

Cite as Det. No. 93-169, 13 WTD 328 (1994).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Refund of)	
)	No. 93-169
)	
. . .)	Unregistered

- [1] RULE 178: USE TAX -- MOTOR VEHICLE -- NONRESIDENT -- EXEMPTION. A person who lived at a Washington address and received assorted services in his name at that address for a substantial portion of a two year period is a Washington resident. As such he is ineligible for a nonresident use tax exemption.
- [2] RCW 82.44.020: MOTOR VEHICLE EXCISE TAX (MVET) -- NONRESIDENT. A person who lived at a Washington address and received assorted services in his name at that address for a substantial portion of a two year period is a Washington resident for MVET purposes even though the standard for residency is slightly different for MVET than it is for use tax.
- [3] RCW 82.32.090: EVASION PENALTY -- MOTOR VEHICLE -- OREGON REGISTRATION. A Washington resident who signs an Oregon vehicle license application form on which (s)he states that (s)he is legally domiciled in Oregon when, in fact, (s)he is not and knows (s)he is not, evidences an intent justifying the tax evasion penalty.

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:

Protest of use tax, motor vehicle excise tax (MVET), and evasion

penalty on van and motor home, alleging non-ownership and non-residency.

FACTS AND ISSUES:

Dressel, A.L.J. -- [Taxpayers] were assessed use tax, MVET, and the evasion penalty by the Department of Revenue (Department) on a motor home and a van. [Taxpayers have paid the amount assessed], but, in this action, ask that it be refunded. Taxpayers state that they are not married to each other. [Mr. Taxpayer] is a licensed chiropractor and acupuncturist. He has also operated a nutrition business. [Ms. Taxpayer] worked for him in Vancouver, B.C. She later emigrated to the U.S. and became a naturalized citizen. At that time she also adopted the surname of her former boss because she favored it over her own. The two remain good friends.

In July of 1990 Ms. Taxpayer purchased a home in Washington. She still lives there and considers it to be her primary residence. Mr. Taxpayer has lived there as well, although he professes to have no ownership interest in the home. He is 66 years of age and has health problems, including diabetes and congestive heart failure. He stated that he spent about 50 percent of his time there during the last two years because of his failing health. Apparently, he relies on medical care in this state and on the assistance of Ms. Taxpayer.

In late 1991, while Taxpayers were living in [Washington], they purchased, at approximately the same time, a motor home and a van in Portland, Oregon. At the time of purchase, the motor home bore a Washington license plate and the van an Oregon plate. Taxpayers made application then to register both vehicles in Oregon. Oregon registration was issued to [Associates] and both Taxpayers, in the case of the motor home; and to [Associates] and Ms. Taxpayer, in the case of the van.¹ The same Oregon address was listed for the owners of both vehicles.

In February of 1992, both vehicles were sighted at the [Washington] residence. Following an investigation the contested tax assessments were issued.

Mr. Taxpayer explained that [Associates] is his nutritional consultation business and that he intended to open a branch in Oregon. He never did because of his health problems. He stated that the [Oregon] address on the registrations was that of a son of a friend. He used the address for mail because he moved

¹ Mr. Taxpayer's name was later added to the van registration.

around considerably in his motor home and between other residences in Vancouver, B.C., Nevada, and Arizona. The Department's investigator, incidentally, determined that the address corresponded to a small business mall and that the mall manager's office had never heard of either [Taxpayers] or [Associates].

While Mr. Taxpayer claimed residences in Vancouver and Arizona, he also revealed that the specific addresses he listed were that of his mother and a friend, respectively. With respect to Nevada, he displayed a form on which he declared himself as a resident of that state.

Regarding the names listed on the registration certificates, Mr. Taxpayer explained that the vehicles were really his and that he just added the name of his good friend, Ms. Taxpayer, on them in case he died or became mentally incompetent. That way probate and other difficulties of transferring title could be avoided. Ms. Taxpayer corroborated Mr. Taxpayer's statement that her name was on the titles for purposes of convenience only. Taxpayers further testified that Ms. Taxpayer had her own automobile which was properly licensed in Washington.

ISSUES:

There are three issues in this case: 1) Are the van and motor home exempt of use tax because Mr. Taxpayer is a nonresident? 2) Are the two vehicles exempt of motor vehicle excise tax because Mr. Taxpayer is a nonresident? 3) Did Taxpayers intend to evade Washington excise taxes by registering the vehicles in Oregon?

DISCUSSION:

. . . The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax.

WAC 458-20-178 (Rule 178). There are, however, certain exemptions from the use tax. The one possibly pertinent to this case reads:

The use by a nonresident of a motor vehicle or trailer which is 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;

Id. at (7)(b). In Det. No. 87-65, 2 WTD 293 (1986), we ruled that for use tax purposes a person could have more than one residence and that if one of them was in Washington that person was not a nonresident of Washington and was not eligible for the above-quoted nonresident exemption.

