Cite as Det. No. 99-101, 20 WTD 175 (2001)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 99-101
. . .	)	Registration No. . . .
	)	Use Tax Assessment

[1] RULE 178; RCW 82.12.020, RCW 82.12.0251: USE TAX – NONRESIDENT – EXEMPTION. To qualify for the nonresident use tax exemption, a taxpayer must prove he is (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. Where an Idaho resident uses the Washington residence owned by his marital community on a regular basis, visits his wife and child in Washington on a regular basis, engages in Washington community activities, and operates vehicles with Washington licenses, the Idaho resident manifests an intent to live or be located in Washington on more than a temporary or transient basis and is considered a Washington resident, as well. Washington residents are required to license their motor vehicles in Washington. As such, use tax was due with respect to the vehicle at issue.

[2] COMMUNITY PROPERTY; TAX LIABILITY. In order to sustain the use tax assessment, we need only to find one of the taxpayers in a marital community was a Washington resident. The Department has consistently held that a tax liability imposed on one joint owner of a vehicle who is a Washington resident can be imposed upon the other who is not a resident. The debt for use tax is a debt of the marital community, composed of the taxpayer and his wife.

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 Idaho resident, whose spouse is a Washington resident, protests . . . the assessment of use tax on [a] motorcycle and car . . . licensed in Idaho.[1]

FACTS:

D. Thomas, A.L.J. -- Taxpayer and his wife (taxpayers) were married in Idaho in 1972. The taxpayer is an Idaho resident. He is registered to vote, licensed to drive, and works in that state. The taxpayer's spouse is a resident of Washington. She is registered to vote, licensed to drive, and works in the State of Washington.

On June 19, 1997, the Washington State Department of Revenue (Department) issued . . . [a] use tax assessment[] . . . on [an] auto and motorcycle, both of which were purchased in Idaho in 1996.

Prior to [the assessment] being issued an anonymous source informed the Department in writing that all of the vehicles had been seen simultaneously at taxpayer's Washington residence. The anonymous source noted the auto . . . [was] in the back yard, while the motorcycle was garaged.[2] Subsequent Department investigations disclosed the taxpayer and his wife owned and jointly used a home in [Washington City,] Washington (residence). Utility records indicate residential utility service began March 20, 1980. The marital community owns the residence. The marital community also owns a [Washington City] rental property purchased in 1992. Prior to and during the period of the assessment the taxpayers' child attended public schools in [Washington City]. In 1996, taxpayer worked for an accounting firm in [Washington City] for 215 hours. Taxpayer has a business registered in the State of Washington.[3]

In response to a Department inquiry taxpayer's wife, by letter dated September 12, 1997, stated her husband moved to Idaho in 1992, the vehicles in question are the property of her husband, and vehicles she owns are licensed in Washington. In a subsequent phone conversation with the Department she stated she was currently married to taxpayer and referred additional questions to his attorney. This appeal followed.

During the teleconference taxpayer stated he moved to Idaho in 1992. His wife and child remained in Washington, residing at the residence. Taxpayer described the relationship as an "unconventional living arrangement," adding the rational [sic] was based on his wife's inability to find suitable employment in Idaho and the couple choosing to keep their child in Washington

---

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

[2] The information was contained in a hand written note dated April 4, 1997 and signed "Anonymous Source-Neighbor." The note contained a detailed description of the vehicles and where they were seen.

[3] Department records indicate the mailing address for this account is the residence jointly owned by the marital community. There was no business activity during the period of the assessment. The account was relieved from the requirement of filing state excise tax returns and was changed to non-reporting status effective July 1, 1996 as a result of having no business activity. See RCW 82.32.045.

schools. The couple is not estranged nor is there any written separation or dissolution agreement.

Taxpayer visits the Washington residence on a regular basis to be with his wife and child. Taxpayer occasionally purchases supplies for his Idaho farm on the visits. Taxpayer conceded all the vehicles at issue have been used in Washington, though he disputes they were there simultaneously, as reported by the anonymous source. Taxpayer attributed the complaint to a vindictive business owner, whose business is located in the same neighborhood as taxpayer's residence, acting in retaliation to taxpayers' community involvement and objections at a zoning law meeting regarding the business owner's proposed business expansion in the [Washington City] neighborhood.

Taxpayer stated his entire income is earned in Idaho from his farm and occasional employment as an accountant. He stated all vehicles at issue were purchased with funds earned in Idaho. Taxpayer and his attorney stated the . . . motorcycle [is] principally stored in Idaho, taxpayer's wife has never driven any of the vehicles, and at no time were any of the vehicles operated for six months in any continuous twelve-month period in Washington.

