Cite as Det. No. 99-105R, 19 WTD 560 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	F I N A L D E T E R M I N A T I O N
	)	No. 99-105R
. . .	)	Unregistered Use Tax Assessment Motor Vehicle Excise Tax Assessments Evasion Penalties

[1] RULE 178; RCW 82.12.0251; RCW 82.44.020; RCW 46.85.060: USE TAX – MVET – EXEMPTIONS – NONRESIDENT. A Washington resident who begins spending substantial time outside the state continues to be a Washington resident when the individual's continued ties to Washington manifest an intent to live or be located in this state on more than a temporary or transient basis. The existence and nature of ties to other states is relevant to that inquiry.

[2] RCW 82.12.090: EVASION PENALTY – USE TAX – MVET. "Snowbirds" who are long-time residents of Washington, retain substantial ties to Washington, and have not established a residence elsewhere, evidence an intent to evade payment of Washington's use tax and motor vehicle excise tax when they license their vehicles in another state by misrepresenting their domicile and residence address.

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 seek reconsideration of Det. No. 99-105, which affirmed the assessment of use tax, motor vehicle excise tax (MVET), and evasion penalties with respect to two motor homes and an automobile. The taxpayers contend they were no longer residents of Washington when they acquired the vehicles and licensed them outside the state, or when they first used them in the state.[1]

FACTS:

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

Prusia, A.L.J. -- The facts in this matter are stated in Det. No. 99-105, issued April 28, 1999, by the Appeals Division of the Department of Revenue (the Department). We will re-state the facts only where necessary.

The taxpayers are husband and wife. They resided in . . . , Washington, for many years. The husband operated an electrical contracting business there, and also was a home builder.

In February 1995, the taxpayers purchased a . . . motor home in Oregon. They licensed it in Oregon, giving the . . . , Oregon address of a relative of the wife as their residence address, and certifying that their place of domicile was in Oregon. In September 1995, the taxpayers traded in the [1991 motor home] on a [1996 motor home] motor home, in Missouri. In November 1995, they licensed the [new] motor home in Oregon, to the address of the wife's relative in [Oregon city]. In May 1996, the wife purchased a [a 1995 automobile] in Oregon, and licensed the vehicle in Oregon, again giving her relative's [Oregon city] address as her residence address, and certifying that her place of domicile was in Oregon.

Following an investigation of the taxpayers, triggered by a December 1995 sighting of the [1996 motor home] in Washington, towing another vehicle of the taxpayers which had Washington plates, the Department assessed MVET and use tax on both motor homes and the [1995 automobile], as detailed in Det. No. 99-105.

The taxpayers protested the assessments. They contended they were not residents of Washington at the time the three vehicles were used in the state. They contended they moved from Washington in November 1994, with the intention not to return, and thereafter were in Washington only for the husband's doctor appointments and to arrange the sale of property in [Washington city].

Det. No. 99-105 affirmed the assessments, except for an adjustment in the use tax on the [1991 motor home], based on the taxpayers' evidence that the value was less than the figure used by the Department. The Determination found that the taxpayers did leave the state in November 1994 and began traveling in a motor home, but had retained substantial ties to Washington, and had not acquired a new residence, when they purchased and licensed the three vehicles, or when they first used the vehicles in Washington. The Determination found the taxpayers were never residents of Oregon and had used an Oregon address to license the vehicles because of the state's lower taxes.[2] It concluded that because the taxpayers had not acquired a new residence when they used the vehicles in Washington, Washington continued to be their residence.

[2] The taxpayers never stayed in Oregon on more than a temporary basis, and never owned property in Oregon. They stayed with the wife's relative in [Oregon city] temporarily after they first "left" Washington, but had decided the [Oregon city] area would not be suitable for a permanent residence before they even purchased the first of the three vehicles. By early 1996, before they purchased the [1995 automobile] and licensed it in Oregon, they had settled on Mexico as the place they would winter. They admitted they chose Oregon to register their vehicles because of its lower taxes.

The Determination discussed a number of facts evidencing an intent to live or be located in the state on more than a temporary basis after November 1994. These included having another vehicle licensed in Washington with disabled plates, continuing to own and pay taxes on a residence in [Washington city] in which their son lived, and keeping a vehicle garaged there, using the address of their [Washington city] residence on credit applications, checks, and a [Washington] County building permit application, renewing their Washington corporate business license in March 1995, overseeing the construction of homes in the [Washington city] area during May to September 1995, building a house in . . . between May and September 1996, and forming a Washington limited liability company in October 1996.

