

Cite as Det. No. 99-105, 19 WTD 546 (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. 99-105 ¹
)	
...)	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. Washington residents who leave the state continue to be Washington residents until they establish a permanent residence elsewhere and, by their actions, manifest an intent to no longer live or be located in Washington on more than a temporary or transient basis.

[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:

The taxpayers protest the assessment of use tax, motor vehicle excise tax, and evasion penalties with respect to their use of two motor homes and an automobile, on the grounds they were nonresidents of Washington.²

FACTS:

¹ The reconsideration determination, Det. No. 99-105R, is published at 19 WTD 560 (2000).

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Prusia, A.L.J. -- The taxpayers, . . . , are husband and wife. On January 8, 1998, the Department of Revenue ("Department") issued the following tax assessments against the taxpayers:

(1) Motor vehicle excise tax (MVET) assessment on a 1991 . . . motor home, for the period January 1995 through September 1995, in the amount of \$. . . , plus an evasion penalty in the amount of \$ The assessment totaled \$

(2) MVET assessment on a 1996 . . . motor home, for the period September 1995 through December 1997, in the amount of \$. . . for the portion of 1995, \$. . . for 1996, and \$. . . for 1997, plus an evasion penalty in the amount of \$. . . and interest in the amount of \$ The assessment totaled \$

(3) MVET assessment on a 1995 . . . automobile, for the period May 1996 through December 1997, in the amount of \$. . . for the portion of 1996 and \$. . . for 1997, plus an evasion penalty in the amount of \$. . . and interest in the amount of \$ The assessment totaled \$

(4) Use tax assessment on the 1991 . . . motor home, the 1996 . . . motor home, and the 1995 [automobile] , in the total amount of \$. . . , plus an evasion penalty in the amount of \$. . . and interest in the amount of \$. . . , for a total of \$ The use tax assessment on the [1991 motor home] is calculated on a value of \$

The taxpayers protest the assessments. Their petition contends they were not Washington residents at the time the motor homes were used in Washington. It states the [automobile] has never been used in Washington. It states they moved from Washington in November 1994, with the intention not to return, and that during 1995 and 1996 they were in Washington only for doctors' appointments and to arrange the sale of property in [Washington city]. It states that the value of the [1991 motor home] was \$40,000, not the \$49,107 figure used by the Department.

The taxpayers waived a hearing on the petition, and relied upon their written submissions.

The assessments resulted from investigations by personnel of the Department and the Washington State Patrol. A Department employee's sighting of a 1996 . . . motor home with Oregon plates, towing a 1989 Chrysler with Washington plates, near . . . , Washington, in December 1995 triggered the investigations. The employee checked the Chrysler's registration, and discovered it was registered to the taxpayers. The Department provides the following facts from the investigations.

As of November 1994, the taxpayers had resided in [Washington city], Washington, for more than twenty years. The husband had operated an electrical contracting business since 1975. In April 1994, the husband had incorporated his business as ". . . ." The taxpayers' home was at . . . , [Washington city] (hereinafter referred to as "the [Washington city] residence"). The taxpayers had Washington driver's licenses. The taxpayers were registered to vote in

Washington, and voted in elections in . . . County in November 1994. The taxpayers owned a [second] 1995 [automobile] and 1989 [automobile], licensed in Washington.

In November 1994, the taxpayers went to [Oregon city], Oregon, where they stayed for several weeks with relatives of the taxpayer-wife. At about that time, the taxpayers' son and daughter-in-law moved into the [Washington city] residence. The taxpayers continue to own the [Washington city] residence.

In December 1994, the taxpayers received a Washington State Disabled Plate on their [second] 1995 [automobile]. As of the date of the above assessments, the plate was still on the vehicle. The plate is valid through December 1999.

In February 1995, the taxpayers purchased a 1991 [motor home] in the [Oregon city], Oregon area. They did not pay sales tax on the purchase, nor have they paid Washington use tax. On the Oregon application for title and registration, they gave their relatives' [Oregon city] address as their residence address, certified that their "place of domicile (home) is in Oregon, or I am otherwise eligible or required to register the vehicle under Oregon law," and certified that the information on the form was true and correct. The taxpayers listed their Washington driver's license numbers on the title application.

In March 1995, the taxpayers renewed the Washington corporate business license of On the renewal application, they listed the [Washington city] residence as their address.

