Cite as Det. No. 99-348, 19 WTD 916 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment/Refund of	)	D E T E R M I N A T I O N
	)	No. 99-348
. . .	)	Use Tax Assessment Motor Vehicle Excise Tax

RULE 178(7)(c); RCW 82.12.0251; RCW 46.04.305; ETA 415: USE TAX — EXEMPTION FOR PRIVATE AUTOMOBILES AND HOUSEHOLD GOODS. A motor home is not a private automobile or a household good for purposes of the use tax exemption for persons who move to the state.

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:

Bianchi, A.L.J. --- The taxpayers protest the assessment of motor vehicle excise tax (MVET) and use tax against their motor home commencing April, 1996.[1][2]

ISSUES

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2. Was a motor home a household good or private automobile for purposes of the use tax exemption prior to July 1, 1997?

BACKGROUND

The tax discovery unit of the Department of Revenue's Compliance Division noted that the taxpayers' motor home was first observed in Washington by audit personnel on April 28, 1998. The case was referred to the Washington State Patrol, which undertook the initial investigation to determine who owned the motor home and whether sales tax had been paid on it. After the investigation, the Compliance Division assessed MVET in the amount of $. . . together with

[1] Nonprecedential portions of this determination have been deleted. See RCW 82.32.410.
[2] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

interest of $. . ., through July 31, 1998 for the periods between April, 1996, and June, 1998. Use tax was assessed as of April 1, 1996 in the amount of $. . . in tax and $. . . in interest through July 31, 1998. No penalties were assessed.

From 1980 until 1997, the taxpayers lived in . . ., Nevada, where they owned their own home. In 1991, they moved out of their dwelling, converting it into a rental and moved into a motor home, which was registered in Nevada. In 1992 or 1993, they began spending the summers in Alaska. In 1994 the taxpayers purchased a 1995 . . . motor home from a dealer in . . ., Arizona. The dealer delivered the motor home to an RV dealer's lot near . . ., Nevada. The taxpayers picked it up there and drove it to Alaska on a 30-day trip permit. The taxpayers paid no sales tax on the vehicle in Alaska, Nevada or Arizona.

The taxpayers assert that they decided to choose Alaska as their residence in 1994, and they registered their new motor home there. The original application for title and registration in Alaska, dated August 13, 1994, identified the taxpayers' residence address as . . ., Alaska, and the mailing address at P.O. Box . . ., Nevada. The certificate of title also listed both the Nevada and Alaska addresses. According to the taxpayer the Alaska address on the registration also belonged to the son of a couple with whom they traveled. He allowed them to park their motor home on the property while they were in Alaska. Although they chose Alaska as their residence, the taxpayers admit that they never applied to receive funds from the Alaska Permanent Fund, because they never remained in the state for more than six months at a time, and they understood that they were not qualified to so apply. The taxpayers never had driver's licenses issued in Alaska. Although the taxpayers have continued to renew the motor home's registration in Alaska by mail, they have not returned to Alaska at least since October of 1995. Their only continuing contact with Alaska is the registration of their motor home there. They have no plans to return there.

While visiting their daughter in . . . Washington in the fall of 1995, the taxpayers purchased a house next door. The couple states they originally purchased it as an investment with the intent to retire there when they could no longer tour the United States in their motor home. They intended to live in it only a short time while they were in Washington, but to rent it out for the remainder of the time. They stated that their daughter was able to rent the house for them for a short period, but she did not like doing it and, after assisting with one short tenancy, declined to continue acting as rental agent. The property was used to shelter an abused woman for three or four months, but the remainder of the time it has remained empty. Although they have considered the house their vacation home, the taxpayers have left their furniture in the house and their clothes in its closets while they are gone. They live in the house while they are in Washington. They first returned there in March and then again May of 1996. The motor home was observed and photographed there alongside the house behind a gate large enough for the motor home to drive through.

Both taxpayers obtained drivers licenses in Washington State on September 27, 1996, at which time they turned in their Nevada licenses. One of the taxpayers registered to vote in Washington under the "motor voter law" at the time she obtained her driver's license. They registered their

boat and trailer in Washington in October 28, 1996 and their new 1997 [vehicle] in Washington in May of 1997. They caused their names, telephone numbers and the address [in Washington] to be listed in the local telephone book. They do not belong to any clubs, social groups in Washington, nor do they subscribe to any magazines that come to the [Washington] address. The address on their federal income tax forms is the . . ., Washington address.

