

Cite as Det. No. 99-250, 19 WTD 370 (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. 99-250
	)	
...	)	Unregistered
	)	Use Tax Assessment
	)	
	)	

[1] RULE 178; RCW 82.12.020: USE TAX -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF A MOTOR HOME LICENSED IN OREGON -- USED IN WASHINGTON. Where a Washington resident and an Oregon resident jointly owned a motor home licensed in both owners' names in Oregon, the Washington resident's use of the motor home in Washington gave rise to the imposition of use tax.

[2] RULE 178; RCW 82.12.020: USE TAX -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF A MOTOR HOME LICENSED IN OREGON -- CLAIM THAT CO-SIGNED FOR FINANCING PURPOSES ONLY -- SUFFICIENCY OF EVIDENCE. A Washington resident's claim that he is listed as a joint owner of a motor home on purchase documents and the Oregon title and registration solely for financing purposes, is not established by the mere fact the monthly payments on the vehicle were made only from the bank account of the Oregon joint owner, when other evidence of ownership contradicts the Washington resident's explanation.

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:

Petition by Washington resident protesting assessment of use tax on a motor home licensed in Oregon in the names of the taxpayer and an Oregon resident, and driven by the taxpayer in

Washington. The taxpayer contends he is not the true owner of the vehicle and did not use it as a consumer, and that the use is exempt under RCW 82.12.0251.<sup>1</sup>

#### FACTS:

Prusia, A.L.J. -- The taxpayer is a Washington State resident. On June 16, 1998, the Compliance Division of the Department of Revenue ("Department") issued a use tax assessment against the taxpayer on an Oregon-licensed 1997 motor home, in the amount of \$. . . . The assessment consisted of \$. . . use tax, a 20% delinquency penalty of \$. . . , and \$. . . interest. The taxpayer contests the assessment on the grounds he has no ownership interest in the motor home, the statutory requirements for imposition of the use tax are not met, and any use in Washington falls under the nonresident exemption from use tax sets forth in RCW 82.12.0251.

The assessment resulted from an investigation by the Compliance Division, after receipt of a report from the Washington State Patrol. On June 1, 1998, the State Patrol informed the Department that it had observed a motor home with Oregon plates in . . . , Washington. A records check showed the vehicle was registered in Oregon to the taxpayer and the taxpayer had a Washington driver's license and address. The Department sent a letter to the taxpayer in June 1998, requesting information on payment of sales or use tax on the motor home. The taxpayer responded that he was only on the Oregon registration as a co-signer, not as a registered owner. He stated that a friend, . . . ("ML"), an Oregon resident, was the owner and had paid the down payment and all monthly payments. He stated he had driven the motor home in Washington only once.

During its investigation of the taxpayer, the Compliance Division discovered that the motor home was purchased in [Washington] on September 28, 1997. ML and the taxpayer are listed as the buyers on the purchase documents, including the bill of sale, the credit application, the security agreement, and the notice to customer to provide insurance. On the credit application, ML states she has resided in . . . , Oregon, for two months, and previously resided in . . . , Washington. The purchase documents also include two receipts, one made out to ML in the amount of \$ . . . , which was the amount of the down payment, and one made out to the taxpayer, in the amount of \$ . . . , which was the amount of the balance due. Sales tax was not paid on the purchase.

In October 1997, ML registered the motor home in Oregon, in the names of herself and the taxpayer, giving an . . . , Oregon address for both. In December 1997, the taxpayer authorized warranty work on the motor home at the [Washington] dealership where the motor home was purchased, and paid for the work by a personal check in March 1998. The personal check was drawn on a Washington bank account that is only in the taxpayer's name. The taxpayer is named as an insured on the motor home's insurance policy.

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

In a July 1998 conference with the Compliance Division, the taxpayer stated he had been the driver of the motor home in Washington. ML stated she was still learning to drive the motor home and was dependent upon the taxpayer to operate it. ML stated she lives with her son in Oregon, when she is not traveling.

Bank account records provided by the taxpayer for the months of January, February, and March 1998 show that payments on the motor home were made by automatic payment on an Oregon checking account that is in the names of both ML and the taxpayer. Monthly motor vehicle insurance premium payments on the motor home also were made by automatic payment on the same account. The only deposits to the account, other than occasional small amounts, were ML's Social Security checks, payments to ML from the sale of property in [Washington,] and insurance settlement payments to ML.

The taxpayer's explanation for the presence of his name on the Oregon bank account is as follows. ML is widowed and retired. Her income is limited. The taxpayer and ML have been friends for many years. When ML's husband died, the taxpayer helped ML arrange her financial affairs. When ML opened a checking account after moving to Oregon, the taxpayer was put on the account only so he could help her settle her business and in case something should happen to her.

The taxpayer's explanation for the presence of his name on the purchase documents and the Oregon registration documents is as follows. ML had long planned on buying a motor home and traveling during her senior years. After ML's husband died, the taxpayer agreed to help her get started with her plans. ML was unable to purchase a motor home without a co-signer, because of her limited income. The taxpayer signed the purchase documents as an accommodation to ML. The taxpayer's name appeared on the title because he co-signed the loan. In an affidavit dated July 9, 1998, the taxpayer states his name was subsequently removed from the title.

Both the taxpayer and ML state the taxpayer has not contributed any funds toward the purchase of the motor home. They state ML made the down payment and all monthly payments. The taxpayer states he paid for repairs on the motor home only once, merely as an accommodation to ML, and ML subsequently reimbursed him for the cost.

During the first year after the purchase of the motor home, ML and the taxpayer did some traveling together in the motor home, mostly in Oregon and in Washington. The taxpayer is the one who drove the motor home in Washington. ML almost always traveled with him. When not in use, the motor home was stored at different times in driveway of the taxpayer's [Washington] home and in ML's brother's driveway in Oregon. After an automobile accident in January 1998, ML spent most of her time at the taxpayer's residence in [Washington], "doctoring there and helping to take care of [the taxpayer]."

