

Cite as Det. No. 99-049, 20 WTD 136 (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. 99-049
...)	USE TAX.
)	MOTOR VEHICLE EXCISE TAX
)	EVASION PENALTY

- [1] RULE 178; RCW 82.12.020, RCW 82.44.020: USE TAX -- MVET -- NONRESIDENT EXEMPTION -- MOTOR HOME -- PARTNERSHIP -- BURDEN OF PROOF. Use tax and MVET was found due on a motor home where Taxpayer failed to establish that the motor home was owned by an out-of-state partnership, that the commercial domicile of the alleged partnership was out-of-state, and that the partnership actually existed.
- [2] RULE 228; RCW 82.32.090: EVASION PENALTY -- PARTNERSHIP -- REGISTRATION IN NAME OF -- NONEXISTENT. An evasion penalty was sustained where longtime Washington residents registered their newly-acquired motor home in the name of a Montana partnership which objective facts indicated did not exist.
- [3] RULE 178; RCW 82.12.020: USE TAX -- VALUE OF ARTICLE USED -- PURCHASE PRICE -- SOLD UNDER CONDITIONS NOT REFLECTING TRUE VALUE. A sales document showing a purchase price of \$75,000 for a dilapidated motor home in Texas "as is, where is," was found to not truly reflect the value of the motor home when it first entered the state of Washington several months later. Taxpayers testified that they had performed substantial engine repair work on the vehicle after its purchase and prior to entering 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.

NATURE OF ACTION:

Washington residents protest use tax, motor vehicle excise tax (MVET), interest, delinquent penalties, and evasion penalties assessed on a motor home licensed in Montana.¹

FACTS:

Okimoto, A.L.J.— . . . (Taxpayers) are Washington residents that purchased a pre-owned . . . motor home in Texas on August 17, 1995. Mr. [Taxpayer] testified during the hearing that he had paid \$75,000 for the motor home “as is, where is.” At the time the motor home did not have a working engine, so Taxpayers purchased the motor home at a substantial discount. The motor home had 37,000 miles on its odometer at the time of transfer. As a former aircraft mechanic, Mr. [Taxpayer] was able to perform the necessary and substantial engine repairs himself. He then drove the motor home to Montana where he titled and licensed the vehicle on August 30, 1995. The Montana Certificate of Title lists the owner as . . . Enterprises (. . .), mailing address “General Delivery,” . . ., Montana . . . with the county of residence being . . . County in Montana. Taxpayers subsequently changed their mailing address on the Montana documentation to: . . . Washington.

After licensing the motor home in Montana, Taxpayers drove the motor home to their residence in Washington and stored it there during the winter months. In March of 1996 Taxpayers drove the motor home back to Montana and began looking for real estate investment opportunities. The motor home was parked in a friend’s lot or sometimes at a nearby trailer park. Taxpayers lived in the motor home until June of 1996 when Mr. [Taxpayer] became ill and was hospitalized in . . ., Montana. Once Mr. [Taxpayer] was released from the hospital, Taxpayers and the motor home returned to their permanent residence in . . ., Washington where they remained for the balance of the year.

In June of 1997 a Washington State park ranger notified the Compliance Division (Compliance) of the Washington State Department of Revenue (Department) that he had observed the motor home being used in a Washington State campground. A subsequent investigation by Compliance revealed that Taxpayers were permanent residents of Washington, registered to vote in Washington, and held Washington driver’s licenses. On August 29, 1997, a Compliance officer observed, documented, and photographed the motor home at . . ., Washington, Taxpayers’ residence.

In response to Compliance’s inquiry, the State of Montana Department of Revenue (Montana) indicated that it had no record of . . . Enterprises, no business registered in Taxpayers’ names, and no record of either party paying income taxes.