At the hearing one of the taxpayers contended that he did not consider the couple to be residents of any state. They obtain nonresident licenses everywhere they go. Over the last three years they have rarely remained in any state longer than one month. The log the taxpayers maintain in the motor home corroborates this contention. The only exception to the pattern detailed by the log is the time they spend in Washington State, which is more substantial than in other states. The log also corroborates that the vehicle has been in Washington approximately 18% of the time for purposes of travel, maintenance and storage and a pattern of repeated return here since 1995. The taxpayers assert that they spent almost an equal amount of time in . . ., California, at their son's house, but the log does not corroborate this contention. Since 1998, the taxpayers have remained for longer periods in Washington state because one of the taxpayers has been receiving medical treatment here.

ANALYSIS

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Use Tax.

2. Use tax is due on the first use of a motor home in this state by residents.

The motor home was purchased in 1994. It was first used in Washington by the taxpayers, as residents, when they returned in March of 1996. No state sales tax was paid elsewhere on the motor home.

Certain motor vehicles are exempt from use tax. RCW 82.12.0251 states:

> 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; . . .

This general exemption is made more specific with respect to motor vehicles in the next portion of the statute:

> . . . [the provisions of this chapter shall not apply] in respect to the use by a nonresident of Washington state 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;

This section applies only if the taxpayer is a "nonresident" of the state. While neither "resident" nor "nonresident" is defined in the use tax statute or rules, as we have previously held in Det. 96-049, *supra*, we apply the definition of residency from RCW 46.016.028(1) to use tax in the same way we did to MVET in the preceding section.[3] Because the taxpayers became residents of this state when they returned here in March of 1996, their motor home vehicle was required to be registered and licensed here. This exemption does not apply to these taxpayers.

2. Prior to the 1997 amendments, a motor home was not exempt as a household good or private automobile.

The remaining portion of RCW 82.12.0251 was relied upon by the taxpayer at the hearing conceding, only for purposes of argument, that he and his wife were residents of Washington. The current statute provides an exemption:

> . . . in respect to the use of household goods, personal effects, and private motor vehicles, not including motor homes, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

(Emphasis added). Prior to July 1, 1997, the effective date of the changes, the statute referred to "private automobiles" and not "private motor vehicles" and did not contain the specific exclusion of "motor homes." Laws of 1997, ch. 301, §1. While clearly the exemption did not apply to this taxpayer after July 1, 1997, the use tax in this instance was assessed prior to the amendment's effective date. Therefore the applicability of this exemption to motor homes prior to July 1, 1997, must be considered.

According to fiscal note accompanying the 1997 amendment, the exclusion of motor homes was a clarification and not a change:

> This bill would broaden the use tax exemption from just private automobiles to "motor vehicles, not including motor homes". Thus, the extension of the exemption would include light trucks, motorcycles, and mopeds; however, from a revenue impact standpoint, this estimate reflects only the use tax loss from motorcycles and mopeds.
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> Because of confusion regarding "private automobiles" and the determination of which types of vehicles were exempt from use tax, the Department of Revenue issued an Excise Tax

[3] Statutes that deal with the same subject matter and relate to each other should be interpreted in like manner. Beach v. Board of Adjustment, 73 Wn.2d 343, 346, 438 P.2d 617 (1968).

> Bulletin in 1970 [ETA 415], which included pickup trucks, carryalls, vans and busses within the definition of private automobiles for use tax purposes. Thus, the revenue loss from this legislation is limited to motorcycles and mopeds only.

Fiscal Note prepared by the Department of Revenue for SB 5353, dated Feb. 17, 1997 (emphasis added). The fiscal note clarified that the bill would only extend the exemption to motorcycles and mopeds because other eligible vehicles had already been made eligible by the 1970 policy announcement. Motor homes were not included in that announcement. Thus motor homes were not included in the exemption even before the changes. The reference to "motor homes" in the 1997 bill simply clarified long standing interpretation of the statute by the Department that the exemption did not include motor homes. If the statute's purpose is remedial or clarifying, then retroactive application is appropriate. Magula v. Benton Franklin Title Co., Inc., 131 Wn.2d 171, 182, 930 P.2d 307 (1997). In Overton v. Economic Assistance Authority, 96 Wn.2d 552, 637 P.2d 652 (1981), the court said:

> But where this court has not previously interpreted the statute to mean something different and where the original enactment was ambiguous such as to generate dispute as to what the legislature intended, the subsequent amendment shall be effective from the date of the original act, even in the absence of a provision for retroactivity.

