

Cite as Det. No. 99-354, 19 WTD 904 (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 of)	
)	No. 99-354
)	
...)	Registration No. . . .
)	MVET/Use Tax Assessment

[1] RULE 178, RCW 82.12.020, RCW 82.44.020: USE TAX – MOTOR VEHICLE EXCISE TAX – JOINT OWNERSHIP – PRESUMPTION -- REBUTTAL. Evidence of a vehicle purchase order and a vehicle registration, showing the names of two persons on each document, establishes a prima facie case that the two persons are joint owners of the vehicle. The prima facie case may be rebutted, however by other evidence.

[2] RULE 178, RCW 82.12.020, RCW 82.44.020: USE TAX – MOTOR VEHICLE EXCISE TAX – SINGLE OUT-OF-STATE OWNER. If a Washington resident successfully rebuts a prima facie case of joint ownership of a vehicle registered in another state, that person is not liable for Washington use tax or motor vehicle excise 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.

NATURE OF ACTION:

Husband and wife appeal an assessment of motor vehicle excise tax (MVET) and use tax.¹

FACTS:

Gray, A.L.J. – The Department of Revenue’s (Department) Compliance Division received an anonymous tip that [an automobile] with Oregon license plates was being driven in Washington by Washington owners.² The Compliance Division and the husband and wife exchanged letters and documents, the former attempting to collect use tax and MVET, the latter attempting to

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

² The informant did not identify the driver.

convince the Compliance Division they were not liable for the taxes. The Compliance Division issued tax assessments for use tax and MVET, and the taxpayers appealed those tax assessments to the Appeals Division.

Husband and wife reside in southwest Washington. The wife's mother (mother) is a resident of Portland, Oregon. She is approximately 71 years old. Mother decided to buy [an] automobile. In addition to her daughter's name on the vehicle registration, her daughter's name also appears on the dealer's purchase order. However, the only address on the purchase order is that of mother, whose address also appears on a copy of her Oregon driver's license. Mother paid for the [automobile] with her own funds. The husband and wife are the beneficiaries of the insurance policy on the [automobile].³ The same policy information card identifies mother as the only driver.

On the advice of her attorney or accountant, mother asked her daughter for permission to place her daughter's name on the vehicle registration, so that in the event of mother's death, the [automobile] would pass outside of probate to her daughter. The taxpayers contend the [automobile] was the mother's car and that the use of her daughter's name was for estate planning purposes only.

The [automobile] has been used in Washington; the taxpayers admitted to the Compliance Division that the daughter drove the [automobile] in Washington when the mother needed assistance.⁴ The Compliance Division submitted no evidence to rebut the taxpayer's argument about the purpose of the use of the wife's name on the purchase order and vehicle registration, and their argument that they are not the car's owners.

ISSUES:

Whether the husband and wife have rebutted the Compliance Division's prima facie evidence that the taxpayer is a present co-owner of the [automobile] and is liable for use tax and MVET.

DISCUSSION:

The use tax is a compensating tax for the retail sales tax. Henneford v. Silas Mason Co., 300 U.S. 577, 57 S. Ct. 524, 81 L. Ed. 814 (1936). It is undisputed that Washington sales tax was not paid on the purchase of the [automobile]. WAC 458-20-178(1) and (2) (Rule 178) describe the nature of the use tax:

³ The evidence regarding the insurance consists solely of a photocopy of a policy information card issued by the insurance company. It does not identify the vehicle. However, the taxpayers submitted the photocopy, along with other documents, to the Compliance Division and represent, in the cover letter, that the insurance information pertains to the [automobile]. We will assume, for the purposes of this determination, the taxpayer's representation is correct and the policy information card summarizes some of the pertinent parts of the contract of insurance on the [automobile].

⁴ The taxpayers acknowledge they own a [automobile of the same make as the automobile at issue, but 20 years older], registered in Washington, and suggest that the anonymous informant mistook the cars.

(1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, 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.

