BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	
	)	No. 99-043
	)	
. . .	)	MVET . . .
	)	MVET . . .
	)	Use Tax Assessment
	)	TDO No. . . .

[1] RULE 178; RCW 82.12.020: USE TAX -- WHETHER WASHINGTON RESIDENCY MAINTAINED – Where Washington residents are retired and spend a portion of the year in another state (Arizona) but maintain substantial connections to Washington and evidence establishes an intent to be located in Washington on more than a temporary or transient basis, the taxpayers have not relinquished their Washington residency and so are not eligible to use nonresident use tax exemptions.

[2] RULE 178; RCW 82.12.020: USE TAX -- ALLEGED ARIZONA RESIDENTS BUT VEHICLES LICENSED IN OREGON – Taxpayers are not entitled to exemption from use tax as nonresidents where they have not relinquished their Washington residency and the vehicles are not registered in the state in which they claim to be residents (Arizona) but rather are registered in a third jurisdiction (Oregon) to which the taxpayers have no substantive connections.

[3] RCW 82.44.020: MOTOR VEHICLE EXCISE TAX (MVET) – ALLEGED ARIZONA RESIDENTS – VEHICLE LICENSED IN OREGON -- USED IN WASHINGTON. Where taxpayers have established connections to another jurisdiction but have not relinquished Washington residency they are required to register and license the vehicles they use on Washington roadways.

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:

Petition for cancellation of motor vehicle excise tax (MVET) and use tax assessment issued on a 1988 motor home and a 1992 [car] jointly owned by husband and wife, and registered in Oregon, based on the assertion that the taxpayers are no longer Washington residents.[1]

FACTS:

Kreger, A.L.J. -- The taxpayers (husband and wife) are protesting three tax assessments; MVET # . . . in the amount of $ . . . - issued on a 1988 . . . Motor Home, MVET assessment # . . . in the amount of $ . . . - issued on a 1992 [car], and use tax assessment TCO No. . . . in the amount of $ . . . - issued on [the same car]. The three forgoing assessments are all amended assessments. The assessments originally included imposition of evasion penalties, which were removed following a meeting with a Senior Revenue Officer of the Department of Revenue (the Department). The taxpayers have asserted that they are no longer Washington residents and are, therefore, exempt from MVET and use tax.

The taxpayers were full time Washington residents until 1988 when the husband retired from his position with [a Washington company]. Following the husband's retirement, the taxpayers sold their house in Washington and purchased a motor home in Oregon. The motor home was subsequently licensed and registered in Oregon. The address provided on the registration was that of the taxpayers' nephew. The taxpayers have acknowledged that while they visit relatives in Oregon several weeks during the year, they do not own any property in Oregon or have any other connections to the state.

Since retiring, the taxpayers have continued to spend several months a year in Washington. They stay with their daughter and her husband who live in Seattle during these visits. The taxpayers also utilize their daughter's Seattle address as their permanent address, relying on her to forward their mail to them when they are traveling. The length time the taxpayers have spent in Washington over the last ten years varies depending on their travel plans, but their daughter has stated that since their retirement the taxpayers have not been in the state for more than five months in any one year.

In 1990 the taxpayers purchased a second mobile home in . . . , Arizona and rented space for that vehicle at the [Arizona] RV Resort. The Resort Manager has confirmed that the taxpayers reside at this location during the fall and winter. The taxpayers have also provided copies of a 1992 rent receipt, a February 1993, electric bill and an August 1994, telephone bill for the [Arizona] address.

On May 24, 1993, the taxpayers subsequently purchased a 1992 [car] from a car dealership in . . ., Washington, which they licensed and registered in Oregon using the same address as that provided for the motor home. The taxpayers have stated that they purchased the car from the Washington dealership due to having purchased several vehicles there in the past and having been pleased with the service they received.

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

The Department's investigation disclosed that both taxpayers are registered to vote in Washington and last voted in November of 1992. The address listed on their voter registration was that of their daughter's Seattle residence. The taxpayer, husband, was registered to vote in Oregon about 55 years ago, but has not been register to vote in Oregon since that time.

The investigation also revealed that the taxpayer, wife, had a valid Washington Drivers license. The husband had a valid Oregon driver's license; his last Washington driver's license had expired on November 2, 1989. The wife has stated that she maintained her Washington driver's license principally for identification purposes as she rarely drives and did not wish to take another driver's license examination.

