EXEMPTION -- NONRESIDENT -- MOTOR VEHICLE. To qualify for the use tax exemption for the use by a nonresident of a motor vehicle or trailer, a person must prove: (1) he or she was a “nonresident” of this state; (2) the vehicle was registered or licensed under the laws of the state of his or her residence; and (3) the vehicle was not required to be registered or licensed under the laws of Washington.
- [2] RULE 178; RCW 82.12.0251; RCW 46.16.028(1): USE TAX -- EXEMPTION -- NONRESIDENT. Whether a person is a resident of this state for use tax purposes is fact specific. The Department will consider factors bearing on the person’s intent to live or be located in Washington on more than a temporary or transient basis.

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.

NATURE OF ACTION:

An individual appeals assessment of use tax on a pickup truck and a fifth wheel trailer he purchased and licensed in Oregon, and subsequently used in Washington, contending he was a nonresident of Washington at the time of purchase and use.¹

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

FACTS:

Prusia, A.L.J. -- On September 12, 2000, the Compliance Division of the Department of Revenue (“Department”) issued a use tax assessment against . . . , the taxpayer. The assessment notice stated the assessment was on the following two vehicles licensed in Oregon:

Article Acquired	Date of Purchase	Value
. . . pickup.	1/1/98	\$. . .
. . . 5th Wheel Trailer.	1/1/99	\$. . .

The assessment notice assessed a total in use tax, penalties, and interest of \$. . . on the combined value of the two vehicles, consisting of the following: state use tax, \$. . . ; local use tax, \$. . . ; 20% delinquent penalty, \$. . . ; interest, \$. . .

The taxpayer appeals the assessment in its entirety. His petition asserts the following reason for relief:

The State of Washington has no jurisdiction to assess use taxes for the purchase of the above vehicles as [Taxpayer] was a nonresident at the time of purchase of the above vehicles, residing in the State of Oregon. Both vehicles were purchased in the State of Oregon while [Taxpayer] was physically present and domiciled in Oregon.

The taxpayer asserts the following facts. The taxpayer resided in Washington prior to September 1997. He owned real property, on which he had a home, in [Washington] County, at On or about September 12, 1997, he leased his [Washington] County home . . . , under a written lease and oral purchase agreement, and moved to Oregon. In [Oregon], the taxpayer moved into the apartment of his girlfriend, She had lived with him in [Washington] County, and had recently moved to Oregon to care for her parents. When the taxpayer moved into [the Oregon] apartment, he placed a lease deposit on the apartment, and became co-responsible for utilities. He has resided continuously there since September 1997. He obtained an Oregon driver’s license on September 26, 1997. He purchased the 5th wheel trailer on September 19, 1997, in . . . , Oregon, and purchased the pickup in the early summer of 1998, in Oregon.

The taxpayer is retired, and spends a lot of time traveling in his pickup and fifth wheel trailer. He was in Washington on only three occasions after September 12, 1997, to deal with problems with his tenants and to visit his daughter. On two of the occasions he was in Washington to collect past-due rent, and on the third occasion, in 2001, to evict the tenants and sell the property. He never spent more than three months in Washington in any one year. He maintained a mail drop in [Washington] for mail forwarding purposes after he leased his real property, and had mail forwarded to wherever he actually was.

The Compliance Division asserts the taxpayer is a longtime Washington resident, and was not a nonresident of Washington when he purchased the . . . pickup and the fifth wheel trailer, or when he first used those vehicles in Washington. The taxpayer did not pay sales tax or use tax on either vehicle, and therefore use tax, delinquency penalty, and interest are due. The Compliance Division asserts the taxpayer spends up to three months a year in Washington. It acknowledges he spends a portion of his time in Arizona and Oregon, and may maintain a residence in Oregon, but contends he never severed his ties to Washington. It argues that while he may be a dual resident of Washington and another state, he is not a nonresident of Washington.

