

Cite as Det. No. 05-0077, 26 WTD 109 (2007)

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. 05-0077
...	)	
	)	
	)	Registration No. . . .
	)	Consumer Use Tax
	)	Docket No. . . .
	)	

- [1] RULE 178; RCW 82.12.020, 82.12.0251: USE TAX — PRIVATE MOTOR VEHICLE — EXEMPTION — NONRESIDENT: The mere fact that one purchases a motor vehicle in another state more than ninety days prior to the vehicle's registration in Washington does not meet the use tax exemption's requirements. Instead, the statute and rule require that a bona fide resident of another state both acquire and use the motor vehicle more than ninety days prior to the time the person enters Washington. Thus, for the exemption to apply, the owner of the vehicle must both be a bona fide resident of another state and acquire and use the vehicle more than ninety days prior to entering Washington to live here as a resident.
- [2] RULE 178; RCA 82.12.020, RCW 29A.08.010: USE TAX — PRIVATE MOTOR VEHICLE — INTENT OF RESIDENCY — VOTING. The ownership of a house in Washington, the use of its address and declaration on an out-of-state exemption certificate provided to an out-of-state automobile dealer that the taxpayers would immediately take the newly purchased vehicle to Washington to register it here, plus the earlier registration in Washington of an older automobile, as well as the wife registering to vote in Washington prior to purchasing the new motor vehicle out-of-state -- all show the taxpayers considered Washington to be their residence.
- [3] ETA 419.32.99: ORAL INSTRUCTIONS — RELIANCE. In the exercise of its statutory authority, the Department has determined that it cannot authorize, nor does the law permit, the abatement of a tax or the cancellation of interest on the basis of a taxpayer's recollection of oral instructions by an agent of the Department.

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.

De Luca, A.L.J. – A husband and wife (the taxpayers) seek a refund of use tax they paid on a motor vehicle that they purchased outside Washington more than ninety days prior to registering it here. The taxpayers do not qualify for the use tax exemption because they were residents of Washington when they purchased the vehicle. Refund denied.<sup>1</sup>

### ISSUE

1. Do the taxpayers qualify for the use tax exemption provided by RCW 82.12.0251 with regard to the motor vehicle that they purchased outside Washington more than ninety days prior to registering it in Washington?
2. Is the Department of Revenue (DOR) estopped from assessing use tax on the value of the motor vehicle when it was first used in this state due to oral conversations the taxpayers had with licensing agents?

### FINDINGS OF FACT

The taxpayers purchased a house in . . . Washington on September 19, 2003. They state they purchased the house with the intent of visiting it until the husband retires from his business within the next few years. That business is in [State A], where the taxpayers also maintain a residence. On March 25, 2004, the wife registered to vote in . . . Washington and she voted in the primary and general elections in Washington in September and November 2004, respectively.

On June 30, 2004, the taxpayers purchased a new . . . truck from [State B]. The purchase was exempt from [State B's] sales tax because the taxpayers filed a Certificate of Exemption for Out-of-State Delivery with the [State B] Department of Revenue by stating that they would take the vehicle immediately to the state of Washington to be licensed or registered for use in this state. The taxpayers wrote on the [State B] exemption certificate the address of their . . . Washington house. The husband signed the exemption certificate. Instead, the taxpayers took the vehicle to [State A] and temporarily registered it there as a sales tax exempt commercial vehicle. On or about September 16, 2004, [State A] issued the title for the vehicle.

The taxpayers drove it to Washington while carrying items in it for their new home . . . . The taxpayers cannot recall exactly when they brought the vehicle into Washington, but it was likely September or early October of 2004. They left the vehicle in Washington when they returned to [State A] in the fall of 2004.

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

The taxpayers state that in January 2004 they first inquired about licensing motor vehicles in Washington . . . . They claim they inquired about the subject because they intended to eventually move permanently to their house in [Washington]. They wrote they stopped at a licensing office . . . and a person . . . working in that office explained (in the taxpayers' words) "when coming into Washington with a vehicle owned in another state, registration and plates could be issued without taxes being assessed as long as the date of purchase was more than 90 days prior." While there, they apparently registered a [vehicle] that they had owned for several years in [State A]. They added that the person at the . . . office "asked no questions regarding ownership of property in Washington or residency and mentioned no subsequent restrictions to the waiver."

