

Cite as Det. No. 99-347, 19 WTD 627 (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	)	
	)	No. 99-347
	)	
...	)	Use Tax Assessment
	)	Motor Vehicle Excise Tax
	)	Assessments Nos. . . .

- [1] RULE 178; RCW 82.12.020: USE TAX – DUAL RESIDENCY. Taxpayer who owns a home, operates a business, and has utility and telephone service in Washington has established substantial connections to Washington and evidence establishes an intent to be located in Washington, on more than a temporary or transitory basis. Taxpayer may be a resident of more than one state for use tax and motor vehicle excise tax (MVET) purposes.
- [2] RULE 178; RCW 82.12.020: USE TAX – DUAL RESIDENT -- USE OF VEHICLE REGISTERED OUTSIDE OF WASHINGTON. Taxpayer is not entitled to non-resident exemption for vehicles used in Washington when Taxpayer is a Washington resident. Vehicles used only to travel from Washington home to border are subject to use tax.
- [3] RCW 82.44.020: MOTOR VEHICLE EXCISE TAX (MVET)-TRIP PERMITS. A dual resident (a resident of Washington and another state) may not operate a vehicle registered in the other state on Washington highways under the authority of a trip permit. A Washington resident must register a vehicle operated on Washington highways.

NATURE OF ACTION:

Petition for correction of assessment of motor vehicle excise tax (MVET), use tax, interest, and penalty.<sup>1</sup>

FACTS:

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

S. Thomas, A.L.J. – The Department of Revenue (Department), Compliance Division (Compliance) issued three motor vehicle excise tax (MVET) assessments and one use tax assessment against the taxpayers, . . . (taxpayer husband), and . . . (taxpayer wife). Compliance issued the assessments after it discovered the taxpayers owned and operated in Washington three vehicles that should have been registered and licensed in Washington, and, one vehicle on which the taxpayers owed use tax. Those vehicles were: (1) a . . . (truck), (2) a homemade horse trailer, and (3) a . . . trailer. Compliance assessed interest and penalties on the unpaid state excise tax liability.

The Washington State Patrol (WSP) first observed and recorded the taxpayers' truck and the . . . trailer in Washington on August 28, 1997. On October 20, 1997 Trooper Haas observed the truck being operated in Spokane City. Three other WSP Troopers, including Trooper Noack observed the truck being operated on Spokane City streets.

On April 10, 1998, Trooper Noack sent a letter to the registered owner of the truck, the taxpayer husband, at [street], in Spokane. The registered owner, the taxpayer husband, responded to the letter with a telephone call to Trooper Noack. Trooper Noack recorded the telephone call. He noted the taxpayer husband claimed to be a Montana resident who used the vehicles in Montana, and thus, exempt from Washington state excise taxes.

In July 1998, the WSP discovered the taxpayers had moved to . . . Road, in Spokane. Trooper Noack went to the . . . Road home and took pictures of several vehicles with Montana license plates parked in the driveway. Three of those vehicles are the vehicles involved in the taxpayers' appeal. Trooper Noack observed and photographed a horse trailer with Montana license plates parked in the pasture next to the house. The three vehicles were registered and licensed to taxpayer husband at the . . . , Montana address.

The WSP presented the information regarding the taxpayers and the Montana licensed vehicles to Compliance in August 1998. Compliance investigated the report. The investigation revealed:

- Taxpayer wife has a Washington Driver's License issued July 2, 1998;
- Taxpayer wife has been registered to vote in Spokane County since July 1994;
- Taxpayer husband has a Montana Driver's License with no record of a Washington Driver's License;
- Taxpayer husband is not registered to vote in Spokane County;
- Taxpayer husband was listed in the Spokane telephone book at the . . . Street address beginning in 1995;
- Taxpayer husband is currently listed in the Spokane telephone book at the . . . [Road] address;
- Neither taxpayer is listed in the . . . , Montana telephone book;

- Taxpayer husband had utility service with [Spokane Utility Company] while at the . . . Street address. The utility company noted the service could have commenced as early as August 1988;
- Taxpayer husband currently has utility service with [Spokane Utility Company] for the . . . [Road] address. Service for the . . . [Road] address commenced September 3, 1997;
- Taxpayer husband is the sole proprietor a business, . . . ,or . . . located . . . in Spokane;
- Taxpayer wife is employed by . . . , located in [Washington]
- Taxpayers purchased a single family residence located at . . . Road, Spokane, . . . on September 8, 1997.