The Compliance Division asserts that the assessment is supported by the following facts:

- The taxpayer continued to own his property in Washington after September 1997, He leased the property effective October 1, 1997.
- The lessee informed the Department the taxpayer spent up to three months a year in Washington, and while in Washington resided in his fifth wheel trailer parked behind his shop at the residence The taxpayer was living there when the sale of the residence closed.
- The insurance identification card for the taxpayer's . . . pickup issued May 1999 indicates his Washington address at: [his former residence]. The insurance identification card for the vehicle issued May 2000 indicates his mailing address at [a mail drop], Washington.
- The lienholder shown on the Oregon title to on the . . . pickup is . . . Credit Union in . . . , Washington. To belong to the credit union, a person must be a [Washington] County, Washington resident.
- The taxpayer received the use tax assessment, which the Department mailed to the above mailing address.
- The taxpayer has never filed Oregon income tax returns.

The Compliance Division submitted the following documents: 1) copy of Oregon vehicle title to . . . pickup, showing . . . Credit Union in [Washington City] is the lienholder; 2) copy of the 1997 lease agreement between the taxpayer and the [tenants]; 3) copy of October 1997 rent receipt to . . . and the taxpayer on the Oregon apartment; 4) copy of the taxpayer's Oregon driver's license issued September 26, 1997; 5) Washington driver's license printout showing the taxpayer surrendered his Washington license on October 22, 1997, which date is followed by the entry "OUT-OF-STATE TO OR"; 6) copies of May 1999 and May 2000 insurance cards on the . . . pickup; 7) June 2, 2000 statement by a CPA that the taxpayer's income has not been high enough to require filing a tax return since 1993; and 8) copy of the use tax assessment, addressed to the taxpayer at his [Washington City], Washington mail drop.

In support of his statement of the facts, the taxpayer submitted his written declaration, dated April 2, 2001, which states (we summarize):

- he has resided at the Oregon address since September 1997;
- the [tenants] rented his Washington property beginning in September 1997;

- he shares the rent and utilities on the [Oregon] apartment with . . . , who has been his girlfriend since 1996;
- he purchased the 5th wheel trailer and the pickup after moving from Washington;
- he finally sold the Washington property in April 2000;
- between September 1997 and April 2000 he was in Washington only three times, and only to deal with the rental and sale of his property;
- he has had no intent to reside in Washington since September 1997;
- although he travels extensively in Utah and Arizona, he maintains his residence . . . in Oregon, and they often travel together;
- each year since September 1997, he has spent approximately three months in Oregon, and the rest of the year RV'ing in Utah and Arizona;
- he has regular trailer spaces in Oregon at . . . , and at the RV Park in Oregon;
- all phone and property utilities on his Washington property were transferred to the [tenants] prior to September 12, 1997;
- he obtained an Oregon driver's license in September 1997, and has maintained it since; he is not, nor has he been, a registered voter in Washington since September 12, 1997, nor has he had any Washington licenses since that date, nor has he ever received any public benefits from the State of Washington.

The taxpayer also provided the following documents in support of his statement of the facts:

1. Current Oregon registration certificate for the pickup, and insurance cards. The registration is issued to the taxpayer at . . . , Oregon The insurance card for 1999 lists the insured as: [Taxpayer], [former residence], WA The insurance card for 2000 lists the insured at a different address: [mail drop], WA
2. Current Oregon registration certificate for the 5th wheel trailer. The registration is issued to the taxpayer at . . . , Oregon
3. Oregon driver's license issued September 26, 1997, to: [Taxpayer] at [address] in Oregon
4. Notice of Transaction to Oregon DMV on July 8, 1999, renewing the 5th wheel license early. It gives the taxpayer's address as the above Oregon address.
5. Notice of Transaction to Oregon DMV on July 8, 1999, renewing the pickup license early. It gives the taxpayer's address as the above Oregon address.
6. Billing statement from . . . to [Taxpayer] for service from 6/08 to 7/07/2000 [at address], Oregon. The statement is mailed to [Taxpayer] at [mail drop], WA
7. Oregon vehicle certificate of title to the pickup, dated July 3, 1998, issued to [Taxpayer] [address] [at Oregon]