Id., 558.

The 1970 Excise Tax Advisory 415.12.178 (ETA 415)[4] referred to by the fiscal note quoted above, defined a "private automobile" as:

> any motor propelled four-wheel vehicle regularly and continuously used by an individual for personal and family transportation. It may include pickup trucks, carryalls, vans and busses which are so used. The term does not include vehicles licensed to corporations, partnerships, associations or any other group of individuals acting as a unit. Further, the term does not include motorcycles, airplanes, boats or any type of transportation equipment other than as above defined.

The ETA's interpretation was in keeping with the ordinary definition[5] of "automobile" as "a car, usually four wheeled, propelled by an engine or a motor that is part of it, and meant for travel on streets or roads; a motorcar." Webster's New Universal Unabridged Dictionary, 2d Ed., 1979, p. 127. While the prior use tax statute and rules made no specific reference to "motor homes," the licensing statute for motor vehicles expressly defined the term "motor homes" in relevant part as

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[4] ETAs are not binding on the Department but may be relied upon where they are a persuasive statement of Department policy. In the current instance this ETA demonstrates that Department policy was to exclude motor homes from the exemption long before the statutory change.

[5] Neither the prior use tax statute, Rule 178 nor any of the provisions of Title 46 RCW, which authorizes the regulation of motor vehicles and drivers, defined the terms "household goods" or "private automobile" or "automobile." Therefore, these terms must be given their plain, ordinary meaning. *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm'n.*, 72 Wn. 2d 422, 429, 433 P.2d 201 (1967).

"motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation. . . ." RCW 46.04.305.[6]

Given these definitions, a "motor home" is not a "private automobile." Unlike an automobile, which is "regularly and continuously used . . . for personal and family transportation," a "motor home," within the meaning of RCW 46.04.305, is a motor vehicle "designed . . . for human habitation." Its use for human habitation precludes its continuous use for transportation, making it not a "private automobile" for purposes of former RCW 82.12.0251 and Rule 178(7)(c). See Det. No. 90-284, 10 WTD 85 (1990)(fifth wheeler).

In the . . . contexts in which our courts have been asked to consider whether the term "household goods" includes mobile homes, the answer has been negative. See, e.g., *Cooper's Mobile Home, Inc. v. Simmons*, 94 Wn.2d 321, 325-26, 617 P.2d 415, 416-17 (1979) in which the Court held that a mobile home is not household goods which would require the joint signatures of the marital community to sell.

> No case has been cited nor have we found any which would define "household goods" broadly enough to include a mobile home. The general definition of the phrase is that which is of a permanent nature, *i.e.*, not consumed in use, which is used by a person *for* his house. *Smith v. Findley*, 34 Kan. 316, 8 P. 871 (1885); *Marquam v. Sengfelder*, 24 Ore. 2, 32 P. 676 (1893). Alternatively, household goods are those articles with which a residence is equipped, other than fixtures. *Kramer v. Beebe*, 186 Ind. 349, 115 N.E. 83 (1917). "The term 'household goods' . . . includes everything *about* the house that is usually held and enjoyed *therewith* . . ." (Italics ours.) *Lawwill v. Lawwill*, 21 Ariz. App. 75, 77-78, 515 P.2d 900 (1973).
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> There simply is not authority or room for rational, reasonable interpretation to hold that mobile homes are household goods.

Such analysis applies with equal vigor to motor homes.

Prior to the 1997 amendments, the use tax exemption at RCW 82.12.0251 that would permit residents to avoid use tax on private automobiles or household goods purchased at least ninety days before the person became a resident did not apply to motor homes because a motor home was not considered a household good or a private automobile. After 1997, the use tax statute clarified that motor homes were specifically excluded from the exemption. Therefore the use tax was properly assessed on April 1, 1996.

DECISION

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[6] See footnote 2 supra.

Because we find the taxpayers to have been residents of the State of Washington at the time when they used in this state a motor home upon which no sales tax had previously been paid, and because a motor home is neither a household good nor a private automobile that would entitle a new resident of the state to exemption from use tax if it had been acquired and used more than ninety days before, the use tax assessment is upheld.

Dated this 30th day of December, 1999.