From May to September 1995, the taxpayers were in [Washington city], Washington. During that period, they oversaw the construction of two homes on property they owned in [a Washington city]. A neighbor near the construction site, observed the taxpayer-husband working at the site. The neighbor also observed the taxpayers' [second 1995 automobile] at the site.

On September 5, 1995, the taxpayers traded in their [1991] motor home and purchased a 1996 . . . motor home from a dealership in Missouri. They did not pay sales tax on the purchase, nor have they paid Washington use tax. On the purchase document, they gave the [Washington city] residence as their address, but crossed it out and gave the wife's relatives' [Oregon city], Oregon, address as their address. They filled out a credit application, on which they gave the [Washington city] residence as their address. They presented an insurance card showing the [Washington city] residence as their address. They gave a check for the down payment on which the [Washington city] residence is shown as their address. In November 1995, they applied to the State of Oregon for a plate transfer. They did not state an address on the application form.

In December 1995, the aforementioned sighting of a motor home towing the taxpayers' [1995 automobile] [in Washington] occurred. The motor home was determined to be the taxpayers' 1996 [motor home].

On December 8, 1995, the wife obtained Oregon registration for the 1989 [automobile]. She completed an Oregon title application in which she gave her relatives' [Oregon city] address as her residence address, certified that her "place of domicile (home) is in Oregon, or I am otherwise eligible or required to register the vehicle under Oregon law," and certified that the information on the form was true and correct. On December 11, 1995, the wife acquired an Oregon driver's license. She gave her [Oregon city] relatives' address as her address.

On May 2, 1996, the wife purchased a 1995 [automobile] in Oregon. She did not pay sales tax on the purchase, nor has she paid Washington use tax. She completed an Oregon title application in which she gave her relatives' [Oregon city] address as her residence address, certified that her "place of domicile (home) is in Oregon, or I am otherwise eligible or required to register the vehicle under Oregon law," and certified that the information on the form was true and correct. She wrote two checks, on both of which her address is shown as the [Washington city] residence. She provided an insurance card that showed her address as the [Washington city] residence.

On May 2, 1996, the husband acquired an Oregon driver's license. He gave as his address the address of his wife's relatives in [Oregon city].

On May 8, 1996, the husband applied to . . . County, Washington, for a building permit to build a house on a lot in [Washington city] (hereinafter "[Washington city] site"). On the application, he listed the [Washington city] residence as his current address, and certified that the information was correct.

Between May and September 1996, the taxpayers built a house on the [Washington city] site. The taxpayers owned the property, which is part of the subdivision where they built two houses in 1995. A neighbor saw them working on the house, and observed that they lived in the [1996] motor home at the site, and later in the partially-finished house. A Department employee observed the taxpayers' [1996] motor home at the site in June 1996, and again in August 1996.

On May 16, 1996, a Washington State Trooper saw the taxpayers' 1995 [automobile] with Oregon plates in [Washington city], Washington. A Department Revenue Agent also saw the [1995 automobile] several times at the [Washington city] site during the summer of 1996.

On October 4, 1996, the taxpayers formed a Washington limited liability company. The certificate of formation states that the address of the principal place of business shall be the address of the [Washington city] residence. On October 11, 1996, the taxpayers transferred ownership of the home they were building at the [Washington city] site to the limited liability company.

On October 1, 1996, a detective with the Washington State Patrol interviewed one of the wife's relatives who resides at the [Oregon city], Oregon residence the taxpayers had listed as their address on the Oregon title applications and driver license applications. The relative stated the taxpayers had never resided in his home, but had stayed there for about a month in 1994, about a

month in early 1995, a week or two in the fall of 1995, and a week in the spring of 1996. The relative had never seen the taxpayers' 1995 [automobile].

On November 29, 1996, the same detective interviewed the taxpayers' daughter-in-law at the [Washington city] residence, by phone. The daughter-in-law stated she had lived in the residence for about two years, and the taxpayers had not lived there during that period. She stated the taxpayers had been in Washington only once in the past two years -- in June and July of 1996, that their stay was "just a temporary passing through," and that they stayed in their motorhome "parked on some friends' property."

On December 4, 1996, the taxpayer-husband telephoned the same detective from . . . , Mexico, and gave a taped statement to the detective.