8. Oregon vehicle certificate of title to the fifth wheel trailer, dated July 3, 1998, issued to: [Taxpayer], [at Oregon]
9. Receipt, dated September 26, 1997, to . . . and [Taxpayer], [address], Oregon, in the amount of \$. . . , for rent for the period October 1 to November 1, 1997.
10. Letter from a CPA in . . . , Washington, stating the taxpayer is retired and his income has not been high enough to require filing a tax return since 1993.
11. Statement from [Power Co.], Oregon, for customer # . . . , that the primary resident is . . . , since September 3, 1997, and the alternate responsibility is [Taxpayer], since September 25, 1997.
12. Residential lease agreement dated September 12, 1997, between [Taxpayer], landlord, and . . . , tenants, for a period of one year commencing October 1, 1997, on the following premises: [address], WA
13. A copy of the Eviction Summons and Complaint for Unlawful Detainer in Cause No. . . . in Superior Court, [Washington] County, titled [Taxpayer] v. [Tenants], filed June 2, 2000, as well as a copy of the judgment entered in the matter on June 9, 2000.
14. The following statement from a service representative of . . . Credit Union, . . . , Washington:

It is the policy of . . . Credit Union that once you become a member through our eligibility requirements you can remain a member for life regardless of your residence. If you move out of state you can still take advantage of our loan products. If you purchase a vehicle, RV or any other product that requires licensing you will be required to license the vehicle in the state you reside in. The licensing will be done according to the state requirements.
15. May 18, 2000 Real Estate Purchase and Sale Agreement, requiring rental tenants to be absent at closing, signed by the taxpayer and property purchasers.
16. Bill of Sale dated 9/19/97 for . . . Travel Trailer, from . . . Trailers in Oregon.
17. Copy of a page from the 1997 [Washington City] White Pages, showing a telephone listing for [Taxpayer], together with a copy of a page from the 1998 [Washington City] White Pages, showing no telephone listing for [Taxpayer].
18. Copy of [Washington] County Public Utilities "Service Order Delete, Month of October," for [Taxpayer] at [address], [Washington City], dated September 25, 1997.

19. . . . auto insurance declaration for period 5-6-00 to 5-6-01, showing . . . pickup and fifth wheel trailer principally garaged at . . . Oregon, and showing the insured's mailing address as [mail drop], Washington.

20. Copies of medical treatment records from Arizona, Utah, and Idaho.

The taxpayer also provided the following written witness statements:

1. Declaration of [Mr. A.], signed April 2001, which states Mr. [A] resides at [Washington], and has known the taxpayer since the spring of 1997. It states the taxpayer moved from Washington when he leased his property at [Washington address] to the [tenants] in September 1997, and has not resided at that address since September 1997. It states Mr. [A] is only aware of the taxpayer being in Washington two or three times, when he picked up rent checks.

2. Declaration of [Mr. J.], signed April 1, 2001, which states Mr. [J] resides at [Washington], and has known the taxpayer for approximately 23 years. It states the taxpayer was Mr. [J's] neighbor, and their properties are separated by a driveway. It states the taxpayer moved from Washington in September 1997, when he leased his property at [Washington address]. It states the taxpayer has been back to visit for short times, but has not lived at the above address or in Washington. It states Mr. [J] saw the taxpayer twice since he moved in 1997, and each time the taxpayer was just visiting friends and relatives.

3. June 2000 statement by . . . , stating: "[Taxpayer] resides [address], OR . . . since Sept 1997."

Three witnesses gave statements in the taxpayer's teleconference, in support of the taxpayer's position. The witnesses, and the essence of their testimony, were as follows:

1. [Mr. C. of Washington], stated he has been a friend of [Taxpayer] for about 20 years, visited him frequently before [Taxpayer] moved to Oregon in 1997, and has seen [Taxpayer] only three times since September 1997, when [Taxpayer] was in Washington to collect rent and, the last time, to sell the property. He stated [Taxpayer] stayed in his RV on those occasions, parking it at [Taxpayer]'s former residence part of the time, and at Mr. [C] on one visit.

2. [Mr. M. of Washington], stated [Taxpayer]'s son is married to Mr. [M]'s daughter, and [Mr. M.] has known [Taxpayer] for about seven years. He stated he sometimes RV's with [Taxpayer], knows that [Taxpayer] moved from Washington around the first of September 1997, [Taxpayer] bought a new fifth wheel, and later a new pickup, after moving, that [Taxpayer] lives in [. . .], Oregon, when he is not traveling, and that [taxpayer] has been back to Washington on only a few occasions, to handle rent problems.

