

Cite as Det. No. 99-084, 19 WTD 229 (2000)

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)	
)	No. 99-084
)	
...)	Registration No. . . .
)	Use tax
)	Motor Vehicle Excise Tax
)	

- [1] RULE 178; RCW 82.12.020: USE TAX – FOREIGN CORPORATION -- VEHICLE -- CORPORATE OFFICER USE -- USE IN WASHINGTON. Where a foreign corporation with offices in Washington purchases a vehicle and provides it to a corporate officer, who uses the vehicle in Washington for the business purposes, the company does not qualify for exemption from use tax. To qualify for a nonresident exemption under Rule 178(7)(j) the company's vehicles must be most frequently dispatched, garaged, serviced, maintained and operated from a place of business in another state. Where the company car is both used in Washington and operated from a Washington location, the first use of the vehicle in Washington gives rise to the imposition of use tax.
- [2] RCW 82.44.020: MOTOR VEHICLE EXCISE TAX (MVET) – FOREIGN CORPORATION -- VEHICLE -- CORPORATE OFFICER USE -- WASHINGTON BRANCH OFFICE -- VEHICLE LICENSED IN IDAHO -- USE IN WASHINGTON. Where a company car is operated by the Washington branch office of a corporation, the owners must register the vehicle in Washington and pay MVET.

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:

Appeals Division

Taxpayer has petitioned for cancellation of motor vehicle excise tax (MVET) and use tax assessments issued on a [vehicle] owned by the taxpayer's employer and registered in Idaho, and used by the taxpayer in Washington and other states.¹

FACTS:

Kreger, A.L.J. --. . . ([T]he Company) is a California corporation providing business services as mortgage brokers and real estate lenders. The Company maintains offices in . . . , Idaho,. . . , Washington and other locations. The taxpayer is a senior vice president of the Company and a major stockholder. In the course of his work for the Company, the taxpayer has spent time, and conducted business, in Washington, Idaho, Montana, Utah, Oregon, Colorado and California. The issue in this appeal involves use tax and motor vehicle excise tax assessed on a vehicle, which was owned by the Company, and which the taxpayer operated in Washington while conducting business for the Company. Taxpayer protested the taxes on the basis that his use of the vehicle in Washington was exempt from both taxes and registration and licensing requirements.

The car was purchased in April of 1996, in . . . , Idaho and, subsequently, registered in Idaho. [The Company] appears as the "purchaser-owner" on the Certificate of Title. The taxpayer stated that the car was used primarily for business purposes; however, he insured the vehicle personally because the company did not carry vehicle insurance. The taxpayer estimates the car was in Washington approximately 50% of the time, during the period following its purchase in April of 1996 to September of 1996, when the taxpayer took the car to California. Since September of 1996, the vehicle has been permanently located in California.

The taxpayer stated the longest consecutive period of time he has ever spent in Washington was five months in 1995. Other than that, he has only occasionally been in this state. In April or May of 1995, the taxpayer purchased a house in [Washington]. Prior to that time, he rented an apartment in [Washington] for use when he was there. The taxpayer stated he and his wife considered the house a secondary home. During the summers of 1995 and 1996, the taxpayer spent two to two and a half months in the house. The taxpayer acknowledged that he still owned this property but stated that it was currently rented out to tenants.

The taxpayer estimates that following the purchase of the vehicle in 1996, he spent approximately half of his time in Washington and the other half of the time in Idaho. In September of 1996, the taxpayer relocated to California and took the car with him. At the time of the telephone conference in March of 1997, the taxpayer stated that the car had stayed in California since the move and that he intended to transfer the license from Idaho to California. The taxpayer stated that he considers himself a California resident, pays taxes in that state, and is registered to vote there.

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

The taxpayer acknowledged that he acquired a Washington state driver's license in October of 1994. He stated that he got the license in anticipation of opening the Washington office. At that time he anticipated being in Washington "a while" and was planning to purchase a home here.

ISSUES:

1. Whether a corporation with offices in multiple states, including Washington, is required to pay use tax on a vehicle it owns and which it provides to one of its corporate officers, who uses the vehicle in Washington for both business and personal reasons?
2. Whether a corporation with offices in multiple states, including Washington, is required to pay MVET on a vehicle which it owns and provides to one of its corporate officers for use in Washington and other states?

DISCUSSION:

This case involves issues of dual residency on two levels, that of the corporate entity that owned the vehicle and that of the individual taxpayer who used the vehicle. During the investigation of this matter the main focus was upon the status of the individual taxpayer. The evidence obtained, and the factual basis for the assessments issued, focused upon the connections between the individual taxpayer and Washington. The assessments, however, were issued to the corporation, and so it is the corporation's actions that are dispositive. While the taxpayer as an individual may have lacked the intent to be located in Washington on more than a temporary or transient basis, it is not his personal activities that are at issue, but rather his conduct as a corporate officer and agent of the company.

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 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).

In this case the Company is a California corporation, registered to do business in the state of Washington. It conducted its business activities through a [Washington] office A corporation is a "person" for purposes of both the Revenue Act (RCW 82.04.030) and the vehicle licensing laws (RCW 46.04.405). A corporation, however, has no personal existence and can only act through its officers and agents. *Seattle International Corporation v. Commerce and Industry Insurance Company*, 24 Wash. App. 108, 600 P.2d 612 (1979). An act of a corporate officer is an act of the corporation if it is on behalf of the corporation or for the corporation's benefit. *Id.* "A corporate officer is an agent for his corporate principal." *C. B. William v. Queen Fisheries, Inc.*, 2 Wash. App. 691, 694; 469 P.2d 583 (1970).