On January 22, 1997, the taxpayer-wife changed the address on her Oregon driver's license to a [new Oregon city], Oregon address. On January 28, 1998, the taxpayers registered to vote in Jackson County, Oregon. They gave the [new Oregon city] address as their address. The address is a ranch. Neither the foreman nor the owners of the ranch know the taxpayers. The taxpayers have never resided at the [new Oregon city] address.

In the taxpayer-husband's December 4, 1996 interview with the Washington State Patrol detective, the taxpayer described himself as a "full-time R.V.'er," and stated that the addresses he has used for mail and registering his vehicles are "home bases" he uses to receive mail and as places to stop once in awhile. He gave the following explanation for registering the first motor home to his wife's relative's address in [Oregon city]:

I was living . . . at [relative's] place and we bought that and we planned on keeping on moving and we, and there wasn't any reason we couldn't get mail at [relative's] place.... We get mail all over the place, and when we . . . bought the motorhome in Oregon there at [Oregon city], there wasn't any reason at all not to go ahead and . . . get a current license while we were there. You want me to run back to Washington and donate all that money to Washington when, when there's no need for it.

. . .

You can't be a full time resident in any state and still be an R.V.'er. There's people all over the country that are doing it. I could license in, I could license in Texas.

Later in the interview, the taxpayer-husband stated the following on the same subject:

I'm gonna say it again, a full time R.V.'er needs to license someplace. One place or another, wherever he, wherever he registers, doesn't mean that he's going to be staying there all the time, that's the reason you buy wheels, to live in and you can go somewhere when you want to. I've been gone from [Washington] in plenty of length of time to choose where I wish.

And still later the following:

I could of done it in Texas, I could of done it in Alaska, I could of done it anyplace I chose. But, um obviously economics has an, has an interest in that. . . . [W]hy would I go to Washington and license in Washington and pay the kind of taxes and penalties that you guys . . . have managed to figure out

The taxpayer-husband stated he knew it was cheaper to license in Oregon than in Washington, and asked the detective: "Why would I pay \$10,000 for a, for a license in Washington when it could cost me 55 in . . . Oregon?"

The taxpayer-husband stated he used the 1991 . . . motor home in Washington for about a week after he purchased it, to load belongings from his house. He stated that he and his wife drove the 1995 [automobile] and the current motorhome to Washington in the summer of 1996, and used them in Washington. They drove the [automobile] to Mexico in July 1996, and flew back to Washington. He stated that the taxpayers' [second] 1995 [automobile] with Washington plates was garaged at the [Washington city] site, and that he had not yet sold the house on the site.

The taxpayer-husband stated the taxpayers own no property in Oregon. They have never paid Oregon income tax. They continue to use their [Washington city] address on their federal income tax returns.

The taxpayer's appeal petition asserts that the following are objective facts showing the taxpayers did not have an intent to live or be located in Washington on more than a temporary or transient basis after November 1994. First, the husband's health rendered him unable to make Washington his permanent home. Second, the taxpayers did not use their home in [Washington city] after November 1994. Their son moved into the home, and they always stayed in their motor home when they went to Washington. Third, they let the general and contractor's licenses expire in 1995. The expiration of the licenses shows both their intent not to continue their ties to Washington, and that they did not take advantage of licensing benefits Washington offers for contractors. Fourth, the taxpayers have not voted in Washington since 1994, and applied for and received voter registration cards in Oregon for purposes of voting in the presidential election in 1996. Fifth, in 1995 the taxpayers were in Washington only for medical visits required by the husband's health condition, and spent only as much time in Washington as was required for the medical purposes. Sixth, the taxpayers purchased property in Mexico, and have acquired FM-3 status there. The husband has been treated by a doctor in Mexico for all his health conditions beginning in 1996.

In an affidavit in support of the petition, the taxpayer-wife states as follows:

1. My husband . . . has been suffering from [a named disease] since the late 1960's. In the early 1990's, however, it grew increasingly worse as his health began to deteriorate. We retired from our construction and electrical business in 1994 after [husband] had [surgery]. Doctors advised him to move to a warmer climate or his

[disease] and other compounding health problems would accelerate his ultimate demise. During the entire period we have owned a motor home, [husband] has not done any driving and we have lived and slept only in our motor home. Also, since we left [Washington city], our daughter has lived in our former residence [the [Washington city] residence]. This proved convenient to us and we continued to use that address to receive mail until we established a more reliable address because we knew our daughter would receive bills and important letters and alert us quickly.