3. [Mr. D. of Washington], stated he had business dealings with [taxpayer]'s tenant [. . .], frequently taking vehicles to the [Tenant] place for [Tenant] to work on. He stated the [tenants] lived at the place until June 2000. He stated he saw [taxpayer] there once or twice, when [taxpayer] was there to collect rent.

ISSUE:

Was the taxpayer's use of the . . . pickup and fifth wheel trailer in this state exempt from the use tax?

DISCUSSION:

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on each retail sale in this state, to be paid by the buyer to the seller. RCW 82.08.020; RCW 82.08.050. The use tax complements the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property used in this state where the sales tax has not been paid. WAC 458-20-178 (Rule 178). The use tax is imposed "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment." RCW 82.12.020. "Use" or "using" means "the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property. . . ." RCW 82.12.010(2).²

RCW 82.12.0251 provides a specific, limited exemption from use tax for the use by a nonresident of a motor vehicle in this state. It states, in pertinent part:

The provisions of this chapter [Use Tax] shall not apply . . . in respect to the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his residence, and which is not required to be registered or licensed under the laws of Washington.

Rule 178(7)(b) states the same exemption. Rule 178(7)(c)(i) states that this exemption does "not extend to the use of articles by a person residing in this state irrespective of whether or not such a person claims a legal domicile elsewhere"

[1] The taxpayer's exemption claim is based on the above-quoted exemption for use of a motor vehicle or trailer by a nonresident. A person claiming that exemption from use tax has the burden of proving he or she qualifies for the exemption. Det. No. 96-049, 16 WTD 177 (1996); Det. No. 99-101, 20 WTD 175 (2001). In order to prevail on his use tax exemption claims, the taxpayer must prove he was (1) a "nonresident" of this state; (2) the vehicles were licensed in the state where he was a resident; and (3) the vehicles were not required to be licensed in Washington. Det. No. 96-049, *supra*. We will address the requirements in order.

² Rule 178(3), addressing when use tax liability arises, similarly states, in part:

Tax liability imposed under the use tax arises at the time the property purchased . . . by the person using the same, is first put to use in this state.

The use tax statutes do not define the term “nonresident,” and the Department has not issued a rule defining the term. The Department applies the vehicle registration definition of the term “resident,” at RCW 46.16.028(1), to the nonresident use tax exemptions. Det. No. 96-049, *supra*. That definition is as follows:

[A] resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

[2] In addition to those three factors, the Department has considered various other factors that may provide evidence of intent to be in Washington on other than a temporary or transient basis. Such factors include, but are not limited to, business registrations, ownership of residential property, interests in residential property in another state, in-state utility services, locations where tax returns are filed, and the intent to return to this state on other than a temporary or transient basis. *See, e.g.*, Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994); Det. No. 96-049, *supra*; Det. No. 99-085, 19 WTD 909 (2000); Det. No. 99-101, *supra*; Det. No. 99-105R, 19 WTD 560 (2000).

Owning property in Washington, and even maintaining a second residence in the state, is not alone sufficient to establish intent to be located in this state on more than a temporary or transient basis. In Det. No. 96-049, *supra*, the Department stated:

Obviously, the maintaining of a residence, without more, is insufficient to manifest such an intent. A person can maintain a vacation home or investment property and use it only on a temporary or transient basis. Similarly, no set amount of time that a person stays in a dwelling, by itself, is sufficient to manifest such an intent. [footnote omitted] Again, it is possible for a person to have a stay that is only temporary or transient in nature, e.g., as a result of temporary employment in this state. Rather, we must look at various factors related to residency on a case-by-case basis.

The Department has long held that a person can be a resident of more than one state for use tax purposes. *See, e.g.*, Det. No. 96-049, *supra*; Det. No. 99-101, *supra*; Det. No. 87-65, 2 WTD 293 (1986); Det. No. 87-174, 3 WTD 171 (1987); Det. No. 93-223, *supra*.