On November 2, 1998, Compliance assessed MVET on three of the Montana licensed vehicles: (1) the . . . (truck), (2) the homemade horse trailer, and (3) the . . . Trailer. Compliance assessed use tax on the . . . Trailer after it discovered the taxpayer husband purchased the [trailer] from . . . in Spokane. At the time of purchase, he used a Montana address, and did not pay Washington retail sales tax. For the purposes of Montana vehicle registration, the taxpayer husband is listed as sole owner of the three vehicles on which tax was assessed. All three vehicles are registered to the taxpayer husband in . . . , Montana.

According to the taxpayer husband, who participated in a teleconference with his attorney on November 9, 1999, the taxpayer wife lives in the Spokane home on a full time basis. It is not disputed that she is a resident of Washington. The taxpayer husband, however, asserts the vehicles in question are his separate property, not community property. The taxpayer husband asserts he is a Montana resident. He claims the vehicles in question are not used in Washington, and thus, are exempt from Washington MVET and use tax. The taxpayer husband offered the following evidence in support of his petition:

- He is a Montana native;
- He rents living quarters from a friend in . . . , Montana. The utility services and telephone he uses in Montana are not in his name;
- He has never registered to vote;
- He has a Montana driver's license, hunting license, bank account and receives mail at his Montana address;
- He owns fifteen (15) acres of land at . . . in Montana;
- His children and his grandparents also live in Montana;
- He admits he owns a business in Spokane, . . . During the winter months (December through March), he spends four or five days a week working at his business . . . . The rest of the year, the business is not as active.

Further, the taxpayer husband admitted he is named on the telephone and utility accounts. He explained the listings are in the name of “. . .” which is his middle name and first name initial. He said the listings were done like this because his wife has had a lawsuit pending for several

years. Apparently, since his wife commenced the lawsuit, she has wished to remain unlisted. For this reason, he claims the telephone and the power are in his name. He asserts he does not live at the . . . Road residence and has the telephone and utility accounts in his name as a courtesy for his wife.

The taxpayer husband admits the vehicles were at the . . . Road home. He explained that he drives the truck from Montana to the . . . Road home. Once at the . . . Road home, he said he does not use the truck. While he admits the vehicles are used in Washington, the taxpayer husband stated the use is limited to the necessary mileage between the Idaho and Washington border. He uses the . . . trailer during the summer months to transport personal watercraft from the . . . Road home to . . . , Montana. He uses the horse trailer only once a year for an elk hunt. He further explained that he stores the horse trailer and the . . . trailer at the . . . Road home because he lives in a rural area in Montana. His Montana home although rural, is very close to the highway.

The taxpayer husband explained that because he is a Montana resident, and the vehicles are registered in Montana, he purchases a trip permit each time he enters Washington with one of the Montana registered vehicles. He claims to have purchased over one hundred (100) trip permits, to support his assertion, he submitted copies of several trip permits with the petition for review. When in Washington, the taxpayer husband said he has several other vehicles that are registered in Washington. He said they have a [3 vehicles]. [One] is registered in both Washington and Montana. The taxpayer husband stated he does not drive the 1991 truck while in Washington, explaining that he has vehicles that are much more fun to drive. . . .

The taxpayer explained that as a Montana resident, he is required to register the vehicles in Montana. He explained that Montana has a property tax on the vehicles and as a Montana resident, if he neglected to register a vehicle for one year or more, should he want to register it in Montana again, he would have to pay the property tax for all the years in between registrations.

The taxpayer husband contends he does not owe the taxes because he was, and is, a full-time Montana resident. He asserts the vehicles are his separate property and as a Montana resident he does not owe Washington MVET and use tax on vehicles used primarily in Montana. Because both he and the vehicles were in Washington on a temporary basis he is a non-resident of Washington, and therefore, exempt from the Washington MVET and use tax assessed on the vehicles.

#### ISSUES:

1. Is the taxpayer a non-resident of Washington for the purposes of MVET?
2. Is the taxpayer a non-resident of Washington for the purposes of Use Tax?

