

Cite as 5 WTD 151 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u>
<u>O</u> <u>N</u>	
For Ruling of Tax Liability of)	
)	No. 88-148
)	
. . .)	Unregistered
)	Use Tax/1987 Dodge
)	

[1] **RULE 178 AND RCW 82.12.0251:** USE TAX -- EXEMPTION -
- MOTOR VEHICLE -- ACQUIRE AND USE -- MINIMUM 90
DAYS -- DATE OF PURCHASE CONTRACT -- DATE OF
DELIVERY -- DATE OF POSSESSION. There is an
exemption from use tax if a bona fide resident of
another state acquired and used a motor vehicle in
the other state more than 90 days prior to
establishing residence in this state. The minimum
90 day period commences running from the date of
delivery/possession of the motor vehicle, not the
date of the purchase contract ordering the vehicle.

[2] **RULE 178 AND RCW 82.12.010(2):** USE TAX -- MEANING
OF USE -- DOMINION OR CONTROL -- OTHER ACT
PREPARATORY TO SUBSEQUENT ACTUAL USE. Use occurs
when a person brings or puts into service an article
of tangible personal property or by taking or
assuming dominion or control over the article
including installation, storage, withdrawal from
storage, or any other act preparatory to subsequent
actual use. Placing an order to purchase a motor
vehicle by itself does not constitute an act
preparatory to subsequent actual use because there
has been no taking or assuming dominion or control
over the vehicle.

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.

TAXPAYER REPRESENTED BY: . . .
. . .

DATE OF HEARING: February 18, 1988

NATURE OF ACTION:

Petition for a ruling that the taxpayer is exempt from use tax pursuant to RCW 82.12.0251.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) and his wife, . . . , moved from . . . , Washington to . . . , Oregon in December 1986 because of a transfer by his employer, They rented a house [in] Oregon.

On March 13, 1987, the taxpayer entered into a "Retail Automobile Contract" with . . . (auto dealer), . . . , Oregon. The contract in pertinent part states:

Please enter my order for one new Dodge Caravan,
color yellow to be delivered on or about
_____.

<u>Cash Delivered Price</u>	\$15,150
AM/FM	222
License	<u>29</u>
Total Cash Price	15,401
[down payment]	<u>401</u>
Cash Balance	\$15,000

On May 8, 1987, the 1987 Dodge motor vehicle was delivered to the taxpayer who at that time paid the \$15,000 balance to the dealer. The purchase price for the vehicle (excluding the \$29 license fee) was \$15,372. The taxpayer received Oregon license plate number

On May 14, 1987, the taxpayer obtained [an] Oregon Driver License

On July 15, 1987, or a few days later, the taxpayer moved back to . . . , Washington because he was able to get a transfer of employment. The taxpayer had sought the transfer back to . . .

because his child suffered from an allergy in Oregon and a doctor had recommended the move back.

On or about October 22, 1987, the Department's . . . Office was informed that the taxpayer was operating in Washington the 1987 Dodge with Oregon license plates and contacted the taxpayer to inquire about use tax liability.

On November 5, 1987, the taxpayer registered the motor vehicle in Washington and claimed an exemption from use tax by completing and selecting the statement (as stated on the Application for Certificate of Title):

Complete below for use tax exempt transactions:
Private automobile was purchased and used by me in another state for a minimum of 90 days while I was a bona fide resident thereof and before I entered Washington on 7/15/87.

The issue is whether the "minimum 90 days" occurred; that is, whether the 90 day period commenced on March 13, 1987, the date when the order for the motor vehicle was entered with the dealer (March 13 to July 15, 1987 is a 124 day period), or whether the 90 day period commenced on May 8, 1987, the date when the taxpayer received delivery of the motor vehicle from the auto dealer (May 8 to July 15, 1987 is a 68 day period).

