

Cite as Det. No. 93-223, 13 WTD 361 (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 Correction of Assessment of)	
)	No. 93-223
)	
. . .)	Unregistered Taxpayer

- [1] RULE 178; RCW 82.12.0251: USE TAX -- EXEMPTION -- RESIDENCE -- ENTRY INTO WASHINGTON. A Washington resident claiming an exemption from use tax for a private automobile must prove both: 1) that the taxpayer was a bona fide resident of another state when the automobile was purchased and used; and 2) that such purchase and use occurred at least ninety days prior to the taxpayer's entry into Washington. Where a Washington resident stays in Oregon on a temporary basis, files a nonresident Oregon income tax return, and periodically enters Washington with a motor vehicle purchased in Oregon, the purchase is not [eligible for] his use tax exemption.
- [2] RCW 46.16.028(3), RCW 82.16.028(3): MOTOR VEHICLE EXCISE TAX -- RESIDENCE. A taxpayer who maintains an apartment in Washington and retains a Washington driver's license is a resident of Washington for MVET purposes.
- [3] RCW 82.32.090: EVASION PENALTY -- PROOF. In order to sustain an evasion penalty, the Department of Revenue must prove intent to evade by clear, cogent, and convincing evidence. This entails proof that the intent to evade was "highly probable," or stated another way, that evidence was "positive and unequivocal." Intent to evade is highly probable where a taxpayer certifies she is domiciled in Oregon for purposes of registering a motor vehicle while, for

the same period of time, she swears she is a nonresident of Oregon for purposes of an Oregon income tax return.

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 resident protests assessment of use tax, motor vehicle excise tax (MVET), and evasion penalties with respect to an automobile purchased in Oregon.

FACTS:

Mahan, A.L.J. -- [In February 1991, the taxpayer] purchased a 1989 Ford Thunderbird from an Oregon dealer She registered it in Oregon and listed her residence address on the application as being in . . . Oregon. She paid . . . Oregon title and registration fees. In October of 1992, she registered the vehicle in Washington and listed her residence as being in Vancouver, Washington. She claimed an exemption from use tax based on an alleged bona fide Oregon residency and that she acquired and used the Thunderbird more than ninety days before she entered Washington.

[In February 1993], a motor vehicle excise tax assessment was issued against [the taxpayer] The period of the assessment ran from her purchase of the vehicle to its registration in Washington. Interest . . . and a fifty percent evasion penalty . . . were also assessed A use tax assessment was also issued . . . which amount included interest and a fifty percent evasion penalty.

Prior to these assessments being issued, an investigation disclosed the following:

1. The taxpayer rented an apartment in Vancouver, Washington since at least 1990.

2. At the time of purchase the taxpayer had a Washington driver's license. It was not until eleven months later that the taxpayer acquired an Oregon driver's license.

3. The loan documents for the purchase listed the taxpayer's Vancouver, Washington address.

4. The taxpayer filed a "Nonresident" Oregon tax return for 1991 and listed her Vancouver, Washington address.

5. The . . . Oregon address was in fact the address for the parents of her fiance.

In a response to the tax discovery officer, the taxpayer asserted that, prior to her purchase of the automobile, she and her fiance lived together in Vancouver, Washington at her apartment. They began having problems and so she moved in with his parents while he continued to live in her apartment. Throughout this period of time she continued to see her fiance. In a letter to the Department, the taxpayer stated that, while living in . . . Oregon, she "would go to his apt. & stay a couple of days, go home for a day or so [sic] then go see him again." On this basis she claims that she was a bona fide resident of Oregon when she purchased and used the Thunderbird.

At the hearing the taxpayer stated that she moved to Vancouver, Washington from Woodlawn, Washington in 1990. She then moved to [Oregon] in January of 1991 and moved back to Vancouver in April of 1991. She admitted that the move was temporary and that throughout the time she continued to stay periodically in Vancouver. As an additional reason for the temporary stay, she stated that it was a requirement of the church where she wanted to be married that she not be living with her fiance prior to the marriage. She was married in May of 1991. She also stated that the only reason she filed a nonresident Oregon return was because her residence in Oregon was for less than a full year.

ISSUES:

1. For use tax purposes, was the taxpayer a bona fide resident of Oregon for at least ninety days before entering Washington?
2. For MVET purposes, was the taxpayer a resident of Washington for the period of the assessment?

3. Has the Department proven by clear, cogent, and convincing evidence the taxpayer's intent to evade taxes?

DISCUSSION:

I. Use Tax Assessment.

[1] This state's use tax law, RCW 82.12.020, imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." It complements the sales tax by imposing a tax equal to the sales tax on an item of tangible personal property used in this state in cases where the retail sales tax was not paid. WAC 458-20-178. "Use" is defined under RCW 82.12.010(2) as "the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property...."

RCW 82.12.0251 provides a limited exemption from use tax. It provides 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 added.)¹

¹WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax legislation. Rule 178(7)(c) similarly includes within the list of exempt uses:

The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or

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). Accordingly, in order for the taxpayer to succeed on her exemption claim, she must prove both: 1) that she was a bona fide resident of Oregon when she purchased and used the Thunderbird; and 2) that such purchase and use occurred at least ninety days prior to her entry into Washington.

With respect to this first element, the statutory exemption at issue does not provide a definition for the terms "resident" or "nonresident." Statutory terms not defined in the statute are given their ordinary meaning. City of Seattle v. Hill, 40 Wn. App. 159, 697 P.2d 596 (1985). Webster's New Universal Unabridged Dictionary 1540 (2d ed. 1983) defines "resident" to mean:

1. one who lives in a place, as distinguished from a visitor or transient.