2. [Husband] was able to travel at the beginning of winter 1994-1995. In November, 1994, we left [Washington city] heading south looking for a future permanent residence in a warmer climate to help [husband] withstand his health problems. We never intended to return to [Washington city] and live permanently or even temporarily, but only expected to return to follow up with physicians regarding [husband's] health.

3. We first went to [Oregon city] thinking it would be warm enough and because we had relatives and friends there. In February, upon resolving that [Oregon city] was not the appropriate climate for [husband's] health, we purchased the 1991 Motor Home to live in until we purchased our new home. Since we lived with relatives most of the winter, and since we intended at that time to reside in Oregon, we used our relatives address in [Oregon city] as a contact point for the purchase.

4. During 1995 we continued to travel throughout the southern United States looking for the best climate for [husband]. When we returned to Washington it was solely for [husband's] follow up doctor visits and we never once stayed anywhere except the motor home the entire time.

5. In June 1996 we returned to [Washington city] to initiate the construction of a "spec" home on some property we own in [Washington city]. The only reason we built the spec home was because the property had not sold as a vacant lot, and real estate brokers told us that building a spec home was the only way it would sell. We went to [Washington city] personally because [husband] wanted to negotiate the subcontractors and coordinate the paperwork to begin construction. It was at this time that we received the building permit in [Washington city] and listed [Washington city] as our "residence" because we wanted to turn around correspondence from the county and contractors as soon as possible--if we had listed our home in Mexico correspondence would have taken months. We spent less than 4 weeks in Washington arranging for that construction.

6. We acquired our FM-3 status as residents of Mexico in February 1997 even though we have lived there since January 1996. We did not seek FM-3 status any sooner because acquiring FM-3 status permits only six months to move all personal belongings to Mexico without paying duty.

The taxpayers have provided a copy of the bill of sale and a financial disclosure document for their [199] motor home, which show a cash sale price of \$40,000.

The taxpayers have provided statements from several medical providers, which establish the taxpayer-husband has for several years suffered from a medical syndrome that is aggravated by cold. His physicians in [Washington city] advised him that some of his medical problems would be less severe in a warmer climate.

The taxpayers' address in Mexico is a club where they live in their motor home, on a lot they own or are purchasing. They did not provide evidence of the time periods during which their motor home was parked at that address.

The petition contends the taxpayers are not subject to use tax on any of the vehicles because they were nonresidents of Washington, and therefore exempt from use tax. It asserts that even if they were Washington residents, they are not subject to use tax on the [1995 automobile], because they did not use it in Washington. It asserts they are not liable for MVET on any of the vehicles, because they were nonresidents of the state, and therefore exempt from the state's licensing requirements under RCW 46.85.060(1). It asserts the evasion penalty is not appropriate, because the taxpayers genuinely believed they were not residents of Washington when they titled the motor homes in Oregon, and when they used the motor homes in Washington.

ISSUES:

1. Did the taxpayers use the [1995 automobile] in Washington?
2. Had the taxpayers sufficiently terminated their connection to Washington to be considered nonresidents when they used the vehicles in Washington?
3. Are evasion penalties appropriate?
4. Did the Department assess taxes on the correct value of the [1991 motor home]?

DISCUSSION:

Use Tax and MVET

RCW 82.12.020 imposes a use tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." It complements the retail sales tax by imposing a tax equal to the sales tax on an item of tangible personal property used in this state on which sales tax has not been paid. WAC 458-20-178 (Rule 178). "Use" is defined in RCW 82.12.010(2) as "the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property."

RCW 82.12.0252 provides an exemption with respect to the use of an article on which retail sales tax has been paid. RCW 82.12.0251, under which the taxpayers contend they qualify,

provides a limited exemption from use tax, available only to nonresidents. It provides in relevant part:

The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington; or 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

The use tax exemptions are repeated in the administrative regulation implementing the use tax statutes, Rule 178.