TAXPAYER'S POSITION:

RCW 82.12.0251 grants an exemption from use tax:

. . . in respect to the use of . . . private automobiles by a bona fide resident of this state . . . if . . . 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 entered this state. (Emphasis supplied.)

The taxpayer asserts that the "minimum 90 days" commenced running on March 13, 1987 for the following reasons:

1. The taxpayer "acquired" the vehicle on March 13, 1987 when he ordered the motor vehicle because he had a "possessory right" to the vehicle. If the vehicle were on the auto dealer's lot at the time of the purchase, the taxpayer would have gotten immediate possession.

2. The taxpayer "used" the vehicle because the order on March 13, 1987 for the vehicle was an act "preparatory to subsequent actual use." The taxpayer points to definition of "use" in RCW 82.12.010(2) which in its entirety states:

(2) "Use," "used," "using," or "put to use" shall have their 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), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; (Emphasis supplied.)

DISCUSSION:

[1] To qualify for the use tax exemption, in RCW 82.12.0251, the taxpayer had to both acquire and use the motor vehicle in another state more than 90 days before entering Washington.

The "ordinary meaning" of "use" which RCW 82.12.010(2) speaks of and which American Heritage Dictionary, New College Edition provides is:

1. To bring or put into service.

In this case, the taxpayer did not "bring or put into service" the motor vehicle until it was delivered to him on May 8, 1987.

RCW 82.12.010(2) speaks of "use" as occurring when "the taxpayer takes or assumes dominion or control over the article." In this case, the taxpayer did not "take or assume dominion or control" over the motor vehicle until it was delivered to him on May 8, 1987.

[2] RCW 82.12.010(2) speaks of "use" as occurring when there is "installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption." We believe that "dominion or control over the article" is implicit in the acts of installation, storage or withdrawal, and in the "other act preparatory to subsequent actual use." We do not believe that the other "preparatory

act" can be extended to include within the definition or meaning of "use" the mere signing of a contract to purchase a motor vehicle. Otherwise, the "preparatory act" can be extended to include a host of acts which are preparatory, i.e., borrowing money to purchase a car, visiting an auto dealer's showroom, reading sales literature on cars, etc. While all of these acts may be preparatory to subsequent use, no taking or assumption of dominion or control has occurred. Each part of a statute must be construed in connection with every other part. De Grief v. Seattle, 50 Wn.2d 1 (1956). Each part of a statute must be considered in relation to the remainder to create a harmonious whole. Ginochio v. Hesston Corporation, 49 Wn. App. 843 (1987).

The words "acquired" and "acquisition" used in RCW 82.12.0251 are not statutorily defined. Words in a statute are given their ordinary meaning absent a contrary statutory definition. Resort to dictionaries may be had to ascertain the ordinary meaning of words. Sellen Construction v. Dept. of Revenue, 87 Wn.2d 878 (1976).

American Heritage Dictionary, New College Edition, defines "acquire" to mean:

1. To gain possession of.

and "acquisition" to mean:

1. The act of acquiring.

and "possession" to mean:

1. The act or fact of possessing.

and "possessing" to mean"

1. To have as property; to own.

In this case, the taxpayer did not "gain possession of" the motor vehicle until May 8, 1987 when it was delivered to him. It was at that time that he "acquired" the vehicle.

The taxpayer's claim that he had a "possessory right," which we do not concede, does not mean that he had gained possession of ("acquired") the motor vehicle before May 8, 1987; the delivery date.

DECISION AND DISPOSITION:

The taxpayer for purposes of the exemption statute, RCW 82.12.0251, "acquired and used" the motor vehicle commencing on May 8, 1987 which was 68 days before he entered this state on July 15, 1987.

Therefore, the "minimum 90 days" requirement of RCW 82.12.0251 has not been met for purposes of qualifying for the use tax exemption.

This Determination is being referred to the Department's . . . Office to proceed with appropriate action by issuing a Notice of Use Tax Due against the taxpayer for collection of the use tax.

DATED this 9th day of March 1988.