[1] In the case before us, there is no doubt of the status of Ms. Taxpayer who admits she is a Washington resident. The question to be resolved in her case is whether she is an owner of the subject vehicles. We will not long deliberate in answering that question. Notwithstanding the testimony that her name was added to the registration certificates for convenience, the fact that her name is on them is persuasive evidence that she is an owner. We so find.

Mr. Taxpayer claims to be a resident of Nevada, British Columbia, and/or Arizona. His connection to Washington, however, in our judgment, is at least as great as it is to the other jurisdictions in none of which he owns a home. By his own admission he has resided for 50 percent of the time in the last two years² at the . . . Washington house. The power company lists him as receiving electricity at that address. The telephone company lists him as receiving telephone service at that address. Moreover, there is no compelling evidence that Mr. Taxpayer is a domiciliary of any other state or province. We find that [Taxpayer] has failed to meet the burden he must to establish himself as a nonresident. See Det. No. 88-237, 6 WTD 69 (1988). We conclude that Mr. Taxpayer is a resident of the state of Washington and, further, that he is not a nonresident of this state. As a consequence, he may not avail himself of the nonresident exemption of Rule 178 (7)(b). Because Taxpayers have used the subject vehicles in Washington, they are subject to Washington use tax.

As to the first issue - use tax - Taxpayers' petition is denied.

[2] The motor vehicle excise tax is imposed on the privilege of using in this state any motor vehicle except those operated under reciprocal agreements (and other nonapplicable exemptions). See RCW 82.44.020. The reciprocal agreements referred to in the

² As of the hearing date in this case.

statute pertain to the registration requirements for vehicles operated on the highways of Washington. See WAC 308-99-025. However, RCW 46.16.028 (3) requires a resident of the state to register, under Chapter 46.12 and 46.16 RCW, a vehicle to be operated on the highways of the state.

For licensing purposes, RCW 46.16.030 provides that vehicles are not required to be licensed in Washington if the owner has complied with the licensing law of the state of his residence subject to the rules adopted by the Department of Licensing. However, RCW 82.44.020 (5) provides:

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.

(Emphasis added.)

RCW 46.16.028 (1), substantially repeated in WAC 308-99-020 (1), defines "resident" for vehicle license registration purposes as: "a person who manifests an intent to live or be located in this state on more than a temporary or transient basis"

We find that the fact that Mr. Taxpayer has lived at the [Washington] address for at least one year out of the last two, the fact that he is listed in the local telephone directory, and the fact that the local power company has listed him as receiving service at this address for the last two years establish his intent to live in this state on more than a temporary basis. Indeed, "[I]ntent may be inferred from a taxpayer's conduct. . . ." Det. No. 87-188, 3 WTD 219, 221 (1987). The length of his stay and the fact that his name was linked with those utility services at the local address, plus the additional fact that he received mail at the subject address, indicate sufficient permanence for resident status.

Inasmuch as Taxpayers are deemed Washington residents for MVET purposes and inasmuch as they operated the subject vehicles in this state, they are liable for motor vehicle excise tax.

As to the second issue - MVET - Taxpayers' petition is denied.

[3] Last of the issues is the evasion penalty. The statutory authority for it is RCW 82.32.090 (5) which reads: "If the department finds that all or any part of the deficiency resulted

from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added." As stated above, "intent may be inferred from a taxpayer's conduct." Det. No. 87-188, supra. Taxpayers' most egregious conduct in this case is obtaining Oregon license plates. To do so, Taxpayers filled out an Oregon license application form. The bottom of the form contains this language: "My place of domicile (home) is in Oregon or I am otherwise eligible or required to register the vehicle under Oregon Law . . . I certify that the information on this application is true and correct." The form was signed by Mr. Taxpayer.

Mr. Taxpayer, during the Department's investigation and at the hearing of this matter, admitted he was not an Oregon resident.³ His statement to the Oregon Department of Motor Vehicles was, thus, untruthful.

We find that the statement was given to secure an Oregon license and to obviate the need for the much more expensive Washington license as well as Washington use tax. It establishes an intent to evade Washington excise taxes. The evasion penalty was properly exacted. Ms. Taxpayer is equally culpable as she participated in the illegal licensing of the motor home and van.

As to the third issue - the evasion penalty - Taxpayers' petition is denied.

DECISION AND DISPOSITION:

The Taxpayers' petition is denied.

DATED this 17th day of June 1993.

³ Mr. Taxpayer also made no offering as to why he might otherwise be eligible for an Oregon license.