We find the facts in this case establish that use tax was due upon the taxpayer's first use in this state, of the Company's vehicle. The Company purchased the car without paying Washington retail sales tax. It owned the car and provided it to its employee and corporate officer, the taxpayer, to use in conducting company business in numerous states, including Washington. The taxpayer stated that from the time the vehicle was purchased in April of 1996 until he permanently relocated to California in September of 1996, he spent at least three months of that period in Washington, using the vehicle while here for company business. These facts are sufficient to establish use by the Company under the meaning of the statute.

The taxpayer is a senior vice president of the corporation and, as such, used the vehicle to conduct corporate business on behalf of the company in Washington. The taxpayer's use of the vehicle, as the "agent for his corporate principal" was subject to Washington's use tax, unless an exemption is available to excuse this liability.

The taxpayer's petition asserts that the vehicle is registered in Idaho because the Company conducted business in that state and has a "physical presence there." 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.

In determining whether an exemption is available to the taxpayer 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 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).

RCW 82.12.0251 provides a limited exemption from use tax for nonresidents. The statute is implemented by Rule 178. With regard to vehicles owned by business entities that conduct activities in multiple states and so are residents of multiple jurisdictions, Rule 178 specifically provides that such entities shall be considered nonresidents in specific circumstances. To be classified as a nonresident for use tax purposes, the rule imposes the following requirements in Rule 178(7)(j).

For the purpose of this exemption the term **"nonresident"** shall include a user who has **one or more places of business in this state as well as in one or more other states**, but the exemption for nonresidents **shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.** (Emphasis added.)

The facts in this case do not establish that the vehicle in question was most frequently dispatched, garaged, serviced, maintained and operated from the Company's place of business in another state. The vehicle was available for and consistently used by the taxpayer in conducting business activities on behalf of the Company. Nothing indicates that the car was operated from the Company's Idaho office or any other out-of-state location. The evidence establishes that rather than being operated from and maintained at an out-of-state location, the vehicle was operated and maintained by the taxpayer from his residence in Washington when he was in the State. Rather than establishing a primary connection with an out-of-state office, the facts establish that the primary connection this vehicle had was to the taxpayer and through the taxpayer to the Washington branch office of the Company. This is not the type of situation that the exemption requires.

"Persons using an automobile temporarily in this state for business purposes are not liable for use tax thereon unless used in conducting non-transitory business activities in this state." RCW 82.12.0251; Rule 178; Det. No. 88-367, 6 WTD 409 (1988). In this case the Company was conducting ongoing business activities in Washington and had an established physical presence in the state. At the time the vehicle was present in Washington, it was issued to and under the control of a corporate officer who owned property in the state, carried a Washington driver's license and conducted business on the Company's behalf in Washington. These are not the types of temporary and transitory activities addressed by the exemption articulated in Rule 178(j). The use tax assessment issued to [the company] was proper and is 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) as "a person who manifests an intent to live or be located in this state on more than a temporary or transient basis."

WAC 308-99-040 provides an exemption from registration for corporate vehicles licensed in another jurisdiction and registered to a bona fide business in that jurisdiction. Owners are not required to obtain a Washington license except when vehicles are operated by a business or branch office located in Washington. WAC 308-99-040(6) states:

A vehicle or a combination of vehicles, not exceeding a registered gross or combined gross weight of 12,000 pounds, which is properly base licensed in another jurisdiction and registered to a bona fide business in that jurisdiction is not required to obtain Washington vehicle license registration except when such vehicle is owned or operated by a business or branch office of a business located in Washington.

Here the vehicle was purchased and registered by the Company's Idaho office. The Washington branch of the Company did not own the car, but in this case the second necessary requirement that the vehicle not be operated by the Washington branch office is not present. The facts in this case establish that the taxpayer operated the vehicle in Washington, as a corporate officer conducting business on behalf of the Company through the Washington branch office. A necessary element to be eligible for this exemption from registration, is that the vehicle not be operated by the Washington business location. As discussed above the actions of a corporate officer are that of the corporation. During the time period in question, the taxpayer conducted business for at least three months in Washington, through the Company's Washington branch office. The vehicle was therefore operated by the Washington branch office, and so the exemption is not available.

There is limited authority available, which particularly addresses the registration of vehicles issued to company employees. In Det. No. 90-164A, 11 WTD 51 (1991), we held that a corporation was not liable for use tax on a vehicle it owned and issued to an employee who utilized the vehicle to commute to work in Oregon at the corporation's headquarters from the employee's Washington residence. That determination focused on the fact that the vehicle was made available for the employee's personal use not for business purposes.

In this case we have use of the vehicle within the state for business purposes of a foreign California corporation and evidence that the vehicle was owned by the Idaho branch of this corporation, but the facts also establish that the operation of the vehicle in Washington was connected to the Washington branch office. The necessary elements for exemption from registration under WAC 308-99-040(6) cannot be met in this case, and so registration was required. The MVET assessment is therefore affirmed.

DECISION AND DISPOSITION:

The taxpayers' petition is denied.

Dated this 31st day of March 1999.