#### DISCUSSION:

## [1] Residency

The taxpayer husband challenges the use tax and MVET assessments based on his assertion of Montana residency. The taxpayer husband asserts the vehicles are his separate property. For the purposes of this determination, we have no facts to dispute this assertion. It is undisputed that the taxpayer wife is a Washington resident. However, based on the taxpayer husband's assertion, that the vehicles are his separate property, we will consider only whether the taxpayer husband is a resident of Washington for the purposes of the MVET and use tax.

On the issue of what constitutes Washington residency the use tax and MVET relate to one another and involve the same subject matter. In interpreting related statutes that address the same subject matter "the sections [are to be read] as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived." Beach v. Board of Adjustments, 73 Wn.2d 343, 438 P.2d 617 (1968). As to the definition of what constitutes Washington residency the use tax and MVET are to be read consistently and, therefore, using the same definition of a "resident" for both statutes is appropriate. Hicks v. Department of Rev., BTA Docket No. 92-69 (1995); see also Det. No. 96-049, 16 WTD 177 (1996).

In this instance, the taxpayer's residency is of central importance to the tax consequences arising from the purchase of the . . . trailer in Washington, and use of the . . . trailer, truck, and horse trailer in Washington. We will therefore first address the residency of the taxpayer before discussing the particular application of the use tax and MVET statutes.

"Resident" for licensing purposes is defined at RCW 46.16.028(1):

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

In Det. No. 96-049, 16 WTD 177 (1996) we stated:

In addition to a state license, voter's registration, and public assistance, we have considered various other factors that may provide evidence of an intent to be in Washington on other than a temporary or transient basis. Such factors include, but are not limited to, business registrations, ownership of residential property, interests in residential property in other states, in-state utility services, locations where tax returns are filed, and the intent to return to this state on other than a temporary or transient basis. See, e.g., Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994).

The relevant statutes do not define the term “nonresident.” By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a “nonresident.” The Department has also long held that a person can have more than one residence 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).

The taxpayer husband owns the . . . Road home purchased jointly with the taxpayer wife in 1997. The taxpayer husband operates a business in Spokane, “. . .” since May 1, 1996. The taxpayer husband currently has utility and telephone service in his name at the . . . Road address. Before the taxpayers purchased the . . . Road home, the taxpayer husband had in-state utility service at the . . . Street home, possibly since 1988. The taxpayer husband is often in Spokane. During the winter, the taxpayer husband spends several days at a time at the . . . Road home. Furthermore, the taxpayer husband and taxpayer wife jointly own vehicles that are registered in Washington. We believe the facts show that the taxpayer husband has manifested an intent to stay in Washington on more than a temporary or transient basis. The question is whether renting living quarters from a friend in Montana, coupled with the intent to make that location the taxpayer husband’s primary residence is sufficient to relinquish his status as a Washington resident.

We find that at the time of the investigation the taxpayer had not relinquished his status as a Washington resident. At the time of the investigation, the taxpayer was self-employed in Washington, owned residential property in Washington, had telephone and utility service in Washington, jointly owned vehicles registered in Washington, and spent a substantial portion of the year in Washington. These facts support the conclusion that the taxpayer had an intent to live or be located in Washington on more than a temporary or transient basis and so was a Washington resident. While the taxpayer established substantial connections to Montana and the taxpayer may consider himself a Montana resident, he did not terminate his Washington residency. We do not contest the validity of the taxpayer’s connections to Montana and there is no evidence that in any manner contradicts the taxpayer’s assertions regarding the nature or quantity of time spent in Montana. We find that at the time of the investigation the taxpayer was a dual resident of Montana and Washington. We must, therefore, find the taxpayer husband is a resident of Washington for the purposes of the MVET and use tax.

### **Use tax**

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on consumers when they buy tangible personal property. RCW 82.04.050; 82.04.190; 82.08.020; 82.08.050. The use tax is a “compensating” tax; it is imposed when the sales tax has not been paid. See Henneford v. Silas Mason Co., 300 U.S. 577, 57 S.Ct. 524, 81 L. Ed. 814 (1937); Northern Pacific Railway Co. v. Henneford, 9 Wn.2d 18, 113 P.2d 545 (1941). The use tax imposes a tax “for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail” on which Washington’s retail sales tax has not been paid, unless an exemption is available. RCW 82.12.020.