Based on its investigation, Compliance concluded that Taxpayer owed use tax, as of Taxpayers’ first use of the motor home in Washington, and motor vehicle excise taxes because the motor home should have been registered and licensed in Washington. To those amounts Compliance added twenty- percent late-payment penalties, a fifty- percent evasion penalty and interest. Compliance

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

estimated the value of the motor home at time of first use in Washington to be \$150,125 based on the Kelley Blue Book and computed the assessments on that value. As a result, Compliance issued a use tax assessment on September 8, 1997 in the amount of \$. . . including tax, penalties and interest and an MVET assessment in the amount of \$. . . Taxpayers protested both assessments to the Appeals Division (Appeals) of the Department, and the assessments remain due

Taxpayers acknowledge that they have a permanent residence in . . . , Washington and that they spend all of their winters in that abode and some portions of the spring, summer and fall as well. Taxpayers state that they return to Spokane during the summer months primarily for treatment of Mr. [Taxpayer]'s medical condition. This condition requires that he be near a [Washington] medical facility and also restricts him from driving long distances.

Taxpayers contend, however, that even though they have a permanent residence in Washington, and that they and the motor home spend a good portion of the year at that residence, that the motor home should not be subject to Washington taxes. Taxpayers argue that they are not the owners of the motor home, but that it is owned in equal partnership by Taxpayers and their two sons and doing business as . . . Enterprises Taxpayers contend that the domicile and residence of the partnership is . . . , Montana where Taxpayers engage in business on its behalf. Although there is no written partnership agreement, Taxpayers submitted e-mail letters from their two sons stating that the sons were partners or had an interest in [Enterprises]. One son resides in . . . , Nevada and the other resides in . . . , Utah. Taxpayers concede that neither son has directly contributed any money to the partnership but states that Taxpayers have used family funds that they routinely gift to their children to fund all [Enterprises] investments, including the purchase of the motor home. Taxpayers stated that the partnership's primary business is real estate investments. Mr. [Taxpayer] also testified during the hearing that he is very familiar with real estate values in Montana and has attempted to purchase numerous properties in Montana during the last several years.

Mr. [Taxpayer] acknowledges that he does occasionally use the motor home while staying in Washington campgrounds, but contends that such use has only been for the purpose of selling the motor home, or while driving through Washington to another state. Taxpayers further acknowledge that they store the motor home at their Washington residence during the winter time, but testified that during the spring, summer, and fall, the motor home is primarily kept in Montana, or other states.

Taxpayers argue in their petition:

The motorhome in question is owned by Mr. [Taxpayer] and two partners, one of whom resides in . . . , Utah and the other resides in . . . , Nevada. The motorhome was purchased in Texas, and following some repair work performed in Texas, driven directly to Montana. The motorhome is licensed in the state of Montana by the business entity “. . . Enterprises”, and limits business activity exclusively in Montana.

Based upon this information, it is apparent that the provisions of RCW 82.12 et seq., do not apply to this business equipment. RCW 82.08.010(2) defines the term “use” to include only

those situations where 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.” As previously indicated, the business equipment is licensed in the state of Montana by a Montana business entity. There simply is no “act preparatory to subsequent actual use or consumption within this state.”

The provision of RCW 82.44, et seq. does not apply as the motor vehicle is used in the state of Montana by a Montana business entity. For purposes of the Washington State Motor Vehicle Excise Tax, a resident is defined by RCW 46.16.020 to include “a person who manifests an intent to live or be located in this state on more than a temporary or transitory basis.” The business entity to which the motor vehicle is licensed in the state of Montana, “. . . Enterprises”, does not conduct business in the state of Washington. Therefore, it is not a resident under the provision of RCW 46.16.020, and therefore the Motor Vehicle Use Tax should not have been assessed.

In response to the evasion penalty, Mr. [Taxpayer] maintains that he did not intend to evade the payment of taxes. In fact Mr. [Taxpayer] states that he currently has two cars licensed and titled in Washington upon which he has paid sales taxes and MVET. Furthermore, Mr. [Taxpayer] states that his prior recreational vehicle was titled and licensed in Washington and that the Montana police have stopped him in the past and instructed him to license that vehicle in Montana. Mr. [Taxpayer] states that this was the main reason that he felt he had to license his new motor home Montana and not Washington. Mr. [Taxpayer] submitted a copy of the Montana regulation given to him by Montana police in support of this statement.

