

Cite as 1 WTD 43 (1986)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Notice of)	<u>D E T E R M I N A T I O N</u>
Use Tax Due of)	
)	No. 86-223
)	
. . .)	Notice of Use Tax Due
)	
)	

[1] RULE 178; RCW 82.12.020; RCW 82.12.010; USE TAX; MOTOR HOME:
VALUE OF ARTICLE

Use tax due on motor home when first brought into state by Washington resident; not exempt because taxpayer intended to sell the vehicle and only stored vehicle at his residence until he could find a buyer. Retail selling price of vehicle held to be value of motor home for use tax purposes; amount not reduced because purchased in Indiana two months prior to entering Washington.

[2] RCW 82.32.050; EVASION PENALTY

Penalty upheld where Washington resident registered and licensed motor home in Oregon using an address that was not his own. Additional facts that taxpayer was former car salesman and that he was cited in Washington driving the vehicle under authority of a Washington trip-permit also indicated intention to evade paying Washington taxes.

Penalty assessed only on additional taxes found owing.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: June 4, 1986

NATURE OF ACTION:

On March 20, 1986, the taxpayer was issued a Notice of Use Tax Due on an Oregon licensed motor home used by him in Washington. The assessment included \$12,640 for taxes and \$6,320 in penalties. The taxpayer submitted evidence of Washington use tax paid on the vehicle in the amount of \$5,070. An amended notice of use tax was

issued May 2, 1986 for a total of \$11,355 in tax and penalties. The taxpayer's petition seeks a cancellation of the assessment.

FACTS AND ISSUES:

Anne Frankel, Administrative Law Judge--The taxpayer purchased the motor home at issue on September 6, 1985 from Barth, Inc. in Milford, Indiana. The total purchase price was \$74,843--that figure represents \$65,000 for the basic unit and \$9,843 for additional optional equipment.

On March 15, 1986, the taxpayer was cited by the Washington State Patrol in Wenatchee for not having a Washington vehicle license on the motor home. At the time he was stopped, the vehicle was displaying a Washington trip permit. The taxpayer appeared in court and was told to register the vehicle.

The taxpayer registered the motor home in Washington three days later. The vehicle was listed as a 1986 motor home series 35 with a taxable value of \$65,000. Tax and fees totaling \$6,316 were paid; \$5,070 of that amount was for use tax.

The taxpayer was sent a Notice of Use Tax Due on March 20, 1986. The assessment was based on an alleged value of the motor home of \$160,000. The assessment was subsequently reduced by the amount of use tax paid. The assessment includes an evasion penalty.

The taxpayer protests both the figure used for valuing the motor home and the imposition of a 50 percent evasion penalty. The taxpayer contends the assessment was based on a figure which does not represent the true value of the motor home and that \$65,000 is a fair market value of the motor home. The taxpayer contends he never intended to avoid the use tax and that the facts do not support the assessment of an evasion penalty. Furthermore, the taxpayer argues RCW 82.32.050, which provides for the evasion penalty, clearly contemplates a deficiency as a necessary prerequisite to imposing an evasion penalty. The taxpayer asserts that at the time the Notice of Use Tax Due was issued, there was no deficiency.

DISCUSSION:

1. USE TAX--The statute imposing the use tax is RCW 82.12.020. It provides in part:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail
 . . .

The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020, as now or hereafter amended.

The "value of the article used" is defined in RCW 82.12.010(1) as:

(T)he consideration, whether money, credit, rights or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter.

. . .

In case the article used . . . is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the department of revenue may prescribe.

RCW 82.12.010(2) provides:

"Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; . . .

The administrative rule implementing the above provisions is WAC 458-20-178 (Rule 178). The rule also states that the tax is levied on an amount equal to the value of the article used and defines value the same as in RCW 82.12.010(1) quoted above. Rule 178 clearly provides that the tax liability imposed under use tax arises at the time the property is first put to use in this state, which includes any act by which the taxpayer "takes or assumes dominion or control over the article."

Clearly under both RCW 82.12.010(20) and Rule 178, use tax was due on the motor home when the taxpayer brought the motor home to Washington. The taxpayer does not dispute that he is, and has been for many years, a Washington resident; thus the exemption provided by RCW 82.12.0251 as to the use by a nonresident of a motor vehicle licensed in another state does not apply. Nor was the taxpayer exempt from use tax because he brought the motor home to Washington in order to sell it.

