

BEFORE THE 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. 96-049
)	
. . .)	Registration No.
)	FY. . . /Audit No.
)	
)	

- [1] RULE 178; RCW 82.12.0251: USE TAX -- EXEMPTION -- NONRESIDENT. Individuals who are domiciled in another state, own a residence in this state, and claim a use tax exemption for their motor home must prove: 1) that they are nonresidents of this state; 2) that their motor home is licensed in the state where they are residents; and 3) that it is not required to be licensed in this state.

- [2] RCW 82.44.020; RCW 46.16.028(1): MOTOR VEHICLE EXCISE TAX (MVET) -- EXEMPTION -- RESIDENT. In general, Washington residents must license and pay MVET on the vehicles they operate in Washington. For vehicle license registration purposes, a resident is defined as a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. The same definition is used to determine whether they are nonresidents for use tax exemption purposes.

- [3] RULE 178; RCW 46.16.028(1): USE TAX -- MOTOR VEHICLE EXCISE TAX -- EXEMPTION -- NONRESIDENT -- DOMICILE. The term "resident" for use tax and MVET purposes is not synonymous with domicile. A person may have more than one residence or home for use tax and MVET purposes.

[4] RULE 178; RCW 46.16.028(1): USE TAX -- MOTOR VEHICLE EXCISE TAX -- EXEMPTION -- NONRESIDENT -- HOME OR DWELLING. Whether a person is a resident of this state, and not here on a temporary or transient basis, is fact specific. Significant factors to be considered in determining whether a person has established a residence or home in this state, as opposed to a temporary dwelling, include: (1) the amount of time spent in Washington; (2) the nature and use of property in this state; (3) domestic, civil, business, and social activities in Washington; (4) the intention when absent to return to Washington; and (5) the nature and use of property in other states.

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:

Oregon domiciliaries, who have a second home on the Washington coast, protest the assessment of use tax on their motor home.¹

FACTS:

Mahan, A.L.J. -- The taxpayers are domiciled in the state of Oregon. They have Oregon drivers' licenses, are registered to vote in that state, pay Oregon state income tax, and own a residence there.

On March 28, 1994, one of the taxpayers was approached by a Washington Fish & Wildlife officer while the taxpayer was clamming on the Washington coast. Although the taxpayer had obtained an in-state shellfish permit that listed an in-state address, the officer discovered that the taxpayer had Oregon license plates and an Oregon driver's license. As a result, the taxpayer was cited for the failure to have either a Washington driver's license or Washington license plates. At that time, the taxpayers owned and used three motor vehicles in this state: an automobile, a pick-up truck, and a motor home.

Subsequently, those citations were dismissed by the Pacific County prosecutor based on the taxpayer's contention that he mistakenly obtained an in-state permit, and that he had since acquired an

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

out-of-state shellfish permit. The prosecutor then referred the matter to the Department of Revenue (Department).

An investigation by one of the Department's Revenue Officers disclosed that:

The [taxpayers] own a house in Seaview, Washington [purchased in October of 1993]; they have electrical and other utility services to this home; they have an active telephone at the home and answer that home on a regular basis, [sic] and they receive mail at a Long Beach, Washington post office box. They also have voluntarily licensed two of their privately owned vehicles in Washington and took a 90 day waiver for the use tax on these two vehicles. [The taxpayer] also voluntarily told me that the reason he did not spend more time in LaPine, Oregon [his primary residence] was that the winters were too cold, the summers were too hot and the Long Beach area was much more to his liking because it was more temperate.

The Revenue Officer also states that, at the time of his investigation, there was no current telephone service at the taxpayer's Oregon address. As a result of this investigation, the Department issued a use tax assessment for the taxpayers' motor home. In doing so, the Revenue Officer concluded that the taxpayers had not changed the registration on the motor home "because they would have had to pay use tax and motor vehicle excise tax on it." The Department, however, did not assess MVET on the motor home.

According to the taxpayers, they registered the automobile and pick-up truck in this state after being cited by the Fish & Wildlife officer in order to avoid any further problems with the state, not because they consider themselves to be residents of this state. As to the motor home, they state it is no longer being used in Washington and use tax should not be imposed on it. In this regard, their attorney states:

When that residence [in Washington] was purchased, it was not done so with the intent of changing their domicile to the State of Washington, but with the intent of maintaining a second residence here rather than continuing to live in the motor home in this area. The motor home was parked at this second residence from October of 1993 until April 25, 1994, when it was transported back to their domicile state in . . . Oregon, where it is currently for sale.

According to the taxpayer, the only time that they have stayed in the Washington residence for a period that exceeded six months was when they first bought it, in order "to see what the winter was like" there. Currently, the taxpayers spend approximately one-third of the year in Washington, one-third of the year in Oregon, and one-third of the year in the motor home in Arizona. Also, according to the taxpayer there is telephone service at their Oregon residence, and their daughter stays there in their absence.