Finally, Mr. [Taxpayer] states that he purchased the motor home in Texas in a dilapidated condition for \$75,000 and not the \$150,125 estimated value by Compliance. In support of that Taxpayers have submitted a “bill of sale” dated 8/20/1995 and allegedly signed by the seller. At the hearing, Mr. [Taxpayer] was asked to provide documentation of the electronic money transfer that consummated the original purchase in order to corroborate the selling price, but did not comply with that request.

ISSUES:

- 1) For use tax purposes, was the motor home owned by bona fide nonresidents of Washington?
- 2) For MVET purposes, was the motor home owned by bona fide nonresidents of Washington?
- 3) If taxes are due, has the Department proven by clear, cogent and convincing evidence Taxpayers’ intent to evade those taxes?
- 4) What was the value of the motor home when first used within the State of Washington?

DISCUSSION:

Use Tax

RCW 82.12.020 imposes a use tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." 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 sales tax has not been paid. WAC 458- 20-178 (Rule 178). RCW 82.12.010 defines the term "Use" to mean ". . . the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property . . . and storage and withdrawal from storage."

RCW 82.12.0251 provides a limited exemption from use tax. It states in relevant part:

The provisions of this chapter [Use Tax] shall not apply in respect to the use of any article of tangible personal property brought into the state by a nonresident thereof for his use or enjoyment while temporarily within the state unless such property is used in conducting a nontransitory business activity within the state; or in respect to the use by a nonresident of this state 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 this state . . . ; or in respect to 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 he entered this state. (Emphasis and bracketed material added.)

Rule 178 similarly includes within the list of exempt uses "the use by a nonresident of a motor vehicle currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state." Rule 178 (7)(b).

However, a resident of Washington must register any vehicle to be operated on the highways of the state. RCW 46.16.028(3). A Washington resident is defined for motor vehicle excise tax purposes as follows:

For the purposes of vehicle registration, 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 Washington; or
- (b) Receiving benefits under one of Washington's public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition at resident rates.

RCW 46.16.028(1)

In general, the definition of residency for use tax purposes is the same as for motor vehicle excise tax. Det. No. 96-049, 16 WTD 177 (1996).

Although Taxpayer contends that the motor home is owned by a nonresident business domiciled in Montana, and therefore is exempt from the imposition of Washington use tax and motor vehicle excise tax, we disagree. In order for Taxpayers to receive the tax exemptions, they must prove the existence and out-of-state domicile of the nonresident business. A party claiming a tax exemption has the burden of proving he or she qualifies for the exemption. Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission, 72 Wn.2d 422, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989); Corporation of Catholic Archbishop v. Johnston, 89 Wn.2d 505, 573 P.2d 793 (1978).

Based on the facts presented, we find that Taxpayers [have] failed to establish not only the existence of an out-of-state business entity, but also that the commercial domicile of that alleged entity is located in Montana or that the motor home is actually owned by that entity. We note that the Montana Department of Revenue has no records documenting the formation of any business entity or partnership named . . . Enterprises in that state. Montana officials found no tax returns, or any business activity relating to . . . Enterprises in the . . . , Montana area. In fact, Taxpayer's only documentation evidencing the existence of the alleged partnership consists solely of two after-acquired, self-serving letters submitted by their sons acknowledging an affiliation with . . . Enterprises. Even these letters fall considerably short of establishing the existence of any sort of joint venture or partnership. Furthermore, Mr. [Taxpayer] readily concedes that his sons have contributed no capital funds into the alleged partnership and that it is funded solely out of "family funds" which he intends to gift to them each year.