The MVET is imposed “for the privilege of using in the state any motor vehicle” except those operated under reciprocal agreements (and other nonapplicable exceptions). RCW 82.44.020. Liability for the MVET is tied to residency and to licensing requirements. A Washington resident must license in this state any vehicle to be operated on the highways of the state, and cannot avoid paying MVET by licensing it in another state. RCW 46.16.028(3); RCW 82.44.020. In this regard, RCW 82.44.020 states:

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,” and that the Department may assess and collect the unpaid taxes under chapter 82.32 RCW, including penalties and interest.

RCW 46.85.060(1) provides a limited exemption from the state’s licensing requirement, and thus from MVET liability, available only to nonresidents, as follows:

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 continuous twelve month period.

Thus, if the taxpayers used the vehicles in Washington, they owe use tax on the vehicles, unless they were nonresidents and met the additional requirements of either portion of RCW 82.12.0251. If they used the vehicles in Washington, they must pay MVET if they were Washington residents, or if they were nonresidents who did not meet the conditions of RCW 46.85.060(1).

The use tax statutes do not define the term “nonresident,” and the Department has not issued a rule defining the term. The licensing provisions define the term “resident,” as follows:

For the purposes of vehicle license 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 this state; or
 - (b) Receiving benefits under one of the Washington public assistance programs;
- or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

RCW 46.16.028(1). The Department applies the licensing definition of the term “resident” to the nonresident use tax exemption. See Det. No. 96-049, 16 WTD 177 (1996).

The taxpayers admit they used the 1991 motor home and the 1996 . . . motor home in Washington. They assert in their petition that they did not use the 1995 [automobile] in Washington, and therefore it is not subject to use tax. That assertion is controverted both by the taxpayer-husband’s statement to the investigating detective, and the observations reported by the Washington State Patrol and Department personnel. We find that the taxpayers used the 1995 [automobile] in Washington in 1996.

[1] The taxpayers were long-time Washington residents when they left in November 1994. A residence once established is presumed to continue until a new one is acquired. Polk v. Polk, 158 Wash. 242, 248, 290 Pac. 861 (1930). Stated another way, an established domicile continues until superseded by a new domicile. In re Lassin’s Estate, 33 Wn.2d 163, 165, 204 P.2d 1071 (1949); Sasse v. Sasse, 41 Wn.2d 363, 366, 249 P.2d 380 (1952). A change in residence does not consist solely in going to and living in another place but intent to make that place a permanent residence must be present. Kankelborg v. Kandelborg, 199 Wash. 259, 262, 90 P.2d 1018 (1939).

With respect to the time periods that are involved in these assessments, we find the taxpayers did not acquire a new residence after leaving Washington in November 1994. According to the wife’s affidavit, they were looking for a future permanent residence when they left Washington. They first went to stay with relatives in [Oregon city], thinking it would be warm enough, but had already determined it did not have the appropriate climate when they purchased the first motor home in February 1995. In his December 1996 interview, the husband stated that since acquiring the first motor home, the taxpayers have been “R.V.er’s” who have several “home bases” where they receive mail, stay temporarily, and vote, but no permanent residence.

Because the taxpayers did not acquire a new residence, Washington continued to be their residence at all times relevant to this appeal. Therefore, the taxpayers are not exempt from use tax on their use of the two motor homes and the 1995 [automobile] in Washington, and are liable for MVET as assessed.³

³ Had the taxpayers acquired a new residence, we would have been presented with the question whether Washington also continued to be their residence. The Department has long held that a person can have more than one residence

Even if the taxpayers had been nonresidents, they would not have met the requirements for nonresident exemption from the MVET. RCW 46.85.060(1) is available only to nonresidents who are not employed in this state. The taxpayers were self-employed contractors, and engaged in that business while using the vehicles in Washington in 1995 and 1996.

The taxpayers also clearly would not have met the requirements of the second portion of RCW 82.12.0251, even if they had been nonresidents. That portion provides an exemption for nonresidents whose vehicle is licensed under the laws of the state of their residence. The taxpayers licensed the vehicles under the laws of Oregon. They were not residents of Oregon. They would not have met the requirements of the first portion RCW 82.12.0251 either, at least with respect to the motor homes. That portion does not apply to a nonresident who uses the vehicle in conducting nontransitory business activity in the state. The taxpayers stayed in the motor homes so that they could build houses in Washington. They used the [1996] motor home as a residence and office on the construction site.