In April of 1994, the motor home was observed at the residence of the taxpayers' daughter in Seattle prompting the mailing of an inquiry letter to the taxpayers at the Seattle address. There was no response to this letter. In July of 1994, the motor home was again observed at the Seattle address and at that time the 1992 [car] was also parked at that location. A second letter was sent to the taxpayers at the Seattle address, which also failed to elicit a response. The revenue officer was finally successful in contacting the taxpayer, husband, in Seattle, by telephone on August 26, 1994. At that time it was disclosed that the taxpayers had been in Washington since May of 1994, while the taxpayer, wife, was recovering from surgery. Following this conversation the initial use tax and MVET assessments were issued on September 27, 1994.

The taxpayers subsequently contacted the Department by phone in October of 1994, and a meeting was held on October 6, 1994. Subsequent to this meeting the evasion penalties on all of the assessments were removed. The use tax assessment on the motor home was also rescinded as the statute of limitations for imposition of tax has passed. Amended use tax and MVET assessments were subsequently prepared and issued.

During the October 3, 1994, phone conversation, the taxpayer, wife, disclosed that the motor home had been registered in Oregon partially due to information obtained in a book written for individuals who resided full time in recreational vehicles. This book purported to provide advice on how motor homes could legally be registered in the most cost efficient manner. Based on this information they believed that registration in Oregon was legal and proper. Correspondence from the taxpayer, wife, submitted with the petition states that the taxpayers plan to "correct" the registration of their vehicles "right away."

The taxpayer, wife, and her daughter have both stated in correspondence to the Department that since the motor home was brought to the daughter's Seattle address it has been there only for storage pending sale of the vehicle. The taxpayers assert that the motor home has not been used for travel in Washington by the taxpayers but rather has remained at the Seattle address.

At the time of the Department's investigation, the taxpayer, wife, was recovering from a recent surgery. The wife stated in the October 3, 1994, phone conversation that their doctors are located in Washington and that the taxpayers plan to return to Washington state on a full time

basis when they are no longer able to travel. The taxpayers assert that they are Arizona residents and have retained their connections to Washington only as a matter of convenience.

ISSUES:

1. Where taxpayers have established a residence in Arizona and spend part of the year in Arizona and part of the year in Washington have they sufficiently terminated their connections to Washington State so as to be considered non-residents?

2. Where taxpayers spend substantial time in Arizona and in Washington but have registered vehicles in Oregon, are the taxpayers entitled to claim exemption from Washington use tax and MVET as non-residents?

DISCUSSION:

Use Tax

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on consumers when they buy tangible personal property. RCW 82.04.050; 82.04.190; 82.08.020; 82.08.050. The use tax is a "compensating" tax; it is imposed when the sales tax has not been paid. *See, Henneford v. Silas Mason Co.*, 300 U.S. 577, 57 S.Ct. 524, 81 L. Ed. 814 (1937); *Northern Pacific Railway Co. v. Henneford*, 9 Wn.2d 18, 113 P.2d 545 (1941). The use tax imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail" on which Washington's retail sales tax has not been paid, unless an exemption is available. RCW 82.12.020.

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax. It explains that the use tax and the retail sales tax "stand as complements to each other" and "provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired." The rule defines use broadly to "include any act by which the taxpayer takes or assumes dominion or control over the article". Rule 178(3).

In this case the taxpayers have asserted they are not subject to use tax because of a specific exemption for motor vehicles used by nonresidents in this state. The exemption is found in RCW 82.12.0251, which reads, in part:

> The provisions of this chapter shall not apply . . . in respect to the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060;

Use tax liability does not depend upon the residence or domicile of the user, but rather upon the privilege of using tangible personal property in Washington on which Washington retail sales tax has not been paid. WAC 458-20-178. Rule 178. The facts in this case establish that the motor home and the 1992 [car] were purchased without payment of retail sales tax. The 1992 [car] was operated and used in Washington. The motor home was brought into the state by the taxpayers and has subsequently been stored at their daughter's Seattle residence.

The definition of "use" provided in RCW 82.12.010(2) expressly includes storage:

> "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; (Emphasis added.)

Thus the motor home's storage at the Seattle address constitutes use within the meaning of the statute. The question, is whether the taxpayers connections to and asserted residency in Arizona make the exemption articulated in RCW 82.12.0251 and explained in Rule 178, available to the taxpayers.