Furthermore, assuming arguendo, the existence of a partnership, Taxpayers are nevertheless liable for use tax on the motor home because of Taxpayers' involvement and ownership interest in the alleged partnership. The Department has held that when a joint-owner of tangible personal property is a Washington resident, any use of tangible personal property by either joint-owner within this state constitutes a taxable incident for use tax purposes. See Det. No. 86-321, 2 WTD 105 (1986); Det. No. 87-145, 3 WTD 99 (1987). Accordingly, we find that Taxpayers are not entitled to the use tax exemption. Taxpayers' petition is denied on this issue.

MVET Assessment

The MVET is imposed for the privilege of using a motor vehicle in this state. RCW 82.44.020(1). A resident of Washington must register any vehicle to be operated on the highways of the state. RCW 46.16.028(3). A Washington resident using a motor vehicle in this state cannot avoid the MVET tax by registering the vehicle in another state. RCW 82.44.020(7) in relevant part provides:

Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another State . . . and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under

chapter 82.32 RCW, including the penalties and interest provided therein.

As set forth above in the use tax discussion, we accord little weight to Taxpayers' contention that an out-of-state business entity owns the motor home. On the contrary, we find that Taxpayers own the motor home and that they are Washington residents as defined in RCW 46.16.028(3) and were required to register the vehicle in Washington pursuant to RCW 82.44.020. Accordingly, Taxpayers' petition is denied on this issue.

Evasion Penalties

Chapter 82.32 RCW governs the Department's authority regarding the imposition and waiver of penalties. This chapter is directly applicable to the respective assessments of use tax (RCW 82.12.080) and unpaid MVET (RCW 82.44.020). RCW 82.32.090(5) provides that a "further penalty of fifty percent (50%) shall be added (to a tax assessment) upon a Department finding the deficiency resulted from an intent to evade the payment of the tax."

The subjective intent of a person is difficult to directly ascertain. Intent is to be determined from the surrounding facts (i.e. taxpayer's actions or statements) from which reasonable deductions or inferences may be drawn. Intent to evade, however, does not exist where a tax deficiency was due to an honest mistake, an unsuccessful attempt at legitimate tax avoidance, inefficiency, or ignorance of proper accounting methods.

The imposition of the evasion penalty requires proof of:

1. a tax liability which the taxpayer knows is due; and
2. an attempt by the taxpayer to escape detection through deceit, fraud or other intentional wrongdoing.

The Department has the burden to prove these elements of evasion by clear, cogent, and convincing evidence. Det. No. 90-314, 10 WTD 111 (1990). WAC 458-20-230(4), the administrative rule implementing this standard of proof, provides in pertinent part:

Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence, which is objective and credible.

Clear, cogent, and convincing evidence has been described as evidence convincing the trier of fact that the issue is "highly probable," or, stated another way, the evidence must be "positive and unequivocal." Colonial Imports, Inc. v. Carlton Northwest, Inc., 121 Wn. 2d 726, 735, 853 P.2d 913 (1993).

Although lowering one's taxes through legitimate means does not constitute evasion, a deliberate attempt to escape detection of a tax liability by falsely claiming exempt nonresident status does. While sustaining an evasion penalty, we have stated:

In an attempt to evade (Washington's) sales and use taxes and to take advantage of (foreign state's) lower costs of licensing, many Washington residents have registered their motor vehicles with (foreign states) using spurious (out of state) addresses. This Department has routinely assessed the evasion penalty in addition to the use tax in cases where an attempt to evade the tax is apparent.

Det. No. 86-223, 1 WTD 43 (1986).

In this case, Taxpayers are longtime Washington residents. They currently have two vehicles registered in their name and licensed in Washington. In addition, Taxpayers paid use tax on their previous motor home and licensed it in Washington. Based on these facts, we find that Taxpayers clearly knew that a use tax and MVET would be due if they registered the motor home in Washington. Moreover, we find that they were aware that the amount of tax owing would be substantial on a motor home valued in excess of \$150,000.

