Cite as Det. No. 99-085, 19 WTD 909 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment	)	D E T E R M I N A T I O N
	)	No. 99-085
. . .	)	Use tax Motor Vehicle Excise Tax . . .

[1] RCW 82.44.020; RCW 46.16.030: MVET -- RESIDENCE. A person is exempt from MVET if the person is a nonresident of Washington, has properly licensed the vehicle in his or her home state, is not employed in this state, and does not operate the vehicle in this state for more than six months in any continuous twelve-month period. 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." Where vehicle owners moved to Alaska from Washington prior to using the vehicle at issue in Washington and were only in Washington intermittently since moving to Alaska, vehicle owners were not Washington residents, despite the fact that they owned real property in Washington.

[2] RULE 178; RCW 82.12.020; RCW 82.12.0251: USE TAX -- RESIDENCE. For the use tax exemption articulated in RCW 82.12.0251 to be available: (1) a vehicle owner 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. Where the vehicle owners were previously Washington residents, but they moved to Alaska, established residency there, and licensed the vehicle there, prior to use of the vehicle in Washington, use tax is not due where there is no evidence that would require the vehicle owners to register their vehicle in Washington.

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:

Taxpayers have petitioned for cancellation of motor vehicle excise tax (MVET) and use tax assessments issued on a 1995 . . . Motor Home based on the assertion that the taxpayers are not residents of Washington State.[1]

FACTS:

Kreger, A.L.J.[2] – . . . (the taxpayers) were Washington residents until 1982, when they moved to . . ., Alaska. The taxpayers own real property in Alaska and own and operate a business in Alaska. When the taxpayers moved to Alaska they retained ownership of residential real estate . . ., Washington, which they had purchased in 1979. During the period of time at issue in this appeal, their daughter occupied that residence.

In December of 1997, the taxpayers traveled to [Washington] so that Mr. [Taxpayer] could obtain medical treatment . . . . The taxpayers arrived in [Washington] on or about December 10, 1997. Following consultation with a physician, it was determined that surgery would be necessary. As their doctor advised against driving the motor home back to Alaska, the taxpayers flew back to Alaska on December 18, 1997, leaving the motor home at the [Washington] residence. The taxpayers returned to Washington on January 7, 1998, and shortly thereafter drove the motor home to Nevada. On January 11, 1998, the taxpayers drove back to [Washington] and Mr. [Taxpayer]'s surgery took place on January 12, 1997. Mr. [Taxpayer] was hospitalized from January 12, 1998 until January 27, 1998, and remained in [Washington] for physical therapy until early March of 1998. On March 12, 1998, the taxpayers drove the motor home back to Alaska.

The Alaska licensed motor home had been observed at the [Washington] residence by another resident of the neighborhood in late 1997 or early 1998, prompting a report to the Department of Revenue (Department). As the result of this information, a tax discovery officer employed by the Department commenced an investigation. The tax discovery officer observed and photographed the motor home at the [Washington] residence in February of 1998. Additional investigation revealed that the taxpayers owned the residential property in [Washington], where the motor home had been observed, and were listed on phone and utility accounts for that residence. When contacted by the Department, the taxpayers asserted their Alaska residency, explained their daughter currently occupied the house, and stated that they were in [Washington] for a limited period of time. The tax discovery officer, however, believed the taxpayers had not relinquished their Washington residency, and on February 25, 1998, use tax and MVET assessments were sent to the taxpayers.

The taxpayers protested this assessment, and subsequently timely filed an appeal with the Department. The taxpayers acknowledge that they were once Washington residents and that they have retained connections to Washington state, in the form of both personal relationships

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[2] Case reassigned from ALJ Jackie Danyo .

with family that still resides here and property ownership. However, the taxpayers contend that they are currently and were at all times pertinent to this case Alaska residents. The taxpayers relinquished their Washington state driver's licenses and currently hold Alaska driver's licenses. Additionally, the taxpayers are registered to vote in Alaska, file personal and corporate federal income tax returns from Alaska, register a number of vehicles in Alaska, and hold fish and game licenses in Alaska. The taxpayers own real property in Alaska, Washington and Idaho. Since moving to Alaska the taxpayers have returned to Washington for an average of three weeks a year. At the time of the telephone conference, the taxpayers disclosed the residential real estate they own in . . ., Washington is no longer occupied by their daughter, but has been rented to tenants and that the utilities have been transferred to the tenant's name. The taxpayers provided detailed documentation regarding their Alaska residency and the medical care Mr. [Taxpayer] received in [Washington] in early 1998.

ISSUE:

Whether the taxpayers are non-residents entitled to exemption from use tax and MVET for their limited use of a motor home in Washington?

DISCUSSION:

[1] 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:
>
> (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 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."