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax. Rule 178 explains that the use tax and the retail sales tax “stand as complements to each other” and “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.” Rule 178(3) defines use broadly to “include any act by which the taxpayer takes or assumes dominion or control over the article.”

In this case, the taxpayer husband asserts he is not subject to use tax because of a specific exemption for motor vehicles used by nonresidents in this state. The exemption is found in RCW 82.12.0251, which reads, in part:

The provisions of this chapter shall not apply . . . 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 . . . .

(Emphasis added.) Use tax liability does not depend upon the residence or domicile of the user, but rather upon the privilege of using tangible personal property as a consumer in Washington on which Washington retail sales tax has not been paid. Rule 178(1).

The facts in this case establish the taxpayer husband purchased the . . . trailer without payment of retail sales tax from a Spokane dealership. At the time of purchase, he gave his . . . , Montana address. The taxpayer husband admits he uses the . . . trailer in Washington to transport personal watercraft from the . . . Road home to . . . , Montana.

To be exempt from use tax, three criteria must be met: (1) the user must be a nonresident, (2) the vehicle must be registered or licensed in the state of the user’s residence, and (3) Washington registration of the vehicle must not be required. RCW 82.12.0251; Det. No. 96-49, 16 WTD 177 (1996). Should the taxpayer fail to meet any one of the three requirements, then use tax is due. Det. No. 99-009, 18 WTD 246 (1999).

In the above analysis, we found the taxpayer husband was a resident of Washington. The first use of the vehicle in Washington was when it was purchased in 1995. During 1995, the taxpayer husband was a resident of Washington with telephone and utility service, and a home on . . . [Street]. Therefore, the taxpayer husband was a Washington resident when he first used the . . . trailer in Washington. We agree that the taxpayer may also be a resident of Montana. Nonetheless, the Department has consistently held that a person can have more than one residence for purposes of this specific use tax exemption, and, a person may be a resident of Washington while claiming a domicile or residence elsewhere. See Det. No. 93-223, 13 WTD 361 (1994); Det. No. 87-65, 2 WTD 293 (1987). Thus, the taxpayer husband’s status as a Washington resident who used the . . . trailer in Washington renders him subject to the use tax assessed on the . . . trailer. We therefore affirm the use tax assessment including any applicable interest; less any applicable credit for sales tax paid in Montana.

**[2] MVET**

RCW 82.44.020 imposes a motor vehicle excise tax on the privilege of using a motor vehicle in this state. The duty to pay MVET arises with the duty to license one's vehicle in this state, and the duty to license is based upon ownership and use in Washington by a Washington resident. A resident of Washington is required to register a vehicle to be operated on the highways of the state. See Chapters 46.12 and 46.16 RCW; RCW 46.16.028(3); WAC 308-99-025. Nonresidents generally are exempted from Washington's license registration requirements. RCW 46.16.030; WAC 308-99-040.

For licensing purposes, RCW 46.16.030 allows an exemption to nonresidents providing that vehicles are not required to be licensed in Washington if the nonresident owner has complied with the licensing law of the state of his or her residence subject to the rules adopted by the Department of Licensing. However, the nonresident exemption does not apply to residents of Washington. RCW 82.44.020(7) provides:

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.

Washington requires the registration of vehicles owned by Washington residents in instances when the vehicle is to be operated on the highways of the state. RCW 46.16.028(3). In this case, the vehicles in question were used in Washington. Although the taxpayer husband and the taxpayer wife maintained and operated other vehicles licensed and registered in Washington for use while in Washington, the taxpayer husband used the vehicles involved in this assessment on Washington highways and roads. He drove the truck from the Idaho border to the . . . Road residence. He towed the . . . trailer and the horse trailer from the Idaho border to the . . . Road residence

As set forth above, the MVET statute requires registration of vehicles to be operated on the highways of Washington. The taxpayer husband did not register the vehicles involved in these assessments that were operated on Washington highways. The taxpayer husband asserts he was not required to register the vehicles and he should not be subject to the MVET because he purchased a trip permit each time he brought the vehicles into Washington.

This argument however, must fail. Washington has exemptions from the MVET only for nonresidents and only under specific circumstances. RCW 46.85.060 states in part:

- (1) 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.