Use tax is due on the first use of tangible personal property in Washington by a consumer. RCW 82.12.020. The first issue in this case is whether the taxpayer is liable for use tax because of the use of the wife's name on the purchase order and the vehicle registration and the subsequent use of the [automobile] in Washington.

[1] The evidence of the purchase order and the vehicle registration create a prima facie case that the wife is a co-owner of the [automobile], together with the wife's mother. In other words, the Compliance Division established enough facts to justify imposition of use tax and MVET in the absence of any rebuttal evidence from the husband and wife. A prima facie case may be rebutted, however. "Title and registration certificates are only rebuttable prima facia evidence of automobile ownership." Heinrich v. Titus-Will Sales, 73 Wn. App. 147, 162, 868 P.2d 169 (1994); Crawford v. Welsh, 8 Wn. App. 663, 664, 508 P.2d 1039 (1973). Other evidence of ownership includes possession, Crawford at 664, Wildman v. Taylor, 46 Wn. App. 546, 557, 731 P.2d 541 (1987) and who paid the consideration for it, Wildman at 557, and Gams v. Oberholtzer, 50 Wn.2d 174, 178, 310 P.2d 240 (1957).

In rebuttal to the Department's assertions that the taxpayers are co-owners of the [automobile] and that they operated the vehicle in Washington, the taxpayers testified that the wife and her mother treated the [automobile] as the mother's car, not as a car presently owned by both of them. Mother paid for the [automobile] and retained possession of the [automobile]. Mother had possession, control, and ownership of the [automobile], and it was properly registered in Oregon because mother is a resident of Oregon. It is clear from the testimony that the husband, wife, and mother intended that only mother was the owner (or at least the present owner) of the [automobile].

The insurance policy information card identifies the taxpayers as the beneficiaries on a contract of insurance coverage. It does not identify them as the owners of the [automobile]. In fact, the policy information card identifies only the wife's mother as the driver of the car. The

arrangement between the taxpayers and the wife's mother is that the mother owned, possessed and operated the [automobile] and her daughter's name appears on the purchase order and vehicle registration only as an accommodation to the mother for estate planning purposes.

Although not essential to our decision, we note that the Compliance Division relied on a document suggesting that the State has had reason to investigate the husband and wife previously, on multiple occasions, regarding the licensing of other vehicles. The Compliance Division submitted no other evidence to support that claim. In rebuttal, the husband and wife said that they were once asked about a [truck] that was dual-registered in Washington and Oregon. They provided proof of Washington registration and nothing more transpired.

[2] We conclude, based on the facts and evidence provided by both the taxpayers and the Compliance Division, that the taxpayers did not purchase the vehicle, do not own the vehicle, nor do they use the vehicle in Washington. We conclude the parties did not intend to create a present ownership interest on the part of the taxpayers in the [automobile], and that their ownership interest was intended to come into existence only upon the death of the wife's mother. Therefore, we find the taxpayers are not liable for use tax.

The second issue is whether the taxpayers are liable for MVET. The following excerpt from RCW 82.44.020 makes it clear that the duty to pay MVET follows the duty to license one's vehicle in this state which follows a determination of whether or not the vehicle owner is a resident of Washington.

(4) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

A resident of Washington shall register (under chapters 46.12 and 46.16 RCW) a vehicle to be operated on the highways of the state. RCW 46.16.028(3). The definition of "resident" for licensing purposes only is provided by statutory law. However, the question of the taxpayers' residency is not an issue in this appeal because they openly acknowledge they are Washington residents.

Having concluded that mother is the owner of the [automobile], we must likewise conclude that the husband and wife were not required to register the [automobile] in Washington and, therefore, are not liable for MVET. We conclude the taxpayers do not owe MVET on the [automobile] because, although they are Washington residents, they are not the vehicle owners.

We conclude, therefore, the use tax and MVET tax assessments should be cancelled.

DECISION AND DISPOSITION:

The petition is granted. The use tax and MVET tax assessments are cancelled.

Dated this 30th day of December, 1999.