

Cite as 5 WTD 173 (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 Refund of)	
)	No. 88-154
)	
. . .)	Unregistered
)	Use Tax
)	

- [1] **RULE 178:** RETAIL SALE -- RCW 82.04.050 -- RCW 82.08.020 -- USE TAX -- COMPLEMENTARY TAX -- SUPPLEMENTS SALES TAX: In Washington, all sales are deemed to be retail sales and the sales tax is applicable to each such sale. The use tax supplements the sales tax in situations where the retail sales tax has not been paid.
- [2] **RULE 178:** EXEMPTION -- PRIVATE AUTOMOBILES -- RCW 82.12.0251: The use tax does not apply to a private automobile that is purchased and used by a nonresident more than 90 days before entering Washington.
- [3] **RULE 178:** EXEMPTION -- PRIVATE AUTOMOBILE -- 90-DAY RULE -- RCW 82.02.0251 -- RCW 82.12.035 -- CREDIT: If a person does not satisfy the 90-day rule of RCW 82.12.0251, he/she must pay use tax subject to the credit provisions of RCW 82.12.035.
- [4] **RULE 178:** USE TAX -- CREDITS -- RCW 82.12.035: No credits are available where the purchase occurs in the state of Oregon. Oregon does not impose a retail sales tax or use tax.
- [5] **RULE 178:** TRADE-IN -- USE TAX -- RCW 82.12.010 -- RCW 82.12.020: The trade-in exclusion is applicable to the use tax imposed by RCW 82.12.020.

[6] **RULE 247:** TRADE-IN -- USE TAX -- NON-RESIDENT: A non-resident who purchases property in another state and trades in an item of like kind property is entitled to benefit from the trade-in exclusion if the Washington use tax applies to the item. See Simpson v. State, 26 Wn. App. 687, 615 P.2d 1297 (1980).

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:

Former nonresidents of Washington protested the denial of a partial refund of use tax paid on a motor vehicle that was subsequently licensed and titled in this state after the taxpayers became residents hereof. The taxpayers felt that they were entitled to credit the value of a vehicle traded in to the out-of-state dealer against their Washington use tax liability.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- . . . (hereinafter referred to as "taxpayers") were formerly residents of the state of Oregon. On October 9, 1987, the taxpayers purchased a used 1986 Ford Bronco Wagon from an Oregon automobile dealer known as . . . Ford. The taxpayers paid \$17,795 for the vehicle. As part of the down payment toward the purchase of the 1986 Ford, the taxpayers traded in a 1983 Dodge Ramcharger. The dealer allowed a trade-in value of \$8,370 for the 1983 Dodge.

Shortly thereafter, the taxpayers moved to Washington State. On November 9, 1987, the taxpayers made application for a certificate of title with the Washington State Department of Licensing. As part of the application process, the taxpayers were required to pay state and local use tax on the full value or purchase price, i.e., \$17,795, of the vehicle.

On December 1, 1987, the taxpayers applied, through the Department of Licensing, for a partial refund of the use tax paid. The Department of Licensing forwarded the taxpayers' refund request to the Department of Revenue's Taxpayer Information and Education Section. The taxpayers' refund request was thereafter, on January 12, 1988, forwarded to the Interpretation and Appeals Division for a ruling. This

Determination will respond to the taxpayers' petition for refund.

The sole issue for our consideration is whether, based upon the facts as outlined above, the value of the traded-in vehicle can be deducted from the purchase price of the new vehicle, before the Washington use tax that is due from the transaction is calculated and paid.

DISCUSSION:

[1] Under Washington law, all sales are deemed to be retail sales (RCW 82.04.050), and the retail sales tax applies to all such sales made within the state (RCW 82.08.020). The use tax (chapter 82.12 RCW) supplements the retail sales tax by imposing a tax on like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the property used. WAC 458-20-178.

[2] However, there are some special exemptions from the use tax which are applicable to former non-residents of Washington. For example, under RCW 82.12.0251, the use tax does not apply

. . . in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of this state . . ., 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 [she] entered this state.
(Emphasis and bracketed inclusion supplied.)

Thus, in order for a person to be entitled to the exemption afforded by RCW 82.12.0251, the person must satisfy three conditions: (1) the item(s) in question must be household goods, personal effects, or private automobiles; (2) the item(s) must have been acquired while the person was a bona fide resident of another state; and (3) the item(s) must have been acquired and used in the other state more than 90 days prior to the time the person entered Washington.

[3] Here, the item in question is a Ford Bronco, a "private automobile," so the first condition was satisfied. The automobile was acquired while the taxpayers were bona fide residents of Oregon, thereby satisfying requirement (2).

However, while the vehicle was purchased on October 9, 1987, it was actually brought into Washington and first licensed in this state on November 6, 1987, or less than 30 days later. Thus, the taxpayers did not satisfy requirement (3), i.e., the vehicle was not used more than 90 days prior to the time it entered Washington. So, the taxpayers were not eligible for the exemption from use tax under RCW 82.12.0251.