In determining whether the exemption is available to the taxpayers in this case we must consider that exemptions to taxing statutes are strictly construed in favor of the application of the tax. *Yakima Fruit Growers Association v. Henneford*, 187 Wn. 252, 60 P. (2d) 62 (1936); *Miethke v. Pierce County*, 173 Wn. 381, 23 P. (2d) 405 (1933*); [a Washington company] Aircraft Company v. Reconstruction Finance Corporation*, 25 Wn.2d 652, 171 P. (2d) 838 (1946). It is required that any claim of exemption be studied with care before depriving the state of revenue. *Alaska Steamship Company v. State*, 31 Wn.2d 328, 196 P. (2d) 1001 (1948). Only where an exemption is clearly required by law should an individual be exempt from tax. *North Pacific Coast Freight Bureau v. State*, 12 Wn.2d 563, 122 P. (2d) 467 (1942).

Applying these rules of construction to the use tax exemption articulated in RCW 82.12.0251 results in three necessary requirements, which must be established for the exemption to be available. Specifically, (1) the user must be a nonresident, (2) the vehicle must be registered or licensed in the state of the user's residence, and (3) Washington registration of the vehicle must not be required. Det. No. 96-49, 16 WTD 177 (1996). Should the taxpayer fail to meet any one of the three requirements, then use tax is due.

In this case the taxpayers do not qualify for the exemption because they are still Washington residents. Additionally, the vehicles were not registered or licensed in the state where the taxpayers have claimed residence, Arizona. To qualify for the exemption, in addition to establishing [the user's] status as a non-resident, the vehicles must be properly registered in the state of the user's residence. In this case the vehicles were registered in Oregon, but there is no evidence that establishes any substantive connection between the taxpayers and Oregon. The

taxpayers were not, at any time pertinent to this inquiry, Oregon residents and therefore the vehicles were not properly registered in that state.[2]

The facts rather establish that the taxpayers were residents of Washington and possibly also residents of Arizona and so are subject to Washington use tax on all personal property used in Washington. The taxpayers have retained substantial connections to Washington State and have consistently resided in Washington. The relevant statutes do not define the term "nonresident." By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a "nonresident." The Department has also long held that a person can have more than one residence for use tax and MVET 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).

The validity of the use tax and MVET assessments issued to taxpayers who denied Washington residency based on connections to other jurisdictions have been found proper in a number of instances where connections to Washington were retained. *See, Stuewe v. Department of Rev.*, BTA Docket No. 96-37 (1997)(Taxpayer in Washington on average four months a year, maintained Washington address, stored vehicles in state and registered some vehicles in Washington.); Det. No. 96-49, 16 WTD 177 (1996)(Taxpayers owned property, were registered to vote and paid taxes in Oregon, but had a second home in Washington and stated intent to return to Washington found to be residents.); *Storm v. Department of Rev.*, BTA Docket No. 46848 (1995)(Exemption from use tax unavailable because vehicle was not licensed and registered in stated of residence (Idaho) but rather in Oregon.); Det. No. 93-169, 13 WTD 328 (1994)(Taxpayer with connection to multiple states and stated intent to relocate to Oregon, was found to have spent significant amount of time (50%) in Washington and this fact in conjunction with use of a Washington address, phone number and receipt of utility bills, established Washington residency.)

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[2] For the registration of vehicles in Oregon to be proper under that state's laws, the owner of the vehicle must be domiciled in Oregon. The Oregon Revised Statute (ORS) addressing vehicle registration, ORS 803.360, provides:

> Domicile in state required; exceptions. (1) No person may register or renew the registration of a vehicle in this state unless the person is domiciled in this state, as described in ORS 803.355.* This section does not apply to persons required by ORS 803.200 or any other provision of law, to register vehicles in this state.
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> (2) Notwithstanding subsection (1) of this section, a person who is not domiciled in this state may register or renew the registration of a vehicle that:
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> (a) Is usually left within the state when the registered owner is absent from the state;
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> (b) Is used primarily for personal transportation within the state;
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> (c) Is a private passenger vehicle or a vehicle with a loaded weight of less than 8,000 pounds; and
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> (d) Is not a motor home or a camper.
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> *The definition of domicile is provided by ORS 360.355, which states: "Domicile" described. For purposes of ORS 803.350 to 803.370 and 807.045, a person is domiciled in this state if the person's place of abode is in the state and the person intends to remain in the state or, if absent, to return to it."

There is no evidence to suggest that the taxpayers were, at any time pertinent to this inquiry, domiciled in Oregon or otherwise had proper grounds to register their vehicles in that jurisdiction.