Evasion penalties

[2] The assessments on the vehicles all include an evasion penalty. Chapter 82.32 RCW is the law governing the general administrative authority of the Department, and defines the Department's authority with respect to the imposition and waiver of penalties. Chapter 82.32 RCW is expressly made applicable to the administration of the use tax by RCW 82.12.080, and to the administration of the MVET by 82.44.020. RCW 82.32.090 requires the Department to add a 50% evasion penalty to a tax assessment if the Department finds that the deficiency resulted from an intent to evade payment of the tax.

Imposition of the evasion penalty requires proof of: (1) a tax liability which the taxpayer knows is due; and (2) an attempt by the taxpayer to escape detection through deceit, fraud, or other intentional wrongdoing. Det. No. 92-133, 12 WTD 171 (1992). The Department has the burden to prove each element of evasion by clear, cogent, and convincing evidence. Det. No. 90-314,

for use and MVET tax purposes. See Det. No. 87-65, 2 WTD 293 (1986); Det. No. 87-145, 3 WTD 99 (1987); Det. No. 87-174, 3 WTD 171 (1987); and Det. No. 93-223, 13 WTD 361 (1994). Rule 178 states that the nonresident exemption from the use tax does "not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere."

The facts in this case amply evidence an intent to live or be located in this state on more than a temporary or transient basis through at least 1996. The taxpayers had a persistent and ongoing presence in Washington. They still owned their former home in [Washington city], and paid the taxes on it. They owned the house on the East [Washington city] site, stayed in it during part of 1996, and during 1996 kept their [second 1995 automobile] garaged there. They engaged in the contracting business in the [Washington city] area, spending several months in the area while overseeing the construction of two homes in 1995, and a third home in 1996, on the property they owned in [Washington city]. They declared they were Washington residents for purposes of obtaining disabled license plates for the [second 1995 automobile] in December 1994, and have retained and used the plates.

In contrast, the taxpayers' ties to other locations were far less substantial, consisting of mail drop-offs, relatives with whom they stayed, and a mailing address they used for voting purposes in Oregon, and a lot at a club in Mexico on which they parked their motor home.

10 WTD 111 (1990). WAC 458-20-230(4) is the administrative rule that implements this standard of proof. It provides in pertinent part:

Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence, which is objective and credible.

Clear, cogent, and convincing evidence has been described as evidence convincing the trier of fact that the issue is “highly probable,” or, stated another way, the evidence must be “positive and unequivocal.” Colonial Imports, Inc. v. Carlton Northwest, Inc., 121 Wn.2d 726, 735, 853 P.2d 913 (1993).

The Board of Tax Appeals (BTA) has also addressed the Department’s burden of proof, stating that the intent to evade must be established by “objective and credible evidence”, as the “mere suspicion of intent to evade” is insufficient to sustain the penalty. Hicks v. Dept. of Revenue, BTA Docket No. 92-69 (1995). The Hicks decision went on to state:

In upholding an assessment of the evasion penalty we must find that the taxpayer acted with intent. For this purpose, the Department must first show that the taxpayer acted with the specific purpose of escaping a tax liability which the taxpayer knew to exist. Although the subjective intent of a person is difficult to ascertain, it may be determined from objective facts such as the actions or statements of the taxpayer. However, intent to evade does not exist where a deficiency was due to an honest mistake, an unsuccessful attempt at legitimate tax avoidance, inefficiency, or ignorance of proper accounting methods. Even gross negligence will not rise to the level of intent to evade. There must be proof of a deliberate attempt on the part of the taxpayer to evade a tax liability.

Once the Department has clearly demonstrated the existence of each of the elements of evasion, a burden of production is imposed on the taxpayer to come forward with evidence of honest mistake, ignorance of the law, negligence, or some other fact which tends to rebut the Department's evidence. Mere subjective and self-serving statements by the taxpayer regarding intent without more are insufficient to meet this burden of production. Any evidence presented by the taxpayer must be weighed against that presented by the Department. Because the burden placed on the taxpayer is one of production only, the burden of proof as to evasion still rests with the Department. The evidence of evasion presented by the Department when viewed alone, or along with the taxpayer's evidence, must weigh heavily in favor of upholding the assessment.

