

Cite as Det. No. 00-030, 20 WTD 154 (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)	
)	No. 00-030
)	
...)	Use Tax Assessment
)	MVET Assessment No. ...

- [1] RULE 178; RCW 82.12.020, RCW 82.12.0251: USE TAX – RESIDENCE – NON-RESIDENT STUDENT. 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." Factors considered in determining residency include: state driver's license, voter's registration, public assistance, 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. RCW 82.12.0251 exempts a nonresident from use tax where the vehicle is "registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington." The taxpayer did not meet the requirements of the nonresident student exemption where she did not register her car in her state of residency. Further, the taxpayer did not meet the requirements for the exemption for use by a nonresident of a vehicle acquired more than 90 days prior to using the vehicle in Washington where the taxpayer did not acquire and use the car in her state of residency.
- [2] RCW 46.16.028: MVET – RESIDENCE. Where the taxpayer was a resident of Washington during the periods covered by the MVET assessment, she had a duty to register her car in Washington and to pay MVET.

NATURE OF ACTION:

Petition for correction of assessment of use tax and motor vehicle excise tax (MVET) assessed on a vehicle purchased in Nebraska and registered in Oregon.¹

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

FACTS:

S. Thomas, A.L.J. -- The taxpayer, . . ., purchased a [car] on June 4, 1996 from an automobile dealer in . . ., Nebraska. The Compliance Division (Compliance) of the Department of Revenue assessed use tax and MVET on January 13, 1999.

The taxpayer gave the dealer her temporary Nebraska address when she bought the car. A few days after buying the car, she vacated her Nebraska apartment, and went to Oregon where she registered the car on June 25, 1996. In Oregon, on June 10, 1996, she signed a month-to-month lease for a house in Oregon, effective beginning July 1, 1996.² On July 2, 1996, she signed an apartment move in inspection sheet for an apartment in Nevada. She produced utility bills from Nevada for the month of July 1996. The Oregon application for title and registration requires the person registering a vehicle to certify that "[m]y place of domicile (home) is Oregon, or I am otherwise eligible or required to register the vehicle under Oregon law." The taxpayer signed the Oregon application for title and registration on June 25, 1996.

On December 17, 1998 a Washington State District Compliance Manager (DCM) observed the vehicle in [Washington] and sent a letter of inquiry to the taxpayer, who owns a house in [Washington]. She hand delivered a statement to the Compliance Division on December 28, 1998 stating "I am a Nevada resident residing at . . ., NV." When Compliance assessed use tax and MVET on the car, it included a twenty-percent delinquent penalty and interest on both assessments.

Compliance assessed use tax and MVET after its investigation revealed:

- The taxpayer purchased a home located at: . . ., Washington, on October 14, 1993. The property is a single-family residence listed to [Taxpayer] as owner.
- The taxpayer responded to mail sent to the above [Washington] address.
- The taxpayer is listed in the 1998 [Washington] . . . (telephone book) at the above [Washington] address. The taxpayer had a telephone in her name at the above [Washington] address.
- The taxpayer was a customer of [Utility Co.] at the [Washington] address since 1994.
- The taxpayer is not registered to vote in Washington.
- The taxpayer began employment at the [Washington] Hotel in the third quarter of 1996.
- The taxpayer surrendered her Washington Drivers License to California on July 24, 1989.
- The taxpayer received a Nevada Drivers License on January 27, 1997.
- The taxpayer does not have an Oregon Drivers License. There is no record of the taxpayer ever having an Oregon Drivers License.
- The vehicle was garaged in [Washington].

The taxpayer explained that from January 1989 through April 1996, she lived and worked in California. Then, she worked in Nebraska from April 18, 1996 until June 7, 1996. She asserts

² We note the Oregon lease is not signed by the lessor.

that in June 1996, she became a resident of Oregon. The taxpayer worked in [Washington], from September through December 1996;³ July through December 1997;⁴ and July through October 1998.⁵ She attended [a Washington] University full time during the fall 1996 semester (September through December); part-time during the spring 1997 semester⁶ (January through May); and part time during the second session (June through August). While she was in Washington, the taxpayer spent time at either one of two friends' homes or in a hotel. Following is a list of the dates the taxpayer says she was in Washington:

<u>1996</u>	<u>1997</u>	<u>1998</u>
Sept. 6 through Nov. 8	Jan. 6 through Jan 11	Jan. 2 through Jan. 23
Nov. 15 through Nov. 18	April 18 through April 25	April 10 through April 26
Nov. 28 through mid-Dec.	May 2 through May 22	May 20 through June 9
	June 10 through June 25	June 21 through June 28
	July 14 through July 27	July 22 through August 12
	August 28 through Nov. 13	Sept. 1 through Sept. 10
	Nov. 27 through Dec. 28	Oct. 15 through Nov. 11

The taxpayer maintains the home she owns in [Washington], is an investment property that is leased to tenants on a regular basis. In support of her contention, she produced a lease for the period of November 1993 through August 1996. When the long term tenants vacated, the utilities automatically reverted to the owner/taxpayer. From July 1996 through October 1996, the house was listed for sale. Upon discovering the house would not sell without renovation, the taxpayer leased it to the daughter of a friend. The friend's daughter moved in during the month of October, 1996. The taxpayer explains she kept the utilities in her name because the tenant had credit problems and could not obtain utility service in [Washington]. That tenant vacated in July 1997 and the taxpayer began renovations shortly thereafter. From December 1997 through April 1998, she had an agreement with a tenant where they exchanged rent for remodeling work. Starting in May and lasting through October 1998, the taxpayer worked on the house sporadically. The house was listed for sale in October 1998 and sold in 1999.

The taxpayer protests the assessments asserting she is a nonresident of Washington. She claims she lacks the intent to be a Washington resident and states that her personal belongings remained outside of Washington.

ISSUES:

³Employment Security Information (ESI) shows the taxpayer worked at the [Washington Hotel] 85 hours during the third quarter and 425 hours during the fourth quarter.

⁴The ESI shows her hours as 210 for the third quarter and 426 during the fourth quarter.

⁵The ESI shows her hours as 218 during the first quarter.

⁶[The Washington] University said the taxpayer was a part time student during the spring 1997 quarter, the taxpayer denies being a student during this period.

1. Whether the taxpayer is a nonresident of Washington for the purposes of use tax?
2. Whether the taxpayer is a nonresident of Washington for the purposes of motor vehicle excise tax (MVET)?

DISCUSSION:

The issue of the taxpayer's state of residency is of great importance in applying the provisions of both the MVET and use tax statutes. While use tax liability does not require a determination of residency, many of the exemptions from use tax are only available to nonresidents. The applicability of MVET provisions depends upon status as a Washington resident. The residency of the taxpayer is of central importance to the tax consequences, and whether the taxpayer was required to register the car. Therefore, before addressing whether the vehicle at issue is subject to taxation in Washington we will first discuss whether the taxpayer was a Washington resident.

Residency

The taxpayer challenges the assessments based on her assertion of Nevada residency. On the issue of what constitutes Washington residency, the use tax and MVET relate to one another and involve the same subject matter. In interpreting related statutes that address the same subject matter "the sections [are to be read] as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived." Beach v. Board of Adjustments, 73 Wn.2d 343, 438 P.2d 617 (1968).

The use tax statutes do not define "nonresident." The licensing provisions, however, do define the term "resident" as one "who manifests an intent to live or be located in this state on more than a temporary or transient basis." RCW 46.16.028(1). As to the definition of what constitutes Washington residency the use tax and MVET are to be read consistently and, therefore, the use of the same definition of a resident for both statutes is appropriate. See Det. No. 96-049, 16 WTD 177 (1996).

We have considered various factors that may provide evidence of a person's intent to be in Washington on other than a temporary or transient basis. RCW 46.16.028 provides three examples: state driver's license, voter's registration, and public assistance. Other factors we have considered 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. See, e.g., Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994); Det. No. 96-049, 16 WTD 177 (1996).

The assessments span a three year period starting in 1996. The first question we must consider is whether the taxpayer was a Washington resident when she bought the car. She claims to have been a California resident from August 1989 until April 1996. We see no reason to dispute this assertion.

The evidence supporting that she may have been a Washington resident when she purchased the car is primarily the fact that she has owned a home in [Washington] since 1993. Utility service in her name at the [Washington] residence began in 1994 and has existed periodically since 1994. She was not registered to vote in Washington, nor did she receive public assistance.