[4] If the taxpayers did not satisfy the requirements for exemption from use tax under RCW 82.12.0251, we must look to other sections of the use tax law for possible relief. One such section is RCW 82.12.035, which allows a credit for any retail sales tax or use tax paid to another state with respect to the property used in Washington. Unfortunately, this section does not apply either since no sales or use taxes were paid by the taxpayers to the state of Oregon with respect to their purchase of the vehicle in that state. (Oregon does not impose a retail sales tax or a use tax.) Consequently, it appears that the taxpayers owe use tax unless some other exemption or exclusion applies.

[5] The use tax is imposed by RCW 82.12.020. The measure of the tax is the "value of the article" used by the taxpayer. This term is defined by RCW 82.12.010(1), which states in pertinent part as follows:

"Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, (Emphasis supplied.)

Thus, the "value of the article used," which is the measure of the use tax, excludes the value of "trade-in property of like kind."

The trade-in exclusion was enacted into the Washington tax law by Initiative Measure No. 464, approved by the Voters of Washington State on November 6, 1984 and was effective on December 6, 1984. Interestingly enough, the original law granted the trade-in exclusion only with respect to the retail sales tax. See Laws of 1985, Chapter 2, Section 2. Nevertheless, at the time of the enactment, implementation, and addition of the trade-in amendment to the Washington tax laws, the Department of Revenue extended the trade-in exclusion so as to apply to the use tax also. See WAC 458-20-

247. Subsequently, in the 1985 legislative session, the State Legislature corrected this apparent statutory oversight by amending the use tax laws to exclude the value of trade-in property of like kind from the use tax. See Laws of 1985, Chapter 132, Section 1.

[6] As mentioned above, WAC 458-20-247 is the Department's administrative rule on trade-ins. The rule states in pertinent part as follows:

RCW 82.12.010 defines the measure of the use tax as the "value of the article used" Thus, the Initiative 464 amendment of the definition of "selling price" will apply equally for use tax purposes. Therefore, the measure of the use tax for tangible personal property upon which no retail sales tax has been paid (e.g., if it were purchased in another state with no sales tax) is the same "selling price" as defined for retail sales tax purposes. In such cases the value of the property traded-in will be excluded from the use tax measure. (Emphasis supplied.)

In our opinion, the above-quoted rule makes three key points. First, the trade-in exclusion was always intended to apply to both the retail sales tax and the use tax. Second, the exclusion was intended to cover property brought into Washington and taxed herein, even though purchased in another state. Third, there is no apparent distinction set forth in the rule on whether the purchaser, at the time he/she claims the trade-in exclusion for tax purposes, was a resident or a non-resident at the time of the purchase of the item.

In short, the trade-in exclusion for use tax applies when the tax is imposed in Washington. If the owner/purchaser can demonstrate by clear and convincing evidence that a portion of the purchase price was paid with a trade-in article of like kind property, then the exclusion will apply notwithstanding the fact that the article was acquired outside Washington while the purchaser was a non-resident.

Here, all three elements were satisfied. First, the taxpayers were assessed use tax on the value of their private automobile, and since the trade-in exclusion applies to use tax, they are entitled to the benefit of the exclusion. Second, even though the property was purchased in Oregon the exclusion applies, since Rule 247 specifically states that the trade-in exclusion was intended to apply to property

"purchased in another state with no sales tax." Third, we attach no particular relevance to the fact that the taxpayers were non-residents of Washington at the time they purchased the motor vehicle, the significant factor being the requirement that a portion of the original purchase price was paid with a trade-in of like kind property. Thus, the resident or non-resident status of the purchaser at the time of the transaction was irrelevant. Therefore, the taxpayers were eligible to have the value of the traded-in vehicle deducted before determining their Washington use tax liability for the new vehicle.

One additional comment is in order. We are mindful that if a Washington resident purchases an item, such as a motor vehicle, in another state and, as part of the purchase price, trades in an article of like kind property, the Department allows the purchaser to deduct the value of the trade-in property from the measure of the use tax. Again, we see nothing in the law which prevents a non-resident of Washington from being entitled to the same treatment when that particular item becomes subject to the taxing jurisdiction of this state. Indeed, although the taxpayers here were formerly non-residents, they subsequently became residents of Washington, and equal protection demands that they should have the same tax burden as a person who was a Washington resident at the time of the purchase or acquisition of the same type of property. See Simpson v. State, 26 Wn. App. 687, 615 P.2d 1297 (1980). Furthermore, this principle seems equally valid for a person who was a non-resident both before and after the state imposes its use tax.

In summary, the taxpayers were entitled to the trade-in exclusion in calculating their use tax liability. The purchase price or value of the 1986 Ford Bronco was \$17,795. The value of the traded-in 1983 Dodge Ramcharger was \$8,370. The taxpayers' liability was to be calculated on the difference between the purchase price of the new vehicle and the value of the traded-in vehicle (i.e., \$17,795 - \$8,370 = \$9,425). Thus, the taxpayers' use liability was \$735.15. Since the taxpayer paid \$1,388.01 in use tax, it is entitled to a refund of \$652.86.

DECISION AND DISPOSITION:

The taxpayers' petition for refund is granted. The Department of Revenue will refund to the taxpayers the excess use tax paid as explained above.

DATED this 11th day of March 1988.