The issue, therefore, is not whether the use tax applies, but whether the assessment was based on a figure which represented the true value of the equipment.

The value of \$160,000 placed on the vehicle by the Department was based on a sales brochure which states a suggested retail selling price for a 1986 Barth 35 Regency motor home is \$179,000. That price is the base retail price for a motor home F.O.B. Barth's factory in Milford, Indiana.

The taxpayer, however, has submitted copies of the invoices and his cancelled check showing he purchased the motor home, including the added equipment, for \$74,843. A phone call to the Barth salesman in Indiana confirmed the price paid by the taxpayer. The salesman stated the taxpayer purchased a 1982 model year chassis and shell in which the interior was completed in 1985. That unit was a fiberglass unit which the company has not manufactured since 1983. The chassis frame on the new Barth 35 Regency series is heavy-duty welded steel, and it is a much more expensive model than the one purchased by the taxpayer. The salesman stated the price paid by the taxpayer was the retail selling price for the motor home.

The taxpayer contends that \$65,000 was a fair value of the motor home for use tax purposes. He stated the value was determined by the local licensing agent after consulting with the Olympia revenue office. He states the \$65,000 figure is apparently the result obtained from applying a reasonable depreciation factor to the original purchase price. The taxpayer adds that he had attempted to sell the vehicle on numerous occasions but has been unable to find a buyer. He contends he would accept \$65,000 as a purchase price.

The taxpayer brought the motor home to Washington two months after its purchase. At the time of the purchase, the taxpayer thought he was getting a good deal and would be able to sell the motor home for much more than the \$74,843 he paid. We believe that the evidence suggests the total retail selling price of the unit and equipment represents a true value of the motor home for use tax purposes.

2. EVASION PENALTY--The taxpayer also objects to the imposition of the 50 percent evasion penalty. He contends that he never intended to avoid the use tax, but that it was his intent to sell the motor home, hopefully for a profit, when he first purchased it. When he first purchased the vehicle, he drove it under the authority of a temporary Indiana trip permit. He stated that the Indiana trip permit had expired when he entered Oregon in late September. He was stopped at the Oregon weigh station and told to obtain an Oregon in-transit permit or an Oregon license if he wanted to drive the vehicle in Oregon. The taxpayer asserts that because it was a Saturday, he could not procure an in-transit permit. He was, however, able to contact a licensing agency and

obtain Oregon plates. He used an Oregon address that was not his. The taxpayer states that the purchase of the Oregon plates seemed logical as he intended to leave the vehicle in storage in Coos Bay, Oregon, for an indeterminate period of time. The vehicle remained stored in Coos Bay until mid-November of 1985. The vehicle was then brought into Washington State and stored by the taxpayer at his residence.

The taxpayer states the vehicle was not driven until last March. He obtained a Washington three-day trip-permit to drive the vehicle to Wenatchee to show it to a prospective purchaser. Because the sale to that buyer did not materialize, and because he believed it would be some time before the vehicle could be sold, he licensed the vehicle and paid the Washington fees and taxes.

The taxpayer believes that his actions "although maybe not in complete technical compliance with the letter of the law with regard to the registration of vehicles, was not an attempt to evade Washington tax." Supplemental letter of June 23, 1986.

RCW 82.32.050 states that

If the department finds that all or part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50 percent of the additional tax found to be due shall be added.

In an attempt to evade this state's sales and use taxes and to take advantage of Oregon's lower cost of licensing, many Washington residents have registered their motor vehicles with the state of Oregon using spurious Oregon 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.

The taxpayer was a Washington resident. He gave the Oregon authorities an address that was not his when he applied for the Oregon license. This action is not mitigated by his statement that he intended to sell the vehicle in Oregon and did store it in that state for a short period. Nor are we convinced that he could not have obtained an in-transit permit in Oregon.

We also note that the taxpayer has sold motor vehicles and that the bill of sale in this case states the vehicle was sold to "Ron Marston of M & K Sales Company." As such, he should be familiar with Washington laws regarding vehicle taxes and licensing requirements. We find his actions can be interpreted as an attempt to avoid the Washington use tax and licensing requirements.

DECISION AND DISPOSITION:

The Notice of Use Tax Due shall be amended to reflect a taxable value of the vehicle of \$74,843. Tax and the 50 percent evasion

penalty shall be computed on the \$9,843 for which no use tax has been paid. The assessment shall be due on the date shown thereon.

DATED this 23rd day of July 1986.