We further find that Taxpayer attempted to evade detection and payment of these taxes through deceit, fraud or other intentional wrongdoing. In this case, Taxpayers registered and titled the motor home in Montana under the guise of an alleged partnership business even though there is no objective evidence that such partnership exists. On the contrary, the Montana Department of Revenue has no record of [Enterprise] or of Taxpayers.² Furthermore, we note that the address originally listed on the Montana motor home registration was "General Delivery," . . . , Montana . . . with the county of residence being . . . County in Montana. Taxpayers' used this out-of-state address for registration purposes even though Mr. [Taxpayer]'s testimony suggests that in 1996 he only spent some portion of the summer months in Montana "looking for real estate," and that for the remainder of the year the motor home was "in storage" at Taxpayers' residence in . . . , Washington. We further note, that Taxpayers subsequently changed their mailing address on the motor home's Montana registration to Taxpayers' Washington residence after obtaining the Montana registration. We find that Taxpayers' use of a "General Delivery, . . . , Montana" address to obtain Montana registration on the motor home, when, in fact, Taxpayers permanently resided in . . . , Washington, constituted an attempt to evade the payment of use taxes and MVET and to "escape detection through deceit, fraud, or other intentional wrongdoing."

Furthermore, we note that Taxpayers' motor home was seen and/or photographed in several different areas throughout Washington. Although Mr. [Taxpayer] testified that he only drove the motor home to . . . State Park on June 15, 1997, to show it to a friend who had indicated he may want to buy the motor home, we find such testimony to be unsubstantiated and self-serving. The

² Although the State of Montana has no record of . . . Enterprises or Taxpayers, the Washington State Department of Revenue records show that a business account in the name of [Mr. Taxpayer]; dba: [Enterprise] . . . , Washington . . . opened on February 10, 1979 and closed on December 31, 1984.

undisputed fact is that Mr. [Taxpayer] was sited on June 15, 1997 at . . . State Park in Northern Washington, which directly contradicts Taxpayers assertion that the motor home was used exclusively for business purposes in Montana.

Based on the objective evidence presented by the Department and Mr. [Taxpayer]'s testimony during the hearing, we find the evidence supports a finding that Taxpayers intended to evade the payment of MVET and use taxes on the motor home. We find this evidence to be clear, cogent, and convincing.

Taxpayers' petition is denied on this issue.

Valuation

RCW 82.12.020 states the measure of use tax to be the " value of the article used." That phrase "shall mean the consideration given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter." RCW 82.12.010(1).

WAC 458-20-178(13) also provides in pertinent part:

In case the article used was . . . sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character.

Taxpayers have presented an after-acquired sales document signed by the seller indicating that the motor home was sold for \$75,000 "as is, where is." However, Taxpayers were also asked to provide corroborating evidence of that price through documentation of any wire transfer of funds, cancelled check or similar documentation. Taxpayers have failed to provide that documentation.

However, even assuming arguendo, that Taxpayer did pay \$75,000 for the motor home in Texas "as is, where is," this payment does not reflect the value of the motor home at the time it was first used in Washington. Mr. [Taxpayer] has testified that he purchased the motor home in a "dilapidated" condition and made substantial repairs in Texas to get it in running condition. Based on this testimony, we find that the motor home was sold under conditions where the purchase price did not represent the "true value" of the article used at the time it first entered the State of Washington. Therefore, under Rule 178, we must refer to the retail-selling price, at the place of use, of similar products of like quality, quantity and character.

In determining that value, the Department's Revenue Agents relied upon guidebooks of recognized standing in the automotive industry, and inquiries with the manufacturer. The vehicle's suggested list price was \$260,500 in 1992. Furthermore, during the year that Taxpayers purchased the motor home, the average retail and wholesale prices were \$204,440 and \$156,300 respectively. Accordingly, we find that the Department's value of \$150,125 accurately

reflects the true value of the motor home at the time it was first used in Washington. Taxpayers' petition is denied on this issue.

DECISION AND DISPOSITION:

Taxpayers' petition is denied.

Dated this 26th day of February 1999.