The Determination found that even if they had been nonresidents of Washington, the taxpayers would not have met the requirements for nonresident exemption from the MVET, because they engaged in business in Washington while using the vehicles in 1995 and 1996. They would not have met the requirements for nonresident exemption from the use tax either, because the vehicles were not licensed in a state where they resided.

The Determination affirmed the evasion penalties on the basis the taxpayers knowingly made false statements on the Oregon registration applications in order to register the vehicles in Oregon and avoid paying Washington taxes.

In requesting reconsideration, the taxpayers challenge and explain a number of the facts in the Determination, and add additional facts, as follows.

They state they never used the disabled plate, because the [automobile] to which it was attached was kept garaged. They deny they performed construction in 1995, and state the husband was frequently in a [Washington city] hospital during the period and was not physically capable of building two homes. They state they renewed the corporate license only because the corporation was a defendant in unrelated litigation, and argue they did not renew more relevant licenses, their construction licenses. They state they continued to use the address of their Washington residence only because it was the most convenient address to use for receiving mail. Their son and daughter-in-law were living at the address.

The taxpayers contend the Determination failed to give sufficient consideration to the severity of the husband's medical condition. They argue the severe medical condition shows evidence of their objective intent to leave Washington, because the condition precluded them from continuing to live in Washington on a long-term basis. They contend the Determination failed to give sufficient consideration to their attempts to pay and settle with the Department. They argue their attempts to settle demonstrate their intent not to defraud the state of any tax.

The taxpayers contend the Determination's legal analysis is flawed. They contend there is no requirement that a person obtain a new residence outside Washington in order to cease to be a resident of Washington for tax purposes. They argue that the cases upon which the Determination relies involved divorce or probate proceedings.

The taxpayers cite Det. No. 96-049, 11 WTD 169 (1991), as setting forth the appropriate analysis of "non-resident" versus "resident" in tax proceedings. They argue that based on factors identified in Det. No. 96-049, specifically obtaining state licenses, voter registration, receiving public assistance, owning residential property, having interests in residential property in other states, receiving utility services, locations where tax returns are filed, and intent to return to this state on other than a temporary or transient basis, the taxpayers are not residents of Washington. They argue that based on factors cited in that determination for distinguishing between a home (a permanent residence) and a dwelling (a temporary or transient residence), the taxpayer had no permanent residence in Washington after November 1994. They contend they stayed only in their motor home when in Washington, their mental attitude was that they could not, even if they wanted, live on their Washington properties because of the husband's health, they have never returned to Washington on a permanent basis, and the husband's health essentially prohibits them from returning.

Finally, the taxpayers cite a Board of Tax Appeals (BTA) decision, Wright v. Department of Revenue, BTA Docket No. 47074 (1996), for the proposition that a person may become a non-resident for tax purposes even if the person has not conclusively established a home in another state.

ISSUES:

1. Were the taxpayers no longer residents of Washington when they first used the three vehicles in this state?

2. Are evasion penalties appropriate?

DISCUSSION:

Use tax and MVET assessments

The statutory bases for the use tax and MVET are set out in Det. No. 99-105. A key to tax liability is one's status as a resident or nonresident of Washington. Generally, Washington residents must license vehicles they use in the state, pay the MVET, and pay use tax if they have not already paid retail sales tax. For the most part, nonresidents are exempt from the registration requirements and the taxes.

Det. No. 99-105 found that the taxpayers did not acquire a new residence after "leaving" Washington, and, therefore, Washington continued to be their residence. It cited In re Lassin's Estate, 33 Wn.2d 163, 204 P.2d 1071 (1949), and divorce cases, for the proposition that an established domicile continues until superseded by a new domicile. We have considered the taxpayer's argument that the Lassin principle does not apply in the present proceeding, and agree

that it is unclear whether the principle applies in the use tax and MVET context.[3] We believe it is appropriate to reconsider the issue whether the taxpayers continued to be residents of Washington when they used the three vehicles in the state, based upon statutory provisions and published Department determinations.

A resident for MVET purposes is "a person who manifests an intent to live or be located in this state on more than a temporary or transient basis." RCW 46.16.028(1); RCW 82.44.020. The Department generally applies the same definition for use tax purposes. See Det. No. 96-049, supra. Thus, a person who, by his or her actions, manifests a contrary intent, is no longer a resident. The focus is on the individual's actions with respect to Washington. Has the individual maintained such ties with Washington that we may conclude the person intends to live or be located in this state on more than a temporary or transient basis? The existence and nature of ties to other states is relevant to that inquiry.