In considering the rules Washington has established for the licensing of vehicles, it is the intent of the statutes that Washington residents pay the MVET for vehicles they use on the state's highways, and that they may not escape payment of the MVET by licensing a vehicle in another state. RCW 82.44.020(1) and (7). It also clearly is the intent of the statutes that nonresidents who have properly licensed their vehicles in their home states not incur MVET liability for their limited use of the vehicles on Washington highways. RCW 82.44.020(1); RCW 46.85.040 and .060.

In determining whether an 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*); Boeing Aircraft Co. v. Reconstruction Finance Corp.*, 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 Co. v. State*, 31 Wn.2d 328, 196 P.2d 1001 (1948). And, 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).

In this case, the taxpayers clearly established that they are currently, and were at the time of the investigation, Alaska residents. The taxpayers were Washington residents until they moved to Alaska in 1982. Yet, by the time this investigation began the taxpayers had unequivocally established Alaska residency. The time the taxpayers spent in Washington in conjunction with their continued ownership of real estate is not sufficient to reestablish their Washington residency.

The taxpayers have retained ownership of real estate in Washington and have also returned to Washington for short periods of time since relocating to Alaska. These connections do not, however, independently manifest an intent to “live or be located in this state on more than a temporary or transient basis” and so to be considered residents under RCW 46.16.028(1). The

establishment of residence is not simply based on consideration of the quantity of time spent at a particular location but involves consideration of an "intent to make the residence a present, permanent home." Det. No. 96-049, 16 WTD 177 (1996)(citing, *In re Marriage of Stohmaier*, 34 Wn. App. 14, 659 P.2d 534 (1983)). "The determination of intent does not depend upon any one factor, but upon the totality of the circumstances." *Wright v. Department of Rev.*, BTA Docket No. 47074 (1996). "Of necessity, the person's intent to live in Washington must be judged in relation to evidence of the person's intent to live elsewhere." *Everman v. Department of Rev.*, BTA Docket No. 44854 (1995). In this case the facts establish the reoccurring presence of the taxpayers in Washington. What is lacking is evidence that would support the conclusion that this presence was coupled with an intent to live in or have more than a transient presence in Washington.

The taxpayers have consistently asserted Alaska residency and provided ample documentation to support this assertion. They own a business and real estate in Alaska, and reside the majority of the year in Alaska. The taxpayers are registered to vote in Alaska, file federal income tax returns and corporate tax returns from Alaska, and both hold Alaska driver's licenses. At the time the investigation commenced the taxpayers were in Washington for the purpose of obtaining medical care, and were staying with their daughter who resided in the house the taxpayers owned. The investigation of the taxpayers by the Department disclosed their ownership interest in the [Washington] residence and the fact that utility and phone service to that residence was in the taxpayers' name. The fact that the taxpayers' daughter was the occupant of the residence at that time provides a reasonable explanation for why the taxpayers continued to be listed on the utility accounts.

There is no evidence available that contradicts or refutes the taxpayers' substantial connection to Alaska or establishes more than a limited connection to Washington. Nor is there any evidence, which would establish that the taxpayers intended to live in Washington or that their presence in this state was more than temporary or transient. We find that the taxpayers are nonresidents.

The evidence available establishes that the motor home was in Washington for several months in late 1997 and early 1998, but not for more than 6 months during any one year. The taxpayers have provided persuasive evidence of their Alaska residency and the fact they have retained real estate in Washington and returned to visit family and obtain medical care is not sufficient to reestablish their status as Washington residents. There is no evidence available that would establish any obligation for the taxpayers to register the motor home in Washington under Washington law. The taxpayers are exempt from MVET based on their status as nonresidents and the fact that their limited use of the motor home within Washington is expressly permitted. The MVET assessment is reversed.

[2] 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 (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 addition to explaining the nature of the use tax, Rule 178 specifies that the use tax applies upon the use of any tangible personal property, not previously subjected to the Washington retail sales tax. Rule 178(2). The person liable for the tax is the purchaser. Rule 178(4).

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. Rule 178(1). While residency is not a prerequisite to the imposition of use tax, many of the exemptions depend upon the residency of the user and allow exemptions for limited use by nonresidents within Washington state. RCW 82.12.0251 provides a limited exemption from use tax for nonresidents. The statute is implemented by Rule 178.

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 . . . .

As set forth in greater detail above, 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).

Thus, for the use tax exemption articulated in RCW 82.12.0251 to be available, a taxpayer must meet three requirements. 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, use tax is due.

Here the facts establish the taxpayers were at one time residents of Washington, they then moved to Alaska and established residency there. Simply because the taxpayers continue to own real property in Washington and occasionally returned to the state for limited periods of time does not independently render them Washington residents. As stated above, we find the taxpayers were Alaska residents. The vehicle in question was properly registered in the taxpayers' state of residence and there is no evidence that would require the taxpayers to register their motor home in Washington. The taxpayers were therefore eligible for the use tax exemption articulated in RCW 82.12.0251 and the imposition of use tax was improper. The use tax assessment is reversed.

DECISION AND DISPOSITION:

The taxpayers' petition is granted. The use tax assessment and the MVET assessment are reversed.

Dated this 31st day of March 1999.