Taxpayer denies he is a Washington resident. He contends he is a full-time Idaho resident and therefore the taxes are not owed. Taxpayer claims the vehicles were in Washington only on a temporary basis and therefore the vehicles are exempt from Washington use tax . . . .

ISSUES:

(1) For use tax purposes is taxpayer a "nonresident" of Washington?

. . .

(3) Are the vehicles that were purchased by taxpayer part of the taxpayer's community property with his spouse, a Washington resident?

DISCUSSION:

[1] Use Tax.

Washington's use tax law, RCW 82.12.020 levies and collects "from every person in this state a 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). The law defines the term "use" or "using" 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 [including] storage and withdrawal from storage." RCW 82.12.010(2).[4]

RCW 82.12.0251 provides a limited exemption from use tax and states in 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.[5]

(Emphasis added.) Taxpayer's exemption claim is based on nonresidency, as underlined above.

The law states 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).

Therefore, in order to prevail on his use tax exemption claims, taxpayer must prove he is (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. It is undisputed that taxpayer is an Idaho resident and registered the vehicles in that state. Accordingly, only points (1) and (3) will be addressed.

---

[4] 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.

[5] Rule 178(7) similarly sets forth limited exemptions from use tax for:

> (a) nonresidents while temporarily within the state; or
> (b) nonresident(s) use of a motor vehicle currently registered or licensed under the laws of the state of his residence; or
> (c) a resident of this state or a nonresident member of the armed forces and the acquisition and use of the vehicle occurred more than ninety days prior to entering this state.

However, Rule 178(7)(c)(i) states that the nonresident exemptions set for in (a) and (b) "do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere . . . ." (Emphasis added.)

Nonresident.

The issue regarding an exemption from use tax turns on whether or not taxpayer is a nonresident of Washington. The use tax statutes do not define the term "nonresident," nor has the Department issued a rule defining the term. The licensing provisions, however, do define the term "resident." The definition of residency for use tax purposes has been held to be the same as for the MVET. Det. No. 96-049, 16 WTD 177 (1996).[6] Therefore, the term resident, for use tax purposes, is defined as:

> . . . a resident 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;
> (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) (emphasis added).

As one's "intent" is subjective and therefore difficult to measure, the Department has stated we must look at various factors related to residency on a case-by-case basis in determining "intent":

> In addition to a state license, voter's registration, and public assistance, we have considered various other factors that may provide evidence of an 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 other states, 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.

Det. No. 96-049, supra.

That the taxpayer is a resident of Idaho is undisputed. However, taxpayer's contention that all factors point only to an Idaho residency is wrong. The facts amply demonstrate evidence of an established Washington residency as well. To a large extent Washington is the center of taxpayer's domestic life. He uses the residence owned by the marital community on a regular basis. Taxpayers are not estranged as he visits his wife and child on a regular basis. His child attended Washington schools. His spirit of community involvement and civic responsibility lent itself to opposing a proposed business expansion in his [Washington City] neighborhood. The marital community owns rental property several doors from the Washington residence. In 1996

---

[6] "For purposes of the use tax and MVET, the definition of resident is the same. That definition is set forth in RCW 46.16.028." Id.

taxpayer worked for an accounting firm here. He has operated and continues to operate vehicles in Washington with Idaho licenses.

Based on the evidence submitted we find taxpayer has not met his burden of proving that he is a nonresident of Washington. The facts and the surrounding circumstances demonstrate that taxpayer manifested the requisite intent to live and be located in Washington on more than a temporary or transient basis, and therefore is a Washington resident. Though taxpayer is an Idaho resident, the Department has long held that a person can have more than one residence for use (and MVET) tax purposes. See Det. No. 87-65, 2 WTD 293, (1986), Det. No. 87-145, 3 WTD 99, (1987), Det. No. 87-174, 3 WTD 171, (1987); Det. No. 93-223, 13 WTD 361, (1994); see also Note, supra note 3, at 4.

Accordingly, for use tax purposes, we conclude taxpayer is not a "nonresident" of Washington, or, put conversely, taxpayer is a Washington resident.

Licensing Requirement.

In order to prevail on his use tax exemption claim taxpayer must also prove the vehicles were not required to be licensed in Washington.