Det. No. 96-049, supra, sets out a number of factors we consider in determining a person's intent with respect to residing in Washington. We consider factors set out in RCW 46.16.028(1) -- becoming a registered voter in Washington, receiving Washington public assistance benefits, or declaring that he or she is a resident for the purpose of obtaining a state license or tuition at resident rates. We consider business registrations, ownership of residential property, interests in residential property in other states, in-state utility services, locations where tax returns are filed, statements of intent to return to this state on other than a temporary or transient basis, and other factors that bear on intent.

In this case, the taxpayers retained significant ties with Washington after they "left" the state in November 1994. They repeatedly returned to [Washington city] for extended periods. Washington remained a center of their domestic and business lives. The husband continued to receive his principal medical care in Washington. The taxpayers maintained their [Washington city] home, which they allowed their son to occupy, and a permanent mailing address and telephone listing in [Washington city]. They parked their RV at their [Washington city] home or at other residential property they owned in Washington, and used the utility services at the residences. They kept a vehicle garaged at their [Washington city] home. Their continued use of the home, while different than before November 1994, appears to have been neither temporary nor transient. The taxpayers continued to engage in the construction business in the [Washington city] area well into 1996, albeit they apparently were winding down their construction activities. They renewed their Washington business license. Their lack of substantial ties with any other state also is consistent with a conclusion that they were not merely visiting or passing through while staying in Washington in 1995 and 1996. The fact that they usually stayed in their motor home while in the state does not require a finding that they were just visiting.

[3] The need for such a rule appears less pressing in the use tax and MVET context. If a (former) resident has in fact severed all ties with Washington and become a nomad who merely passes through the state occasionally, is there a sound reason for Washington to continue to assess MVET and use tax against the individual? We need not answer that question in this case, and will leave it to be addressed in a more appropriate case.

The fact the taxpayers traveled outside the state most of the year does not make them nonresidents. There is no minimum time limit in RCW 46.16.028(1) under which one is deemed not to be a resident. We find Washington continued to be the taxpayers' principal place of abode and the principal center of their family and business lives at all relevant times.

The taxpayers' situation differs significantly from the BTA case upon which they rely, Wright v. Department of Revenue, supra. In Wright, the taxpayer still had significant ties to Washington, but appeared to be in the process of establishing permanent residence in Idaho. He had abandoned his employment and long-time place of abode in Washington, maintained his motor home and place of abode in Idaho most of the time, and had purchased a homesite in Idaho with the intention of building a home there. Wright, arguably, is an example of a case in which the taxpayer is merely winding up his affairs in Washington while establishing his residence elsewhere. If the facts of the present case evidenced an unequivocal intention to leave the state in the immediate future, and to remain here for only so long as necessary to wind up affairs and vacate the state, we might view the situation differently. That is not what the facts show.

None of the explanations of facts, challenges to facts, or additional facts set out in the petition for reconsideration persuade us that the taxpayers did not continue to be residents of Washington.

We sympathize with the fact the husband's poor health made it impossible for the taxpayers to continue to reside in Washington on a year-round basis. However, we do not agree with the taxpayers' argument that this fact evidences the taxpayers' objective intent to no longer live in the state year other than on a temporary or transient basis (Irrelevant for use tax purposes.). Many Washington residents spend their winters in warmer climates for medical reasons. That their health does not permit them to live in the state year-round does not make them non-residents.

In sum, we find the taxpayers continued to be residents of Washington when they purchased the three vehicles and used them in Washington. Therefore, we affirm the result of Det. No. 99-105 with respect to the use tax and MVET assessments.

For reasons set out in Det. No. 99-105, even if the taxpayers had become nonresidents of Washington, they would have been liable for MVET and use tax.

Evasion penalties

Nothing in the taxpayers' petition for reconsideration or supporting affidavit persuades us that Det. No. 99-105 erred in sustaining the evasion penalties. They have added nothing to their previous statements and arguments in this regard. We are not persuaded that their attempts to settle their tax problems, after they were assessed the taxes and penalties, indicate they did not, knowingly, misrepresent their address and domicile in registering their vehicles in Oregon for the purpose of evading payment of Washington taxes.

DECISION AND DISPOSITION:

We modify Det. No. 99-105 in part, but affirm the Decision and Disposition set out therein. The MVET and use tax assessments are sustained, except as to the amount of the use tax owing on the [1991 motor home], as set out in Det. No. 99-105. The evasion penalties are sustained.

Dated this 25th day of August, 1999.