ISSUES:

1. Whether the vehicle licensing definition of the term "resident" should be used to define the term "nonresident" for purposes of the motor-vehicle-use-tax exemption.
2. For purposes of the use tax and MVET exemptions, is the term "resident" synonymous with domicile?
3. What factors should be used in determining whether a person is a resident of this state for use tax and MVET purposes?

DISCUSSION:

1. Use Tax and Licensing Requirements.

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 (Rule 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. . . ."

[1] 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.²

(Emphasis added.)

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).

Under the portion of the exemption provision upon which the taxpayers rely (underlined above), they must prove: 1) that they were nonresidents of this state; 2) that their motor home was licensed in the state where they were residents; and 3) that it was not required to be licensed in this state. It is undisputed that the taxpayers' motor home was registered in a state where they reside. We must, then, address the other two elements of the exemption claim, starting with the licensing issue.

[2] A Washington resident must license in this state any vehicle to be operated on the highways of the state. RCW 46.16.028(3). 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. In relevant part it 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.³

²WAC 458-20-178 (Rule 178), the administrative regulation that implements the use tax legislation, contains similar provisions.

³Under certain circumstances, even a nonresident may be required to license a motor vehicle in this state and to pay the MVET. In this regard, RCW 46.85.060(1) states:

Nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another

Under these related licensing requirements, the issue with respect to the use tax turns on whether the taxpayers were residents, or in the converse, nonresidents, of this state.

The use tax statutes do not define the term "nonresident" and the Department has not issued a rule defining the term. The licensing provisions, however, define the term "resident" 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).

The use tax provision at issue in this case refers to the licensing statutes. In this respect, the statutes are related.⁴ Because the two statutes relate to one another and involve the same subject matter, we should "read the sections as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived." Beach v. Board of Adjustment, 73 Wn.2d 343, 346, 438 P.2d 617 (1968). As stated in State v. Houck, 32 Wn. (2d) 681, 684, 203 P. (2d) 693 (1949):

Statutes in pari materia must be construed together. Statutes in pari materia are those which relate to the same person or thing, or the same class of persons or things; and

jurisdiction for a period not to exceed six months in any continuous twelve month period.

Although the taxpayers were in this state for a period that exceeded six months and there is some evidence that the motor home might have been used here for most of that period, we do not need to decide this case on this issue.

⁴RCW 46.85.060(4) also provides that the Department of Licensing must consult with the Department of Revenue with respect to the adoption of rules regarding the nonresident exemption.

in construing a statute, or statutes, all acts relating to the same subject matter or having the same purpose, should be read in connection therewith as together constituting one law. The object of the rule is to ascertain and carry into effect the intent of the legislature, and it proceeds upon the supposition that the several statutes having to do with related subject matters were governed by one spirit or policy, and were intended to be consistent and harmonious in their several parts and provisions. . . .

The Board of Tax Appeals has also held, based on the available legislative history, that the two provisions should be read in a consistent manner. Jenson v. Department of Rev., BTA Docket No. 92-71 (1994). Although there may be circumstances where the two statutes should not be read together, we do not find such a circumstance in this case. Accordingly, we apply the licensing definition of the term "resident" to the nonresident use tax exemption.⁵

2. Residency and Domicile.

[3] The taxpayer contends that the definition under RCW 46.16.028 is the equivalent of domicile. In general, the use of the term "resident" in a statute may be synonymous with the term "domicile", depending on the context and purpose of the statute. See, e.g., McGrath v. Stevenson, 194 Wash. 160 (1937); see also, Black's Law Dictionary 1309 (6th ed. 1990) (the "word 'resident' has many meanings in law, largely determined by statutory context in which it is used"). The distinction between residence and domicile was addressed in In Re Mullins, 26 Wn.2d 419, 444, 174 P.2d 790 (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

⁵In general, 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.

This definition is consistent with the definition of the term "resident" found under RCW 46.16.028(1).

something more. That "something more" is a legal inference gathered from all the relevant facts, such as physical presence, declared intention, conduct, etc., -- in reality, all the surrounding circumstances from which it can be determined that a domicile exists.

In this regard, a person can have only one domicile, but several residences or homes.

While there may be valid reasons to have certain tax obligations associated with a single domicile, such as with inheritance taxes, the same cannot be said of use and MVET taxes. As stated in Restatement (Second) of Conflicts § 11, comment k (1971):

In the absence of evidence of a contrary legislative intent, "residence" in a statute is generally interpreted:

As being the equivalent of domicil in statutes relating to judicial jurisdiction, voting, eligibility to hold office, exemption (other than homestead) from the claims of creditors, liability for inheritance and poll taxes, and certain personal property taxes.