The taxpayer provided evidence, including lease agreements and affidavits, supporting her contention the [Washington] property was a rental property. The lease agreements indicate the property was occupied by lessors when she purchased the car. She explained the utility service as being related to ownership of the rental property, that when the renters vacated, the utilities reverted to the owner – the taxpayer. Based on the evidence presented, we do not dispute the taxpayer's contention that the house was an investment property and that she did not reside in that house while in [Washington]. The taxpayer lived and worked in Nebraska when she bought the car. Her job in Nebraska was for the period of April through June 1996. Upon completion of the Nebraska job, she vacated her Nebraska apartment on June 7 and went to Oregon. Three days later, she signed a month-to-month rental agreement for a house in Oregon, which was to begin on July 1, 1996. Curiously, she signed an apartment move inspection sheet on July 2, 1996 for an apartment she rented in Nevada, and she produced proof of utility service in Nevada for that month. We have no evidence that she worked, lived, or visited Washington on a regular basis before September 1996. Thus, we conclude the taxpayer was not a Washington resident in June 1996 when she purchased the car.

Was the taxpayer a resident when she used the car in Washington beginning in September 1996? She entered Washington in September 1996 to attend [a Washington] University full-time and claims to have lacked the intent to be a resident. While she was in school, she also worked in state. Our vehicle licensing rules explain that full-time nonresident students are exempted from the licensing requirements when they operate a vehicle properly licensed in their state of residency. WAC 398-99-040. The rules permit a student to accept employment if the employment is incidental to the person's status as a student. Id. We decline to determine whether the taxpayer's work was incidental to her status as a student as it is not necessary for the purposes of this decision. She attended a private university which does not have resident tuition rates. The taxpayer claims she lacked the intent to stay in Washington on more than a temporary and transitory basis. We find it credible that the taxpayer's stay in Washington in 1996 was for the purpose of attending [a Washington] University full-time.

Beginning in 1997, the taxpayer routinely returned to [Washington] to work, to be a part-time student, to work on her rental property, and for social reasons. During 1997, according to [the Washington] University, the taxpayer attended the school on a part-time basis during the spring semester and the second summer session. The taxpayer denies she went to school during the spring semester. For the purposes of this determination whether she was a part-time student during that time period does not affect the outcome for the year 1997. She worked 636 hours in [Washington] during the third and fourth quarters of 1997. She routinely and regularly traveled to [Washington] and spent extended periods of time living and working in [Washington]. Over the course of the year, she was in Washington for almost one-half the year.

Her ties to the community in [Washington] are great, as she stayed with friends for much of her time in Washington. We note that she did own a house in [Washington], and if she chose to, she could have stayed in her house. She decided to designate the house as an investment property and rent it out. That decision affected where she stayed while in Washington. Her personal finance decisions, do not however, cause her to be a nonresident. She did not transport her personal belongings and furniture to Washington, but it seems she had no need to do that since she was able to reside with friends during her extended stays in [Washington].

In 1998, the taxpayer says she was in Washington for about twenty weeks, usually in two week increments with a month long stay in October and November which according to the taxpayer was the date of her last visit in Washington. This however could not have been her last visit to [Washington] in 1998, considering that the DCM saw her car on December 18, 1998. She worked for her Washington employer during the first quarter. The taxpayer was not enrolled in school during 1998. She devoted time and energy to the renovation of her [Washington] house and even had telephone service there in her name. She did not rent the home after April 1998. In short, she stated that she was in Washington for twenty weeks, that estimate, however, is without considering that her car was observed by the DCM in Washington during the month of December.

In 1996, the taxpayer was a nonresident full-time student. Beginning in 1997 and throughout 1998, the taxpayer was a Washington resident; she demonstrated an intent to stay in Washington on more than a temporary or transitory basis. Even assuming she was in state for a week or two less in 1998 than in 1997, such a small difference alone is not sufficient to terminate her Washington residency. She asserts she was a resident of Nevada. That may be true, we are not experts in Nevada law. A person may be the resident of more than one state for the purposes of Washington state excise taxes. Det. No. 87-145, 3 WTD 99 (1987); Det. No. 96-049, 16 WTD 177 (1996).

[1] Use Tax

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on consumers when they buy tangible personal property. RCW 82.04.050; 82.04.190; 82.08.020; 82.08.050. The use tax is a "compensating" tax; it is imposed when the sales tax has not been paid. Henneford v. Silas Mason Co., 300 U.S. 577 (1937); Northern Pacific Ry. Co. v. Henneford, 9 Wn.2d 18, 113 P.2d 545 (1941). The use tax imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail" on which Washington's retail sales tax has not been paid, unless an exemption is available. RCW 82.12.020.