Although lowering one’s taxes through legitimate means does not constitute evasion, a deliberate attempt to escape detection of a tax liability by falsely claiming exempt nonresident status does. In sustaining an evasion penalty, in Det. No. 86-223, 1 WTD 43, 47 (1986), we said:

In an attempt to evade this state's sales and use taxes and to take advantage of Oregon's lower costs of licensing, many Washington residents have registered their motor vehicles with the State of Oregon using spurious Oregon addresses. This Department has routinely assessed the evasion penalty in addition to the use tax in cases where an attempt to evade the tax is apparent.

The taxpayer was a Washington resident. He gave the Oregon authorities an address that was not his when he applied for the Oregon license.

The taxpayers are longtime Washington residents. They had vehicles registered and licensed in their names in Washington. They knew a use tax and MVET would be due if they registered the [1991 motor home] motor home, the [1996] motor home, or the 1995 [automobile] in Washington. They knew the amount of tax Washington would charge if they registered the vehicles in Washington would be substantially greater than Oregon's registration fee.

We find that the taxpayers attempted to escape detection and payment of these taxes through deceit, fraud, or other intentional wrongdoing. In registering the [1991 motor home] motor home and the 1995 [automobile] in Oregon, the taxpayers signed applications for title and registration on which they certified that their "place of domicile (home) is in Oregon, or I am otherwise eligible or required to register the vehicle under Oregon law." They gave their relatives' address as their residence address, and certified that the information was correct. That address was never their residence address, and Oregon was never the taxpayers' home. According to the wife's affidavit, they had decided before they even purchased the first motor home (the [1991 motor home]) that they would not settle in [Oregon city]. According to the taxpayer-husband's statements, the taxpayers had decided to "keep on moving" when they purchased the [1991 motor home], and have been "R.V.'ers" since then. We find the taxpayers knowingly made false statements on the Oregon registration applications in order to register the vehicles in Oregon and avoid paying Washington taxes.

Even if we did not have the taxpayers' admissions, the objective facts would not support a finding that Oregon was ever their home. The only real connection these people had with Oregon is relatives living in [Oregon city] with whom they could temporarily stay. They own no property in Oregon, and the only property they purchased after leaving Washington is in Mexico. During all relevant periods, they had far more substantial continuing ties with Washington. They continued to own a home and other real property in Washington. Their children lived in Washington. They had a business license in Washington, which they renewed in 1995. They continued to engage in business in Washington, building homes in 1995 and 1996. They continued to have at least one vehicle, [the second 1995 automobile], licensed in Washington, in order to continue taking advantage of the state's disabled license plate privileges. They continued to garage the [second 1995 automobile] in Washington. They spent far more time in Washington than in Oregon.

Given the taxpayers' continuing substantial ties to Washington, and the absence of substantial ties to Oregon, their registering to vote in Oregon, and obtaining drivers' licenses in Oregon, make no sense, except as an attempt to create an appearance that Oregon was their home. The

taxpayers have provided no credible explanation for why they would choose to vote in Oregon and use Oregon driver's licenses, other than their admitted desire to avoid paying Washington's motor vehicle and sales taxes.

We find the evidence to be clear, cogent, and convincing that the taxpayers knew a tax liability was due and attempted to escape detection through deceit, fraud, or other intentional wrongdoing. Accordingly, we affirm the assessment of evasion penalties, and deny the taxpayers' petition on this issue.

Valuation of the [1991 Motor Home]

RCW 82.12.020 states the measure of use tax is the "value of the article used." The phrase "shall mean the consideration given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter." RCW 82.12.010(1).

WAC 458-20-178(13) also provides in pertinent part:

In case the article used was . . . sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity, and character.

The use tax assessment on the [1991 motor home] is calculated on a value of \$49,017. The source of that figure is not apparent from the record. The taxpayers have provided copies of sales documents showing they paid only \$40,000. The circumstances of the sale do not appear to invoke WAC 458-20-178(13). The taxpayers purchased the [1991 motor home] from a recreational vehicle dealer, at a location far from their home, and paid a price that is more than eighty percent of the value used by the Department. Under these circumstances, we find that \$40,000 is the appropriate value to use for calculating the use tax. We grant the taxpayers' petition on this issue.

DECISION AND DISPOSITION:

The taxpayers' petition is denied, except as to the amount of use tax owing on the [1991] motor home.

Dated this 28th day of April, 1999.