As meaning a domicil at which the person in question actually dwells in statutes relating to the competence of a divorce court and homestead exemption laws.

As meaning the place where a person dwells without regard to domicil in statutes relating to income taxation, attachment, school privileges and constructive service on nonresident motorists.

We are not aware of any jurisdiction where a nonresident use tax provision was held to be synonymous with domicile. To the contrary, see Morris v. New York State Dept. of Tax & Finance, 588 N.Y.S. 2d 927, 929 (A.D. 3 Dept. 1992), rev. on other grounds, 605 N.Y.S. 2d 807 (Ct. App. 1993), in which that state's regulatory agency defined a use tax exemption for "nonresidents" as simply the maintaining of a residence, even a temporary or transient one.

Further, the legislature's use of the words "temporary or transient" implies something far different from words usually

associated with domicile.⁶ See Kemp v. Franchise Tax Board, 45 Cal. App. 3d 821, 825 (1975).

Furthermore, Rule 178, the rule implementing the use tax legislation, clearly states that the nonresident exemption does "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" Rule 178(7)(c)(i). The Department has also 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).

For these reasons, we conclude that the terms resident and nonresident are not synonymous with domicile for use tax and MVET purposes.

3. Factors Regarding Residency.

[4] We must, then, address whether the nature and use of property in Washington and other actions manifested "an intent to live or be located in this state on more than a temporary or transient basis."⁷ Obviously, the maintaining of a residence, without more, is insufficient to manifest such an intent. A person can maintain a vacation home or investment property and use it only on a temporary or transient basis. Similarly, no set amount of time that a person stays in a dwelling, by itself, is sufficient to manifest such an intent.⁸ Again, it is possible for a person to have a stay that is only temporary or transient in nature, e.g.,

⁶The essential elements of domicile are residence in fact, coupled with the intent to make the residence a present, permanent home. In re Marriage of Stohmaier, 34 Wn. App. 14, 659 P.2d 534 (1983).

⁷With the possible exception of the clamming license, we recognize that the taxpayers do not meet any of the three enumerated examples of evidence that commonly demonstrates residency under the statute. Accordingly, we must review the taxpayers' case under the more general terms of the statute.

⁸Moreover, if we were to arbitrarily hold that a person who was in this state for more than six months was a resident, this would render RCW 46.85.060(1) superfluous. Statutes are to be construed, wherever possible, so that no clause, sentence or word shall be superfluous, void, or insignificant. United Parcel Serv. v. Department of Rev., 102 Wn.2d 355, 687 P.2d 186 (1984).

as a result of temporary employment in this state. Rather, we must look at various factors related to residency on a case-by-case basis.

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. See, e.g., Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994).

In large part, the distinction is between whether the taxpayers are staying in a dwelling on a temporary basis, as may occur with a vacation or weekend residence, or whether they have established a home for use on other than a temporary or transient basis. In this regard, the Restatement (Second) of Conflicts § 12 (1971) is instructive in how it distinguishes between a home and a dwelling.

Under the Restatement, a home is defined as "the place where a person dwells and which is the center of his domestic, social and civil life." Id. A person may have more than one home, but a dwelling used only for weekend and vacation purposes would not be considered a home. Restatement (Second) of Conflicts § 20 (1971).

Under comment c to section 12 of the Restatement, the following factors are considered relevant:

In determining whether a dwelling place is a person's home, consideration should be given to:

1. Its physical characteristics;
2. The time he spends therein;
3. The things he does therein;
4. The persons and things therein;
5. His mental attitude toward the place;
6. His intention when absent to return to the place;
7. Other dwelling places of the person concerned, and similar factors concerning them.

In this case, the taxpayers spend three to six months a year in Washington. It is a center of their domestic and business lives as shown, for example, by their extended use of utility, telephone, and mail service at their Washington address. It may also be a center of their civic lives as shown, for example, by the registration of their other vehicles in Washington and the use

of an in-state clamming permit. They have further expressed the intent to return in the future for substantial and repeated intervals of time. In at least one year, they spent more time in Washington than they did at their primary residence.

Even if we disregard the clamming license and the registration of other vehicles in this state, we must conclude that the taxpayers are residents of this state for use tax and MVET purposes. The taxpayers are not simply maintaining a dwelling for vacation or weekend purposes, but have established, by their own admissions, a second home in this state. Although it is not their primary home, it is a home nonetheless.

Under such circumstances, the taxpayers are obligated to pay this state's use tax on the motor home.

DECISION AND DISPOSITION:

The taxpayers' petition is denied.

DATED this 27th day of March, 1996.