In this case, the evidence establishes that the taxpayer’s primary residence has been in [. . .], Oregon, since on or about September 12, 1997. That is when the taxpayer left Washington, following his long-time girlfriend who had already moved to Oregon. The taxpayer shares the rental obligation on the [Oregon] apartment. He shares the obligation for utility service at the [Oregon] apartment. He shares the apartment with his girlfriend, and she also travels part of the time with him. He spends at least three months of the year in [Oregon]. He has regular trailer

spaces in Oregon at . . . and [. . .]. [. . .], Oregon, may reasonably be characterized as the center of his and his girlfriend's domestic life. The only fixed dwelling in which the taxpayer has resided since September 1997 has been the [Oregon] apartment. He has had an Oregon driver's license since September 1997. He has been licensing his vehicles in Oregon since 1997.

The taxpayer took steps to end his ties to Washington when he moved from his [Washington] County residence in September 1997. He had tried to sell the residence, and had leased it with an option to buy. He took his name off the utilities. He ceased to be listed in the local telephone directory. He surrendered his Washington driver's license.

None of the three factors that RCW 46.16.028(1) lists as evidencing residency in Washington is shown to be present in this case after September 12, 1997.

Nonetheless, the taxpayer retained some ties to Washington until at least the spring of 2000. He continued to own his former residence in [Washington] County, and stayed at the address, albeit in his fifth wheel trailer, during at least three separate periods between September 1997 and the spring of 2000. He kept some belongings stored on the property. He had a daughter and friends in the [Washington City] area, whom he visited during those three periods. He maintained a mail drop in [Washington City]. He financed vehicle purchases through his credit union in [Washington City].

The Compliance Division based its conclusion that the taxpayer continued to be a Washington resident on a report by the taxpayer's tenant that the taxpayer continued to reside on the taxpayer's [Washington] County property during three months of the year, and other evidence of continuing ties to Washington. The credibility of the tenant's report is substantially undercut by the evidence the taxpayer presented on appeal, particularly the other witness statements regarding the purpose and duration of the taxpayer's trips to Washington, and the court documents relating to the tenants' eviction. The taxpayer has established that his visits to the [Washington City] area were in relation to problems he had getting rent from the tenants, and in evicting the tenants so that he could sell the property. We find the visits do not evidence an intent to live or be located in this state on more than a temporary or transient basis.

We find the taxpayer's other continuing ties to Washington do not objectively evidence an intent to live and be located in Washington on more than a temporary or transient basis. Maintaining a mail drop for forwarding mail to wherever the taxpayer might be around the country, and continuing to use the services of a credit union of which the taxpayer was already a member, do not, by themselves, establish the requisite intent. Viewing the evidence as a whole, we conclude the taxpayer was a nonresident of Washington after September 12, 1997.

The taxpayer also met the second requirement for the exemption. The vehicles were licensed in a state where he resided, Oregon.

The third requirement for the exemption is: were the vehicles required to be licensed in Washington? There is a general requirement that any vehicle being operated over and along a

public highway of this state be licensed. RCW 46.16.010(1). However, nonresident persons not employed in this state are exempt from the requirement if the vehicle is currently licensed in another state and the nonresident does not operate it in this state for a period exceeding six months in any continuous twelve-month period (RCW 46.85.060(1)). Nonresident persons employed in this state are exempt from the requirement if the vehicle does not exceed a specified weight and is currently licensed in another jurisdiction, if the person does not maintain a permanent, temporary, or part-time residence in this state for a period greater than six months in any continuous twelve-month period (RCW 46.85.060(2)). A Washington resident must register a vehicle to be operated on the highways of the state (RCW 46.16.028(3)), and it is a violation of RCW 46.16.010 for a resident of this state to license a vehicle in another state to avoid the payment of any tax or license fee imposed in connection with registration (RCW 46.16.010(2)(a)).

The taxpayer was a nonresident. He was not employed in this state. His vehicles were currently licensed in another state. He did not operate the vehicles in this state for a period exceeding six months in any continuous twelve-month period. Therefore, under RCW 46.85.060(1), the vehicles were not required to be licensed in Washington.

The taxpayer met all three requirements for above-quoted exemption from use tax when he used the two vehicles in Washington. Accordingly, the use tax assessment should be cancelled.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The use tax assessment is cancelled.

Dated this 11th day of May, 2001.