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax. Rule 178 explains that the use tax and the retail sales tax "stand as complements to each other" and "provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired."

The facts in this case establish that the car was purchased without payment of retail sales tax, and that the taxpayer operated and used the car in Washington. The taxpayer asserts she is not subject to use tax because of a specific exemption for motor vehicles used by nonresidents in this state. We concluded above that the taxpayer was a full-time student during 1996. Now we must decide whether she meets the requirements set forth in the rules to be exempt from Washington use tax and MVET. The exemption is found in RCW 82.12.0251; it exempts a nonresident from use tax whose vehicle is "registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington"

Rule 178(7) explains a nonresident who uses tangible personal property in Washington while temporarily in the state is exempt from use tax on that property. A nonresident who uses a 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, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060" is exempt from use tax on that vehicle. Id. RCW 46.85.060 provides specific exemptions from registration requirements for nonresidents. WAC 308-99-040 is the administrative rule explaining the exemptions, and it contains the nonresident student exemption, which explains:

Nonresident students: The student must be in full-time attendance . . . in Washington . . . and maintain their legal home of record at a location outside of the state of Washington. Student's vehicles must be registered in their name . . . in the resident state of record. The student must carry documentation issued by the institution in the vehicle which readily establishes the nonresident status. Employment incidental to the full-time student status is permitted.

In determining whether the exemption is available to the taxpayer, we must consider that exemptions to taxing statutes are strictly construed in favor of the application of the tax. Yakima Fruit Growers Assoc. v. Henneford, 187 Wn. 252, 60 P.2d 62 (1936). Any claim of exemption must be studied with care before depriving the state of revenue. Alaska Steamship Co. v. State, 31 Wn.2d 328, 196 P.2d 1001 (1948). Only where an exemption is clearly required by law should an individual be exempt from tax. Northern Pac. Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P.2d 467 (1942). A party claiming a tax exemption has the burden of proving he or she qualifies for the exemption. Group Health Coop. of Puget Sound, Inc. v. State Tax Comm'n, 72 Wn.2d 422, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989).

As discussed above, the taxpayer was a full-time student during 1996 while she was in [Washington]. In order to qualify for the nonresident full-time student exemption, the taxpayer must have registered the car in her state of residency. WAC 308-99-040. When Compliance sent the taxpayer a letter of inquiry in December 1998, the vehicle was registered in the state of Oregon and had been registered in Oregon since 1996. She claims to have been an Oregon resident in July 1996. Since we know the taxpayer moved into a Nevada apartment the day after

her month-to-month lease in Oregon was to take affect, we researched both Oregon and Nevada law as it applies to residency and vehicle registration.

We found that in Oregon, a person is a resident for the purposes of vehicle registration if they meet one of several criteria "during the period of sojourn"; the only criterion that applies to this taxpayer requires the person to remain in Oregon for a consecutive period of six months. ORS 803.200.⁷ Oregon law does not require that the six month stay be complete before a person may register a vehicle. The taxpayer's records, move in agreement and utility bills for the Nevada apartment, indicate she was in Oregon for a period of less than a month.

In Nevada, a person becomes a resident and is required to register their vehicle in Nevada after they are present for thirty days. NRS 482.103. Nevada requires a person registering a vehicle to pay a vehicle privilege tax for the privilege of using a vehicle on Nevada's highways. See generally NRS Ch. 371. And, Nevada imposes a use tax on certain purchases where the taxpayer did pay not retail sales tax. See generally NRS Ch. 372. The taxpayer makes no claim that she was a resident of Nebraska which is the state in which she bought the car.

Based on the evidence presented and our reading of the laws of foreign states, we find the taxpayer does not meet the requirements of the nonresident student exemption. Oregon requires the person remain in Oregon for six months. The taxpayer left Oregon within a month of her arrival and we have no evidence that she returned for a six month period. Nevada residency requirements for vehicle registration, with certain exceptions, render a person a resident after they exhibit an intent to stay and do stay for more than thirty days. The taxpayer has produced evidence she intended to stay in Nevada and did in fact remain in Nevada for more than thirty days. Thus, she did not register her car in her state of residency, and unless another exemption applies, she must pay use tax for her use of the car in Washington.

The other exemption which may apply requires that a bona fide resident of Washington has "acquired and used [the car] 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." RCW 82.12.0251; Rule 178; Det. 98-042, 17 WTD 346 (1998). Since she failed to meet the criteria of a nonresident student exempt from use tax, for the purposes of use tax and MVET the taxpayer is a Washington resident. Id.