The taxpayers state that later in 2004 they contacted the . . . Auditor's Office [in the county where their Washington home was located] to verify the information they claimed to have received at the office [where they first inquired]. The taxpayers assert that the county auditor's office affirmed that information and "asked no questions regarding Washington property ownership or residency and mentioned no subsequent restrictions to the waiver." . . .

On or about October 6, 2004, the taxpayers registered [the vehicle purchased in State B] at a licensing agent's office in . . . Washington. The taxpayers claimed the vehicle was exempt from use tax because they purchased it outside Washington more than ninety days prior to registration. Again, according to the taxpayers, "no questions regarding Washington property ownership or residency were asked and there was no mention of subsequent restrictions to the waiver." Because of some confusion at that licensing office, the taxpayers state they again contacted [the] Auditor's office [in the county where their Washington home was located] to verify that the requirement for the exemption was ninety days from purchase of the vehicle rather than ninety days from issuance of the title. The taxpayers claim [the individual they spoke to] contacted the Department of Licensing in Olympia to verify that requirement. Again, the taxpayers assert "no questions regarding Washington property ownership or residency were asked and there was no mention of subsequent restrictions to the waiver." The taxpayers registered the motor vehicle in Washington without paying use tax on it. The title to the vehicle is in both of their names.

On or about December 1, 2004, DOR's Compliance Division contacted the taxpayers by letter and informed them that as residents of Washington prior to the purchase of their motor vehicle they did not qualify for the use tax exemption they claimed. The Compliance Division based its finding of residency on the fact the taxpayers purchased the house in [Washington] in September 2003 and because the wife registered to vote in Washington prior to purchasing the vehicle. The Compliance Division assessed the taxpayers \$. . . in use tax based on the value of the motor vehicle when the taxpayers first used it in Washington. The taxpayers have paid the tax in full and seek a refund.

### ANALYSIS

The taxpayers assert they genuinely attempted to seek accurate information from the licensing agents in this state and relied on their opinions, which the taxpayers claim contradicts DOR's position. They contend DOR should be estopped from assessing use tax.

RCW 82.12.020 imposes the use tax and provides that the tax shall be collected from every person in this state for the privilege of using within Washington as a consumer any article of tangible personal property. WAC 458-20-178 (Rule 178) implements the use tax statute and explains the use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state by a consumer of any article of tangible personal property purchased at retail where the user or other specified persons have not paid retail sales tax on the purchase. Thus, the use tax applies upon the use of tangible personal property where the sale or acquisition has not been subject to retail sales tax. Use tax liability arises at the time the property purchased is first put to use in this state. *Id.*

[1] There are some use tax exemptions. The one the taxpayers cite is found in RCW 82.12.0251, which provides that the use tax does not apply 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 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 the person entered Washington. *See also* Rule 178(7)(c).

Contrary to the taxpayers' belief, the mere fact that one purchases a motor vehicle in another state more than ninety days prior to the vehicle's registration in Washington does not meet the exemption's requirements. Instead, the statute and rule require that a bona fide resident of another state both acquire and use the motor vehicle more than ninety days prior to the time the person enters Washington. Thus, for the exemption to apply, the owner of the vehicle must both be a bona fide resident of another state and acquire and use the vehicle more than ninety days prior to entering Washington to live here as a resident. Det. No. 87-50, 2 WTD 249 (1986).<sup>2</sup> That appears to be the case with the taxpayers' [vehicle they had owned for several years]. It was exempt from use tax because the taxpayers acquired and used that motor vehicle as bona fide residents of [State A] more than ninety days prior to entering Washington as residents of this state.