The evidence presented establishes that the taxpayers are regularly and consistently in Washington, they vote in Washington, have a permanent address in Washington, file federal income tax returns using this Washington address and receive medical care here. The taxpayers have spent at least five months of each year since their retirement in Washington State and have stated they eventually intend to return to here. In 1994 the facts establish that the taxpayers were in Washington for at least 6 months. The taxpayers reoccurring presence in Washington in conjunction with the fact that they consistently maintained Washington as their state of residence for federal income tax returns, voter registration, and in the case of the wife for her driver's license, establishes more than a temporary or transient connection to Washington. The facts thus support the taxpayers being residents of Washington. While the taxpayers have established substantial connection to the state of Arizona, these ties do not negate their connection to Washington to an extent sufficient to terminate their Washington residency.

As [the taxpayer's are] Washington residents [who "used"] personal property within the state within the meaning of the statue, the use tax assessments on both the 1992 [car] and the 1988 motor home were, therefore, proper and are affirmed.

MVET

RCW 82.44.020 imposes a motor vehicle excise tax on the privilege of using a motor vehicle in this state. The duty to pay MVET arises with the duty to license one's vehicle in this state, and the duty to license is based upon ownership **and use in Washington** by a Washington resident. A resident of Washington is required to register a vehicle to be operated on the highways of the state. See, chapters 46.12 and 46.16 RCW, RCW 46.16.028(3) and WAC 308-99-025. "Resident" for licensing purposes is defined at RCW 46.16.028(1):

> 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:
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> (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 46.16.030 generally exempts nonresidents who have complied with the vehicle licensing requirements of their home state from Washington's license registration requirements, to the extent the nonresident's state grants like exemptions to Washington residents.

RCW 46.85.040 authorizes the Department of Licensing to enter into reciprocal agreements and arrangements with other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction exemption from payment of the MVET. RCW 46.85.060 provides that in the absence of an agreement or arrangement with another jurisdiction, the Department of Licensing shall declare specified minimum exemptions. One is

that nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed six months in any one continuous twelve-month period.

Reading the above statutes together, a person is exempt from MVET if the person is a nonresident of Washington who has properly licensed the vehicle in his or her home state, the person is not employed in this state, and the person does not operate the vehicle in this state for more than six months in any continuous twelve-month period. The statutes, therefore, exempt nonresidents who have properly licensed their vehicles in their home states from MVET liability for their limited use of the vehicles on Washington highways. RCW 82.44.020(1); RCW 46.85.040 and .060.

As discussed above, the relevant statutes do not define the term "nonresident." By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a "nonresident." [As noted above,] The Department has also long held that a person can have more than one residence for use and MVET tax purposes.

It is not disputed that the taxpayers were registered to vote in Washington at all time pertinent to this appeal. Voter registration is particularly articulated as a basis for residency in RCW 46.16.028(1) set forth above. Additionally, as discussed above, the taxpayers have consistently been present in Washington and have maintained ties to Washington that establish intent to be present here on more than a transient or temporary basis. The taxpayers have not sufficiently severed their connections with Washington state so as to be considered non-residents.

The taxpayers have not contested that the 1992 [car] was operated and used on Washington roadways during the period in question. As they were Washington residents during this time the MVET assessment on that vehicle was appropriate and is affirmed. Additionally, it should be noted that even had the taxpayers been able to establish they had sufficiently severed their ties with Washington and were only Arizona residents, the vehicles were not registered in that state, but rather in Oregon a jurisdiction to which no substantive connection has been established.

With regard to the motor home, however, it has been asserted that this vehicle has not been operated but merely stored at the Seattle address pending its sale. As set forth above the applicable statutes impose MVET on vehicles “to be operated on the highways of the state.” While, storage is expressly included within the definition of use for use tax purposes, use for MVET is not so broad and is limited to vehicles operated on state highways. The only evidence submitted in this case regarding the motor home establishes its storage on private property and not that it was operated on the state roadways. The taxpayer, wife, and her daughter, on whose property the vehicle has been stored, have asserted that the vehicle has not left the Seattle property from November, 1993, the beginning of the period of liability on the amended MVET assessment. It was acknowledged that between January of 1988 and November of 1993 the motor home was sporadically driven in Washington. However, the portion of the assessment for those time periods was cancelled. During the period at issue there is no evidence to establish use

of the motor home on state roadways. The MVET assessment for the motor home for the period of time between November of 1993 and October of 1994 therefore found to be inappropriate and the assessment is reversed.

DECISION AND DISPOSITION:

The taxpayers' petition is granted in part and denied in part. The use tax assessments on the 1988 motor home and the 1992 [car] are affirmed. The MVET assessment on the 1992 [car] is also affirmed. The MVET on the 1988 Motor home is reversed.

Dated this 25th day of February, 1999.