

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 of                                   | ) |                                  |
|   | ) | No. 98-042                       |
|   | ) |                                  |
| ...   | ) | Unregistered.                    |
|   | ) | Notice of Use Tax Due on 1995    |
|   | ) | Ford Bronco.                     |

RULE 178; RCW 82.12.0251: USE TAX -- EXEMPTION FOR PRIVATE MOTOR VEHICLES ACQUIRED IN ANOTHER STATE. A person who leased a private motor vehicle for more than two years in another state where he was a bona fide resident and then, while still a resident of the other state, exercised his right under the lease agreement to purchase that vehicle qualifies for the use tax exemption even if he purchased the vehicle less than 90 days prior to becoming a Washington resident.

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:

A person (the taxpayer) protests the assessment of use tax on his private motor vehicle that he brought from Oregon when he moved from that state to Washington.<sup>1</sup>

FACTS:

De Luca, A.L.J. -- The taxpayer began leasing a 1995 Ford Bronco in December 1994 while residing in Oregon. After two years, he exercised his option to purchase the vehicle, which he did on December 26, 1996 while still residing in Oregon. The taxpayer moved to Washington from Oregon on March 16, 1997. Shortly after arriving in Washington, he went to a licensing subagent to register his vehicle in this state. The taxpayer paid the motor vehicle excise tax and other applicable taxes and fees. However, the taxpayer did not pay use tax because, according to the licensing subagent, she neglected to notice that the taxpayer was "not eligible" for the use tax exemption allowed nonresidents. She reasoned that the taxpayer was not eligible because the taxpayer had not owned the vehicle for more than 90 days prior to moving to Washington. In fact, he moved to Washington only 80 days after acquiring title to the vehicle. The licensing agent notified the Compliance Division (Compliance) of the Department of Revenue (the

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410

Department). On April 16, 1997 Compliance mailed a Notice of Use Tax Due to the taxpayer. The taxpayer appealed the notice. The amount in dispute is \$1,469.50

Compliance in an April 16, 1997 letter to the taxpayer agreed with the licensing agent that the taxpayer was not entitled to the use tax exemption because less than 90 days had passed from December 26, 1996 until March 16, 1997. In a subsequent memorandum, Compliance explained that though the taxpayer had leased the vehicle in Oregon for two years prior to purchasing it, the taxpayer did not acquire it until December 26, 1996 when he purchased it. Compliance rejected the argument that leasing the vehicle prior to purchasing it constituted acquiring it for purposes of the tax exemption. Compliance relied on Det. No. 88-258, 6 WTD 141 (1988) in explaining that a tangible personal property lease agreement is not one transaction, but a series of transactions affording the lessee the right to use an item for a specific period of time, as in this case, a series of monthly transactions. Thus, according to Compliance, the taxpayer in the present matter acquired the vehicle each month when he made his lease payment. Likewise, he again acquired the vehicle when he exercised his option to purchase it at the end of the lease. Until then, the taxpayer had no equity in or ownership of the vehicle and, therefore, had no right to claim the exemption under the 90 day rule allowed nonresidents moving to Washington.

#### TAXPAYER'S EXCEPTIONS:

The taxpayer contends that he is eligible for the use tax exemption because he acquired the vehicle and used it in Oregon while he was a bona fide resident of Oregon and the acquisition and use of the vehicle in Oregon occurred more than 90 days before he became a Washington resident.

#### ISSUE:

Does a person who leased a private motor vehicle for more than two years in another state where he was a bona fide resident and then while still a resident of the other state exercised his right under the lease agreement to purchase that vehicle qualify for the use tax exemption if he purchased the vehicle less than 90 days prior to becoming a Washington resident?

#### DISCUSSION:

The use tax exemption at issue is provided in RCW 82.12.0251:

The provisions of this chapter shall not apply. . . in respect to the use of household goods, personal effects, and private motor vehicles, not including motor homes, by a bona fide resident of Washington,. . . 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 or she entered Washington.

WAC 458-20-178(7)(c) (Rule 178) largely repeats the statute. The statute and the rule require that a person must have been bona fide resident of another state at the time that person acquired

and used the private motor vehicle in that state and such acquisition and use must have occurred more than 90 days prior to becoming a resident of Washington. The statute and rule do not clearly state that the person must own the vehicle in another state more than 90 days prior to becoming a Washington resident. The terms “acquire” and “acquisition” are not defined in the statute. Therefore, we look to their ordinary and common meanings. John H. Sellen Constr. Co. v. Department of Rev., 87 Wn.2d 878, 882, 558 P.2d 1342 (1976). “Acquire” is commonly defined as:

To gain by any means, usually by one’s own exertions; to get as one’s own; to obtain by search, endeavor, investment, practice, or purchase; receive or gain in whatever manner; come to have. In law of contracts and descents, to become owner of property; to make property one’s own. To gain ownership of. . . . The act of getting something or obtaining something which may already be in existence . . . through means employed to acquire it. . . . It does not necessarily mean that title has passed.

Black’s Law Dictionary 23 (5th ed. 1979). The word “acquisition” is commonly defined as:

The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. . . . Taking with or without consent. . . . Term refers to material possession obtained by any means.

*Id.* Thus, “acquisition” and its root word “acquire” can connote ownership in tangible personal property, but the words can also mean obtaining or possessing the property by other means. Furthermore, as shown, a person can acquire property without having title to it. Indeed, Rule 178 begins by explaining the use tax as follows:

(1) Nature of the tax. 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.

(Underlining ours). Thus, the Department’s own rule recognizes that a person can “acquire” tangible personal property by lease. See also RCW 82.12.020, which, too, provides that a person can acquire an article of tangible personal property by lease.

Considering the above-quoted dictionary definitions, RCW 82.12.020 and Rule 178’s express provisions, and the facts of this case, it is reasonable to construe that the present taxpayer had legally obtained, i.e. acquired, the vehicle and used it continuously for more than two years in another state as a bona fide resident of that state before entering Washington. That act can and does meet the definitions of “acquire” and “acquisition.” The fact that a lease may be a series of transactions is not controlling for our purposes. 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. We find that he did.

**DECISION AND DISPOSITION:**

The taxpayer's petition is granted.

Dated this 26th day of March 1998.