- (2) Nonresident persons employed in this state may operate vehicles not to exceed twelve thousand pounds registered gross vehicle weight that are currently licensed in another jurisdiction if no permanent, temporary, or part-time residence is maintained in this state for a period greater than six months in any continuous twelve-month period.

A person is exempt from MVET if the person is a nonresident of Washington who has properly licensed the vehicle in his or her home state, the person is not employed in this state, and the person does not operate the vehicle in this state for more than six months in any continuous twelve-month period. (Emphasis added.) Det. No. 98-142, 18 WTD 98 (1999).

The Department has held that residence for MVET purposes is not the equivalent of “domicile.” A person may have only one domicile, but may have more than one residence for MVET purposes. Id.; See also Det. No. 96-049, supra., and determinations cited therein.

[3] RCW 46.16.160 authorizes the use of a trip permit under certain conditions:<sup>2</sup>

- (1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable . . . .
- (2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days . . . no more than two trip permits may be used for any one vehicle in a one-year period.

We must deny the taxpayer’s petition on this issue based on our finding the taxpayer husband is a Washington resident. The statute is clear that Washington residents must register vehicles used on Washington highways and roads in Washington. Thus, the specific exemption from registration when operating using a trip permit does not apply to the taxpayer husband. Again, we do not dispute the taxpayer is a Montana resident. But, for the purposes of the MVET and use tax, the Department also considers him a Washington resident. Therefore, he is liable for MVET on vehicles used on the Washington roadways. The taxpayer does not dispute the vehicles are used on Washington roadways. The MVET assessments are, therefore, affirmed.

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<sup>2</sup> RCW 46.16.045 and RCW 46.16.047 govern the state’s issuing of temporary trip permits. The Department may grant a temporary trip permit to operate a vehicle for which an application for registration has been made, and the proper fee has been paid. The trip permits purchased by the taxpayer husband, however, were those authorized by RCW 46.16.160, therefore, only that section is discussed in this determination.

**Penalties**

RCW 82.32.090 requires the Department to assess penalties for the late payment of taxes, including MVET and use tax. See RCW 82.32.090(1); RCW 82.44.020(7).

The Department's only authority to waive or cancel penalties and interest is set forth in RCW 82.32.105 and WAC 458-20-228 (Rule 228), the administrative rule implementing RCW 82.32.105. Rule 228 states in its introduction: "[t]axpayers have a responsibility to become informed about applicable tax laws and to correctly and timely report their tax liability." See also Chapter 82.32A RCW, "Taxpayer Rights and Responsibilities." RCW 82.32.105 states:

- (1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.
- (2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:
  - (a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and
  - (b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

Rule 228 provides the only circumstances "beyond a taxpayer's control" under which the Department can cancel late payment penalties. As an administrative agency, the Department is given no discretionary authority to waive or cancel penalties. Det. No. 98-109, supra; Det. No. 87-235, supra. The taxpayer has not presented facts demonstrating that the Department can grant a waiver under Rule 228.

The penalties assessed on delinquent tax payments are affirmed.

**Interest**

Taxpayer requested waiver of the interest assessed on the late payment. RCW 82.32.105(3) provides the only circumstances under which the Department may waive or cancel interest:

The department shall waive or cancel interest imposed under this chapter if:

- (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

- (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

See also Rule 228(7). The taxpayer has not presented evidence supporting waiver or cancellation of interest. The interest imposed on the delinquent tax payments is, therefore, affirmed.

#### DECISION AND DISPOSITION:

The taxpayers' petition is denied in its entirety. The taxpayer must remit payment for the use tax assessed on the . . . trailer. The file is remanded to the Compliance Division for collection action.

As a result of the passage of Initiative 695, the Department will no longer collect MVET that was assessed, but not paid, prior to January 1, 2000. Even though the original assessment in your case has been upheld on appeal, such assessment will not become final until after January 1, 2000. Therefore, the Department will make no effort at this time to collect the MVET assessment.

The validity of the Initiative is currently being litigated. In the event that MVET collection authority is restored as a result of that litigation, the Department may issue supplemental assessments adding extension interest to the MVET, interest, and penalties as authorized by this determination. A final decision in the litigation is not expected until the end of 2000.

Dated this 30<sup>th</sup> day of December, 1999.