Consistent with such a definition, it is the Department's position that a person can have more than one residence for purposes of RCW 82.12.0251. In this respect, a residence is different from a domicile, which implies one's legal residence. A person may be a resident of Washington while claiming a domicile or residence elsewhere. A person may have more than one residence but only one domicile.

The distinction between residence and domicile was addressed in In Re Mullins, 26 Wn.2d 419, 444 (1946), in which the Court stated:

The terms "residence" and "home" are not synonymous with domicile, even though they may be and generally are included in the term. Domicile, then, is "residence" or "home" plus something more. That "something more" is a legal inference gathered from all the relevant facts, such as physical

nonresident members of the armed forces who are stationed in this state pursuant to military orders, 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 such person entered this state.

presence, declared intention, conduct, etc., -- in reality, all the surrounding circumstances from which it can be determined that a domicile exists.

Based on the taxpayer's conduct and all surrounding circumstances, we find that the taxpayer's sole residence and domicile during the period in question was in Washington. The taxpayer has produced no evidence of rent or utility payments to establish Oregon residency. Her testimony indicates nothing more than a temporary and transient stay in Oregon while difficulties with her fiancé were resolved or marriage arrangements were completed. All indications of residency remained in Washington. She continued to have a Washington driver's license and continued to have an apartment in Washington in her name. She returned to that residence after her temporary stay in Oregon. She also filed a tax return for 1991 which stated that her residence was in Vancouver, Washington and that she was a "nonresident" of Oregon. At all relevant times she remained a Washington resident and was not a resident of Oregon. Accordingly, she is not entitled to the exemption from use tax.

As mentioned above, a taxpayer may have more than one residence. Even if the taxpayer was considered a dual resident of Oregon and Washington, she still would have to satisfy the entry requirement in the statute. It is undisputed that the taxpayer periodically entered Washington in order to stay with her fiancé for several days at a time. Her entry into Washington during the relevant period of time also precludes her from claiming the exemption. Her exemption claim fails on both residency and entry grounds.

II. MVET Assessment.

[2] The MVET is imposed for the privilege of using a motor vehicle in this state. RCW 82.44.020. A resident of Washington must register any vehicle to be operated on the highways of the state. RCW 46.16.028(3). A resident is defined for registration 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;
- (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). 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 in relevant part 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.

It is clear from the evidence -- as set forth above -- that the taxpayer manifested an intent to live or be located in this state. She was a long time resident of Washington. This residency continued through 1991, as confirmed in her tax returns. She also obtained a Washington state driver's license and otherwise took actions indicating Washington residency. Accordingly, she cannot avoid Washington's MVET by registering the car in Oregon.

III. Evasion Penalties.

[3] Chapter 82.32 RCW sets forth the Department's authority with respect to the imposition and waiver of penalties. This chapter applies to the assessment of use tax (RCW 82.12.080) and assessments of unpaid MVET (RCW 82.44.020). Under RCW 82.32.090, a 50% evasion penalty "shall be added" to a tax assessment if the Department finds that the deficiency resulted from an intent to evade the payment of the tax. The use of the word "shall" indicates that the penalty is mandatory if an intent to evade is found.

Although the subjective intent of a person is difficult to ascertain, it may be determined from objective facts such as the actions or statements of the taxpayer. Intent to evade does not exist where a 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 the following:

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 burden is on the Department to prove each of these elements by clear, cogent and convincing evidence. See, e.g., Det. No. 90-314, 10 WTD 111 (1990); Det. No. 92-133, 12 WTD 171 (1992).² 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).

The taxpayer had been a resident of Washington for many years. She clearly knew that a retail or use tax would be due if she had registered the Thunderbird in Washington rather than in Oregon.³ The more difficult question here is whether the Oregon registration was a legitimate attempt at tax avoidance.

When she purchased the Thunderbird, the taxpayer certified that she was domiciled in Oregon. However, at that time she had a Washington driver's license, had resided in Washington for many years, and provided a Washington address in her loan application. The taxpayer's failure to use the [Oregon] address for her loan and other documents indicates that she knew that her stay in [Oregon] was only temporary. Further, she filed a "Nonresident" Oregon state income tax return and used her Vancouver address to show nonresidence in Oregon. The Oregon tax return provided

²WAC 458-20-230 was recently revised to reflect this standard of proof. It provides in pertinent part:

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

³Unlike Washington, which largely depends on retail and other excise taxes, Oregon relies on an income tax for most of its needs. Hence, Oregon charges substantially less excise tax and no retail tax on the purchase and registration of an automobile.

spaces to indicate a change in address and for residency in Oregon of less than a year. Those spaces were left blank by the taxpayer. She could have easily indicated on the return that she was a resident of Oregon for less than a year if she wanted to do so, as she now indicates was her reason for signing a nonresident return. She signed this return under penalty of perjury.

We find the evidence submitted by the Department supports a finding of tax evasion, and the testimony submitted by the taxpayer is not sufficient to overcome the inferences which can be reasonably drawn from the objective evidence submitted by the Department. The execution of false or contrary statements as to Oregon residency makes it highly probable that the taxpayer intended to evade the higher excise tax and the retail or use tax in Washington. The taxpayer's failure to register the vehicle in Washington when the taxpayer allegedly returned to Washington further supports the inference that the taxpayer was evading taxes in Washington.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 24th day of August, 1993.