[2] We do not doubt that the taxpayers are residents of [State A], where they have a home and a business. But for Washington excise tax purposes, persons can be residents of more than one state. Det. No. 87-174, 3 WTD 171 (1987), Det. No. 87-177, 3 WTD 177 (1987). We find the taxpayers, and particularly the wife, were residents of Washington at the time they purchased the motor vehicle in June 2004. As discussed, in September 2003, more than a year before they registered their vehicle in Washington the taxpayers purchased their house in [Washington]. The taxpayers used the [Washington].property as their address when they filed the Certificate of Exemption for Out of State Delivery with [State B] in June 2004. They certified on the exemption certificate that they were taking the vehicle immediately to the state of Washington to register or license it here. The ownership of the house in Washington, the use of its address and declaration on the [State B] exemption certificate that the taxpayers would immediately take the vehicle to Washington to register it here, plus the earlier registration of the [vehicle they had owned for several years], all show they considered Washington to be their residence.

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<sup>2</sup> [See also, *Steuwe v. Department of Rev.*, 98 Wn. App. 947, 991 P.2d 634 (2000).]

Furthermore, on March 25, 2004, three months prior to purchasing the motor vehicle, the wife registered to vote in [the county where their Washington home was located]. Registering to vote in Washington is an act of residency. RCW 29A.08.010 provides that the minimum information on a voter registration application required by a county auditor “. . . includes the applicant’s name, complete residence address, date of birth, and a signature attesting to the truth of the information provided on the application.” (Underlining ours.) The wife used her [Washington] house’s address as her residence address when she registered to vote. Clearly, the act of registering to vote in Washington showed that she considered herself to be a resident of Washington at that time. Because the taxpayers were bona fide residents of Washington prior to purchasing the motor vehicle, they do not qualify for the use tax exemption in RCW 82.12.0251. Det. No. 87-50, *supra*. We note the wife voted in the Washington primary election on September 14, 2004, which was about three weeks prior to registering the motor vehicle and less than ninety days from the time the taxpayers acquired it.<sup>3</sup>

[3] The taxpayers’ contend the oral information they received from the various licensing agents estops DOR from assessing the use tax. We disagree. Excise Tax Advisory 419.32.99 (ETA 419) addresses the question whether oral instructions or interpretations by employees of DOR are binding upon the department. The answer is generally “no” according to ETA 419 for the following reasons:

In the exercise of this statutory authority, the department has determined that it cannot authorize, nor does the law permit, the abatement of a tax or the cancellation of interest on the basis of a taxpayer's recollection of oral instructions by an agent of the department.

The department of Revenue gives consideration, to the extent of discretion vested in it by law, where it can be shown that failure of a taxpayer to report correctly was due to written instructions from the department or any of its authorized agents. The department cannot give consideration to claimed misinformation resulting from telephone conversations or personal consultations with a department employee.

There are three reasons for this ruling:

- (1) There is no record of the facts which might have been presented to the agent for his consideration.
- (2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.
- (3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

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<sup>3</sup> Even if only one of the joint owners of a motor vehicle is a resident of Washington, use of the vehicle within this state by either of the joint owners is a taxable event. Det. No. 86-321, 2 WTD 105 (1986).

In *King Cy., etc. Assn. v. State etc. Bd.*, 54 Wn. 2d 1, the court ruled that:

Estoppel will never be asserted to enforce a promise which is contrary to the statute and to the policy thereof.

(Emphasis original.) Indeed, as we have shown above, the oral information the taxpayers claimed they received from the licensing agents was contrary to the statute, assuming the taxpayers accurately identified their status as non-residents of Washington. That is, the mere purchase of a motor vehicle ninety days before registering it in Washington does not qualify for the use tax exemption. Rather, the statute provides that the vehicle must be acquired and used by a non-resident of Washington more than ninety days prior to the time the person enters Washington to reside here. RCW 82.12.0251, Rule 178(7)(c), Det. No. 87-50, *supra*.

Moreover, RCW 82.32A.020 explains the rights that taxpayers of the state of Washington have. One of those rights is

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

The taxpayers did not seek or receive official written advice from DOR and therefore do not have the right to have the assessment waived and the tax refunded on the basis of erroneous oral information they claim to have received.

#### DECISION AND DISPOSITION

The taxpayer's petition for refund is denied.

Dated this 4<sup>th</sup> day of April, 2005.