

Cite as Det. No. 99-324, 19 WTD 666 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 99-324
)	
...)	Use Tax Assessment
)	Dated March 9, 1998
)	

RULE 178; RCW 82.08.0264: USE TAX – NON-RESIDENT EXEMPTION.
Former Washington resident, who purchased a motor vehicle in Washington after his move to Idaho, was not liable for use tax where evidence showed only limited use in Washington and residency in Idaho was confirmed.

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:

Taxpayer, currently an Idaho resident, appeals use tax assessment on a motor home purchased in Washington, on the basis that he had, prior to the purchase, moved to Idaho.¹

FACTS:

Munger, A.L.J. – . . . , the taxpayer, purchased a 1994 . . . motor home on December 5, 1997 from a dealer in Spokane. He obtained a trip permit and had the motor home licensed in Idaho. He also paid \$. . . in Idaho sales or use tax. The Department of Revenue (the Department) issued a use tax assessment on March 9, 1998, on the basis that the taxpayer did not pay retail sales tax at the time of purchase and that it believed the taxpayer to have been a Washington resident. The taxpayer has paid the assessment under protest, and now petitions for a refund on the basis that he was an Idaho resident when the motorhome was purchased. Both parties have provided objective evidence in support of their respective positions.

The Department's evidence:

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

The Department's investigation showed that the taxpayer owns a condominium in Spokane. He has utilities and phone service there. The taxpayer had a Washington driver's license and was registered to vote in Washington (and did vote in November 1997) at the time of the purchase. The motorhome was seen parked at the Spokane residence for 4 weeks during February 1998.² At the time of the Department's investigation, it was noted that the taxpayer had not paid Idaho state income taxes, however, these taxes were not due until April 15, 1998, and the taxpayer did file and pay such taxes as described below. The taxpayer owns several investment properties in Washington, and has a business (a . . . corporation in Spokane) registered in Washington. There was also [another vehicle] registered to the Washington corporation he owns that was used by the taxpayer and his son.³

The Taxpayer's evidence:

The taxpayer does not dispute the above information, however, he states that he permanently moved to . . . , Idaho in October 1997, after moving out of his Spokane residence. His daughter, who graduated high school in June 1997, stayed at the Spokane residence, except for the summer, until September 1998 when he leased it out to third parties. He had also owned the property in Idaho since 1972 and his family spent their summers and some additional time there. The taxpayer also has utilities in his name at his Idaho residence. This includes cable TV service for the October 12, 1997 through October 10, 1998 period, including various premium channels.⁴ He does not dispute parking the motorhome at the Spokane residence when the roads were icy that winter. He also has rental properties in Washington.

The taxpayer has provided copies of his Idaho state income tax return for 1997. For 1997, he reported his income on the basis that he had lived in the state for 4 months and he paid \$. . in Idaho income taxes.

The taxpayer has also provided a copy of his 1998 [Idaho] County⁵ property tax statement, which shows a \$50,000 homeowner's deduction. That deduction was not given on the 1997 property tax statement, which the taxpayer indicates is evidence of when the Idaho property was used as his principal residence. Under Idaho Code Sec. 63-602G, the first \$50,000 of market value of residential improvements is exempt from the property tax, if it is owner occupied and used as the primary residence as of January 1, of the tax year. The Idaho Administrative Code

² The Department also noted that there is a 1997 [vehicle] registered in his name. We accept the taxpayer's explanation that this was purchased by his daughter, a recent high school graduate, who is now living in Seattle. Additionally, there is no evidence that the taxpayer ever used this vehicle himself.

³ By contrast with the motor home under appeal, the [vehicle], used for non-transient business activities and registered to a Washington corporation would likely be subject to sales or use tax regardless of the corporate owners' Idaho residence. See WAC 458-20-178(7)(c)(i).

⁴ The cable TV was upgraded in October 1997.

⁵ This is the Idaho county where [the taxpayers's Idaho residence]. [The residence] is located. . . is . . . about an hour's drive from Spokane.

Sec. 35.01.03, 135, further explains that the residence must be the owners "... true, fixed and permanent home...".

The taxpayer got his Idaho driver's license and registered to vote there shortly before his March 20, 1998 birthday, when his Washington license expired.

ISSUE:

Was the taxpayer a Washington or Idaho resident on December 5, 1997, when he purchased a motorhome in Washington?

DISCUSSION:

The objective evidence certainly demonstrates that the taxpayer was a Washington resident for much of 1997 and an Idaho resident in 1998. What we must determine is whether his move to Idaho had been made prior to the motor home's purchase [in December 1997]. RCW 46.16.028 requires Washington residents to register their vehicles in Washington. RCW 82.08.0264 provides the exemption utilized by the taxpayer:

RCW 82.08.0264 Exemptions--Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160, or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

The taxpayer has complied with these requirements. The taxpayer has demonstrated that he is a resident of Idaho and is no longer a resident of Washington. We consider it unlikely that the taxpayer would have paid the \$. . . in Idaho use taxes if he had not already moved there. The relatively small difference with the Washington taxes makes an evasion motive more remote.⁶ Additionally the taxpayer subsequently filed and paid \$. . . in Idaho income taxes. The taxpayers explanation that the Idaho income taxes (for income earned in the last four months of 1997), were not paid until April 1998, is certainly plausible given that many (if not most) people put off paying taxes until they are due. He was also granted a significant residents-only tax break on his Idaho home only after the move was completed. While this property tax exemption is not an act that is binding on Washington, it is significant evidence in his favor.

⁶ An evasion penalty was not assessed in this case, however, tax evasion is a common motive for Washington residents to register motor vehicles in other states.

The taxpayer's failure to obtain an Idaho driver's license and voter registration, until his Washington license had expired on his birthday, under the circumstances, is better proof of procrastination, than proof of Washington residency in December 1997. His description of the timing of the move, made after his oldest child graduated high school, is plausible and credible. Given this, combined with the documented evidence of Idaho residency, we find that the taxpayer, was at the time of purchase, an Idaho resident.

The objective evidence of Washington residency, proves that the taxpayer was previously a Washington resident. It is not conclusive that he was still a Washington resident in December 1997.

The taxpayer's remaining contacts with Washington do not appear to be enough to make him a dual resident. The temporary parking of the motor home in Spokane for four weeks in the winter is less than the three months set forth in RCW 82.08.0264.⁷ In any event, under RCW 82.08.0264, the taxpayer was not a Washington resident for tax purposes in December 1997, who would be required to register the motor home in Washington.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

Dated this 7th day of December 1999.

⁷ We also note that [the Taxpayer's Idaho residence], although 60 miles from Spokane, is in a mountainous region with more dangerous winter driving conditions, making it not unreasonable to leave a large vehicle like the motor home elsewhere in the winter.