RCW 82.44.020(7) requires Washington residents, as defined by RCW 46.16.028 (above), to pay Washington's MVET if they license their motor vehicles in another state. Use tax is also due if the taxpayer meets that same definition. Det. No. 96-49, supra.

Taxpayer relies on an exemption that is applicable to "nonresidents" who use their motor vehicles in Washington. However, as stated above, a person may have more than one residence for use tax purposes. Det. No. 96-049, supra. Taxpayer's Idaho residency did not change his status as a Washington resident at the time of purchase of the auto and motorcycle. Taxpayer used the vehicles in Washington and there are no exemptions from licensing for Washington residents who use their motor vehicles in Washington that apply in this case.

Based on the facts and surrounding circumstances we conclude taxpayer has failed to state grounds or submit evidence proving the vehicles are not required to be licensed in Washington. Accordingly, taxpayer is not entitled to the use tax exemption on the auto and the motorcycle.

Additional considerations regarding exemption.

Although taxpayer did not raise the issue on appeal, the Department also considered an exemption under WAC 458-20-178(7)(j). That subsection states:

> For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently

> dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state. . .

However liberally we construe Rule 178, in consideration of taxpayer's situation, we are unable to find taxpayer to be a "nonresident" under subsection (7)(j) or any other subsection of Rule 178. Taxpayer did not have places of business in two states. Even assuming arguendo the rental property was a business and taxpayer may have used the vehicle at times while managing this "business," the exemption applies only to vehicles dispatched from the user's place of business in another state. The term "dispatched" is not defined in the WAC. When a term is not defined, commonly understood definitions will apply. King County v. City of Seattle, 70 Wn.2d 988, 425 P.2d 887 (1967). Webster's Third New International Dictionary, 653, (1993) defines "dispatched" as: " To send off or away (as to a special destination) with promptness or speed often as a matter of official business." In this case, the only use in Washington was by taxpayer for his personal use, in this instance periodic visits to his family, and not within the context of a business use.

We construe the Rule 178(7)(j) exemption to require that the vehicle must be owned or leased by and for a business "user" who has places of business in Washington and one or more other states. The vehicle must be "most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state." These vehicles were not "dispatched" on a matter of specific business to Washington. Therefore, taxpayer does not meet the exemption's requirements that the same business entity must have places of business both in Washington and another state and that the entity must dispatch, garage, service, etc., its vehicle most frequently at the out-of-state place of business. Exemptions to a tax are narrowly construed; taxation is the rule and exemption is the exception. Budget Rent-a-Car vs. Dept. of Rev., 81 Wn.2d 171, 174 (1972). In this case, the only use in Washington was by taxpayer who used the vehicle to commute to visit his family. If taxpayer did not use the vehicle to conduct any business in Washington, any use that occurred in Washington was personal use.

We find that taxpayer was a resident of Washington at the time he first used the auto and motorcycle in Washington. We find the only use in Washington was by taxpayer who used the vehicles to commute to visit his family. We find the use tax is due because taxpayer, as a Washington resident, used these two vehicles in Washington and they had not been subjected to Washington sales tax at the time the he purchased them. Accordingly, the use tax was properly assessed.[7]

Taxpayer's petition is denied on this issue.

. . .

[2] Community Property.

There is no question the taxpayer's wife is a Washington resident. Washington is a community property state. Chapter 26.16 RCW. Property acquired after marriage by either husband or wife

[7] The taxpayer was credited with the amount of Idaho sales tax paid at time of purchase.

or both, is community property. RCW 26.16.030. In order to sustain the use tax . . . assessment, we need only to find one of the taxpayers was a Washington resident. The Department has consistently held that a tax liability imposed on one joint owner of a vehicle who is a Washington resident can be imposed upon the other who is not a resident. See, e.g., Det. No. 86-321, 2 WTD 105, (1986); and Det. No. 87-145, 3 WTD 99, (1987).

The debt for use tax . . . is a debt of the marital community, composed of the taxpayer and his wife. Taxpayer is a member of that community. As a consequence, the nonresident exemption is not available to the owner of the vehicles. Debts acquired during the existence of a marriage are presumed to be community debts. Oil Heat Co. of Port Angeles, Inc. v. Sweeney, 26 Wash. App. 351, 353, 613 P.2d 169 (1980). Therefore, under the community property laws of the State of Washington taxpayer is liable for use tax . . . on the vehicles.

DECISION AND DISPOSITION:

Taxpayer's petition is denied. The file will be remanded to the Compliance Division for collection action.

Dated this 26th day of April 1999.