The taxpayer owns, only in his name, a truck and another motor home, both of which are registered and licensed in Washington. He states he has no need for a second motor home.

The taxpayer contends there is no basis under the use tax statute, RCW 82.12.020, for assessing use tax against him. He notes that the statute imposes the tax on the use as a consumer of property purchased at retail, or acquired by lease, gift, repossession, or bailment. He argues he did not purchase the motor home, nor acquire it by lease, gift, repossession, or bailment. He argues he was not a "consumer," in that he merely drove the motor home for ML at her request, and ML was almost always in the vehicle. He argues the motor home was wholly owned by a nonresident, and any use in Washington falls under the nonresident exemption from use tax set forth in RCW 82.12.0251.

#### ISSUES:

Does the taxpayer owe use tax on use of the motor home in Washington?

#### DISCUSSION:

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on each retail sale in this state. 82.08.020. The use tax supplements the retail sales tax. It is imposed "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment." RCW 82.12.020. Use of property upon which the user has already paid retail sales tax is exempt. RCW 82.12.0252.

RCW 82.12.010(2) defines "use" as having its "ordinary meaning, and shall mean 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), . . ." "Consumer" is defined in RCW 82.04.190 as "[a]ny person who purchases, acquires, owns, holds, or uses any article of tangible personal property . . . other than for the purpose of [exceptions not relevant]."

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax. It states in pertinent part:

(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, . . . 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.

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, . . . is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state . . .

(4) Persons liable for the tax. The person liable for the tax is the purchaser, . . . the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor . . .

RCW 82.12.0251 generally exempts from the use tax the use of property brought into the state by a nonresident for personal use or enjoyment while temporarily in the state, and the use by a nonresident of a motor vehicle or trailer which is registered or licensed under the laws of the nonresident's state. Rule 178 explains these exemptions as follows:

(7) Exemptions. Persons who purchase, . . . or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or

Rule 178(7)(c)(1) specifically states that the exemptions found in Rule 178(7)(a) and (b) "do not extend to the use of articles by a person residing in this state."

The facts in this case establish that the motor home was purchased without payment of retail sales tax. It is undisputed the motor home was used in Washington. The taxpayer contends, however, that he is not liable for the use tax, asserting he did not purchase the motor home, nor did he acquire it by lease, gift, repossession, or bailment, and asserting he did not use it as a consumer. He contends the use was by ML, and the above statutory exemptions with respect to use by nonresidents apply.

[1] The taxpayer is liable for use tax on use of the motor home in Washington if he used it as a consumer in Washington, and it is property he purchased at retail. We find those conditions are met. The taxpayer was a purchaser of the motor home, and at the time of its first use in Washington was a co-owner. ML was unable to purchase a motor home because her credit was

insufficient. The dealer sold the motor home only after the taxpayer agreed to be a purchaser. If the taxpayer had not purchased the motor home, there would have been no sale. ML's insufficient credit explains why the taxpayer became a co-owner of the motor home, but does not negate the taxpayer's ownership interest. See Det. No. 99-009, 18 WTD 246 (1999).

This is not a case in which the only evidence of ownership is the presence of the taxpayer's name on the sale documents, or the brief presence of his name on the registration. Until contacted by the Compliance Division, both the taxpayer and ML treated the taxpayer as a joint owner of the motor home. The taxpayer was listed as an owner of the vehicle when it was licensed in Oregon. He did not remove his name from the title until after the Compliance Division contacted him in June 1998. The taxpayer took dominion and control over the vehicle. He has been the principal and perhaps sole driver since the purchase. He has stored the motor home in his driveway. He took it to the [Washington] dealer for warranty repairs, and paid for the repairs. The taxpayer is an insured on the motor vehicle insurance policy on the motor home.

[2] The only evidence that supports the taxpayer's claim that he intended to be a mere lender is the fact that the monthly payments are made from ML's funds. However, that evidence is equivocal. Individuals who share common expenses often split responsibility for the expenses, one paying some and the other paying others. We take official notice of the fact that motor homes are expensive to operate and maintain, and payments on the purchase price and insurance expense are not the only significant costs.

We find that the taxpayer used the motor home in Washington as a consumer. He admits he drove it in Washington. Indeed, he has been the principal, and perhaps the sole driver. The taxpayer argues he has "driven" but not "used" the motor home as a consumer, in that he drives it for ML at her request and she usually is in the vehicle. That view is not consistent with the facts. The taxpayer is not ML's chauffeur. He is her friend and companion. They travel together, and clearly both are using the vehicle for their personal use. Even if she were the sole owner of the vehicle, he would be a using the vehicle as a consumer.

We find that the taxpayer, a Washington resident, used in Washington, as a consumer, tangible personal property (the motor home) which has not been subjected to Washington's retail sales tax. Under RCW 82.12.020 and Rule 178, he is liable for use tax on the value of the article used.

The taxpayer argues that any use of the motor home falls under the exemptions from the use tax in RCW 82.12.0251. Rule 178(7)(c)(1) specifically states that those exemptions "do not extend to the use of articles by a person residing in this state." ML's use might qualify for the exemptions were she the sole owner. But, when a Washington resident uses a jointly owned motor vehicle in Washington that was licensed in the state where the other joint owner resides, use tax liability arises on the first use of the motor vehicle in Washington. Det. No. 86-321, 2 WTD 105 (1986); Det. No. 87-145, 3 WTD 99 (1987); Det. No. 99-009, supra.

The use tax assessment was appropriate and is sustained.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 27<sup>th</sup> day of July 1999.