Cite as Det. No. 99-042LTR, 19 WTD 795 (2000)

RCW 82.12.020; RCW 11.40.050: USE TAX – COLLECTION OF TAX – COMMUNITY PROPERTY – SURVIVING SPOUSE -- ESTATE – NONCLAIM. The Department has a use tax claim against the surviving spouse where that spouse used the vehicle in Washington. The nonclaim statute does not bar the Department's collection of the use tax.

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.[1]

December 30, 1999

Re: . . .
Unregistered
Use Tax

Dear Mr. . . .:

This letter is the Department of Revenue's (Department's) decision on the taxpayer's (. . .) petition for reconsideration of Det. No. 99-042.[2] . . .

This appeal began in 1995 when the taxpayer protested use tax assessed on his 1955 [vehicle]. He claimed the Department was estopped from the assessment, and, he protested the valuation of the vehicle. In Det. No. 99-042, we affirmed the use tax assessment and upheld the value of the vehicle on which the use tax was assessed. The taxpayer petitioned for reconsideration of Det. No. 99-042.

The taxpayer contends a mistake of fact occurred when the Department used May 8, 1991 as the date of purchase on the use tax assessment. The taxpayer says the date he purchased the car was December 21, 1982. However, until 1991, when it was shipped to Washington, the car was located in California. On May 8, 1991, the taxpayer registered the car in Washington without paying use tax. On August 11, 1995, the Department assessed use tax on the vehicle and used the date the taxpayer registered the vehicle as the date of purchase.

The taxpayer protested the use of that date, presumably because of the value ascribed to the vehicle as of that date. The May 8, 1991 date was listed as the date of purchase because that is the date the taxpayer first used the car within Washington. Technically, the Department should have referred to that date as the date of first use in Washington. Although the Department may have erred in assigning May 8, 1991 as the date of purchase instead of the date of first use, this

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[2] The original determination, Det. No. 99-042, is published at 19 WTD 784 (2000).

error was harmless. The Department is permitted to use the value of the vehicle at the time of first use. Det. No. 98-120, 18 WTD 132 (1999). The issue of the vehicle's valuation as the measure of the use tax was explained thoroughly in Det. No. 99-042. Taxpayer has not provided any basis for us to reverse our decision on this issue.

The taxpayer further contends the Department erred in failing to collect the tax from his deceased wife's estate, and that failure bars collection of the use tax pursuant the nonclaim statute, RCW 11.40.051(1). The taxpayer asserts the car was community property. Thus, the taxpayer says, because the Department did not file a claim with the personal representative of the taxpayer's wife's probate estate, the Department is barred by the nonclaim statute from collecting the use tax from the taxpayer. The taxpayer's wife died in 1993, about two years prior to the assessment, and about two years after the taxpayer registered the car without paying use tax.

Washington imposes the use tax "for the privilege of using within this state as a consumer of any article of tangible personal property." RCW 82.12.020. WAC 458-20-178 (Rule 178) is the Department's administrative rule implementing the use tax statute. "Use" means "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)." RCW 82.12.010(2). A "consumer" is "any person who purchases, acquires, owns, holds, or uses any article of tangible personal property." RCW 82.04.190; see Rule 178(5) ("consumer" defined in RCW 82.04.190). Rule 178(1) explains the use tax is imposed "where the user . . . has not paid retail sales tax." And, "use tax liability arises at the time the property . . . is first put to use in [Washington]." Rule 178(3).

In the petition, the taxpayer claims the Department is barred by the nonclaim statute from proceeding against him for payment of use tax. The petition cites RCW 11.40.051(1) as stating:

> Whether or not notice is provided under 11.40.020, a person having a claim against the **estate** is forever barred from making or commencing an action against the decedent if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations . . . .

(Emphasis added). This statute is quoted incorrectly. RCW 11.40.051(1)[3] actually reads:

> Whether or not notice is provided under RCW 11.40.020, a person having a claim against the **decedent** is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations. . . .

[3] We note that in 1995 RCW 11.40.014 was the section pertaining to claims against the decedent. That section was repealed in 1997 and replaced with RCW 11.40.051. The change does not affect this determination.

(Emphasis added). The taxpayer seems to be basing his argument on an erroneous reading of the statute. The Department has a claim against the surviving spouse, as he used the vehicle in Washington. We have no proof that the decedent used the car in Washington, or anywhere for that matter.

Further, the taxpayer cites In re Rhodes, 196 Wash. 616, 83 P.2d 896 (1938), in support of the notion that the nonclaim statute applies to claims held by the state. The facts of In re Rhodes, however, support a different holding -- the nonclaim statute bars the state from collecting sums due for the support and maintenance of an insane person who was a long term state hospital patient. Id.

Further, the taxpayer cited Ruth v. Dight, 75 Wash. 2d 660, 453 P.2d 631 (1969), to stand for the proposition that a claimant who fails to comply with the nonclaim statute may not recover against community or separate property of the surviving spouse. However, the Ruth case determines that the creditor of a community cannot recover against either the community or separate property of the surviving spouse for torts committed by the deceased spouse. Id.

In this case, the Department is not seeking to collect sums for the maintenance and support of an insane person, nor is it seeking to collect for a tort committed by the deceased spouse. Here, the Department assessed use tax on a vehicle used by the taxpayer himself as a Washington resident, when the taxpayer failed to pay use tax when he registered the vehicle.

One of the leading authorities on Washington Community Property law wrote:

> [I]f the surviving spouse is separately liable on a claim, the creditor does not have a claim recognizable in the administration of the community estate, and therefore need not file any probate claim. The creditor subsequently may reach any assets formerly community property which become the separate property of the debtor-survivor. This last proposition has also been applied even though the creditor's claim was one which could have been enforced against either the survivor's separate property or the community property, but was not asserted in the administration of the community estate occasioned by the death of the other spouse.

Harry M. Cross, The Community Property Law in Washington, 61 Wash. L. Rev. 13, 146 (1986).

The taxpayer incurred use tax liability when he put the car to use in Washington. This was his separate liability as a consumer. Granted, if the community was in existence this may be a community debt, but as the community no longer exists, we may proceed directly against the taxpayer for payment on his tax liability incurred as a consumer in Washington.

We find the state is not barred by the nonclaim statute from collecting use tax. The taxpayer, . . ., used the vehicle as a consumer while a resident of Washington. Therefore, the taxpayer, a Washington resident and consumer of tangible personal property is liable for use tax incurred when he first used the car in Washington.

The taxpayer's petition is denied.