She purchased the car on June 4, 1996, more than ninety days prior to the date she became a Washington resident (for the purposes of use tax and MVET) on September 6, 1996, a Friday.

⁷ The Oregon Administrative Rules explain:

- (a) During a consecutive six-month period the person has continuously maintained a residence in Oregon and has only been absent from Oregon on trips of limited duration (e.g., vacations, business trips or retreats); or
- (b) If the person lives in Oregon and some other jurisdiction, all of the following are true:
 - (A) At one time the person lived in Oregon for at least six consecutive months;
 - (B) He or she continuously maintains an Oregon residence; and
 - (C) Oregon is the person's primary residence.

Her classes started on September 3, 1996. Nonetheless, we find it credible that the taxpayer waited until the end of the week to travel to [Washington] as she began most of her stays on Fridays.

To be exempt from use tax, the taxpayer must have acquired and used the car in her state of residency. RCW 82.12.0251; Rule 178; See also Det. No. 98-042, supra ("The question is whether the taxpayer acquired and continually used the motor vehicle in Oregon as a resident of Oregon more than 90 days prior to entering Washington."). From the taxpayer's statements and the documents provided for examination, we conclude the taxpayer did not acquire and use the vehicle in her state of residency. She bought the car in Nebraska, registered it in Oregon and immediately moved to Nevada. Thus, although she bought the car more than ninety days before coming into Washington, she did not meet the acquire and use in state of residency requirement. The taxpayer is liable for use tax on the vehicle for the reasons stated above.

[2] MVET

Washington residents must register vehicles to be operated on the highways of this state and must pay the MVET. RCW 46.16.028(3); WAC 308-99-025. A Washington resident using a motor vehicle in this state cannot avoid licensing it in this state by licensing it in another state. RCW 82.44.020. RCW 82.44.020 states in the pertinent part:

Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country 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.

The term "resident" was defined and discussed above. The same analysis and conclusion applies to the MVET appeal; the taxpayer was a resident of Washington beginning in September 1996 and continuing through 1997 and 1998. We conclude, therefore, the taxpayer as a Washington resident during the periods covered on the MVET assessment had a duty to register her car in Washington and pay the taxes associated with vehicle registration.

Penalties

RCW 82.32.090 requires the Department to assess penalties for the late payment of taxes, including MVET and use tax. See RCW 82.32.090(1); RCW 82.44.020(7).

The Department's only authority to waive or cancel penalties and interest is set forth in RCW 82.32.105 and WAC 458-20-228 (Rule 228), the administrative rule implementing RCW 82.32.105. Rule 228 states in its introduction: "[t]axpayers have a responsibility to become informed about applicable tax laws and to correctly and timely report their tax liability." See also Chapter 82.32A RCW, "Taxpayer Rights and Responsibilities." RCW 82.32.105 authorizes the Department to waive or cancel penalties when circumstances beyond the taxpayer's control caused the delinquency. Rule 228 provides the only circumstances "beyond a taxpayer's control" under which the Department can cancel late payment penalties. As an administrative agency, the

Department is given no discretionary authority to waive or cancel penalties. Det. No. 98-109, 18 WTD 124 (1999); Det. No 87-235, 3 WTD 363 (1987). The taxpayer has not presented facts demonstrating that the Department can grant a waiver under Rule 228.

Interest

Taxpayer requested waiver of the interest assessed on the late payment. RCW 82.32.105(3) provides the Department may waive or cancel interest only if (1) untimely payment was caused by written instructions to the taxpayer from the Department; or (2) the due date extension was solely for the convenience of the Department. See also Rule 228(7). The taxpayer has not presented evidence supporting waiver or cancellation of interest.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. As a result of the passage of Initiative 695, the Department will no longer collect MVET that was assessed, but not paid, prior to January 1, 2000. Even though the original assessment in your case has been upheld on appeal, such assessment will not become final until after January 1, 2000. Therefore, the Department will make no effort at this time to collect the MVET assessment.

The validity of the Initiative is currently being litigated. In the event that MVET collection authority is restored as a result of that litigation, the Department may issue supplemental assessments adding extension interest to the MVET, interest, and penalties as authorized by this determination. A final decision in the litigation is not expected until the end of 2000.

Dated this 29th day of February, 2000.