

Cite as Det. No. 01-098, 21 WTD 25 (2002)

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/Refund of	)	
	)	No. 01-098
...	)	Unregistered
	)	Petition for Refund
	)	Docket No. . . .

- [1] RULE 177: RETAIL SALES TAX – EXEMPTION – SALE OF MOTOR VEHICLE – NON-RESIDENCY – GOOD FAITH RELIANCE. When a seller receives information contrary to a buyer’s assertion that he is a nonresident, the seller may no longer in good faith rely on the buyer’s claim.
  
- [2] RULE 177: RETAIL SALES TAX – EXEMPTION – SALE OF MOTOR VEHICLE – NON-RESIDENCY – BURDEN OF PROOF. Persons seeking the benefit of a tax exemption bear the burden of proving they are qualified for the exemption.
  
- [3] RULE 177: RETAIL SALES TAX – EXEMPTION –SALE OF MOTOR VEHICLE – NON-RESIDENCY – EVIDENCE. By renewing his Washington driver’s license, and thus declaring himself to be a Washington resident on the very day he signed the purchase agreement for his automobile, Taxpayer effectively contradicted the very testimony and documentary evidence he now offers to prove he was a nonresident. The cumulative evidence, at best, suggests Taxpayer may have been a dual resident of both states.
  
- [4] RULE 177: RETAIL SALES TAX – EXEMPTION – SALE OF MOTOR VEHICLE – NONRESIDENCY – DUAL RESIDENT. Nothing in the taxing statutes suggests that the Legislature intended to treat dual residency citizens different than single residency citizens.
  
- [5] RULE 177: RETAIL SALES TAX – EXEMPTION – SALE OF MOTOR VEHICLE - NON-RESIDENCY – EVIDENCE AVAILABLE TO DEALERSHIP. Evidence that a buyer had a current Washington driver’s license

justified seller's conclusion that Taxpayer was not an exempt Washington nonresident.

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:

An individual complains he was a nonresident of Washington and should have been entitled to a retail sales tax refund for sales tax paid when he purchased a vehicle in Washington.<sup>1</sup>

#### FACTS:

Bauer, A.L.J. -- Taxpayer purchased and took delivery of a [vehicle] from a dealership in . . . , Washington on October 25, 1999. He advised the dealership he was a resident of Massachusetts, where he would be taking the automobile to be licensed, and would therefore be liable for neither retail sales tax nor Washington's Motor Vehicle Tax. In support of his Massachusetts residency, he presented his Massachusetts drivers license (expiration date Nov 28, 1999), his U.S. passport with a Massachusetts address (issued March 1991, expiration date March 2001), and his Massachusetts Notary Public identification card (expiration date May 10, 2002). He applied for and was issued trip permits under which he could drive temporarily within this state without the automobile being licensed.

The dealership, in a routine credit bureau check, received information that Taxpayer had a Washington driver's license, a Washington bank account, and was working in Washington. When Taxpayer returned on October 28, 1999, the dealership would not release title to the [vehicle] without payment of retail sales tax. The dealership rewrote the sale contract, adding \$. . . in retail sales tax, before releasing title, and on October 30, 1999 Taxpayer wrote a check for the total amount due. He reportedly left the State of Washington on October 31, 1999.

On October 25, 1999, Taxpayer applied to Massachusetts' Department of Revenue for an exemption of Massachusetts use tax on the [vehicle] because of the retail sales taxes paid in Washington. His application was rejected. Taxpayer registered the [vehicle] in Massachusetts, using his . . . , Massachusetts address, on November 8, 1999. He paid \$. . . in use tax.

According to the Washington Department of Motor Vehicles Licensing Division, Taxpayer was first issued his Washington Driver's license on May 13, 1996. Taxpayer renewed this license on October 28, 1999. This license will be valid until November 28, 2003 unless earlier surrendered or revoked.

#### TAXPAYER ARGUMENTS:

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

In his petition, Taxpayer complains that he was “coerced” into paying the retail sales tax at issue by the car dealership, which advised him that he would not have to pay the tax twice – once to Washington and once to Massachusetts -- because there was a “reciprocal agreement” between the states. When he went to register his car, Massachusetts collected use tax again on its purchase price. Taxpayer notified the Washington dealer of the problem, and was told that he could get a refund from the Department of Revenue (Department). Taxpayer applied for a refund from the Department’s Compliance Division on December 17, 1999. A refund was denied by Compliance on June 6, 2000 because Taxpayer has a Washington driver’s license and bank account.

In his petition, Taxpayer explains:

In 1999 I had three temporary residences as my work brings me to different locations for which I am paid a per diem under federal guidelines for my work away from home. I have paid taxes in these states and also had bank accounts there as out of state checks are not welcomed. The Washington license was a requirement while I was working there.

At this point I have been taxed twice and seek relief.

Taxpayer, with his appeal to this division, submitted a copy of a “change driver” amendment to his automobile insurance effective February 1, 1999. The [vehicle] subject to the policy was garaged in . . . , Massachusetts, and Taxpayer’s mailing address on the policy amendment was in . . . , Massachusetts. He also presented an excise tax form issued reflecting a \$40 Massachusetts vehicle excise tax paid on February 23, 1999, whereon Taxpayer’s mailing address was . . . , Massachusetts.

In the course of the teleconference, Taxpayer argued he was a Massachusetts resident working in Indiana -- and thus a nonresident of Washington -- when he purchased the [vehicle] in [Washington]. Taxpayer stated he was not in Washington to work, but was here merely to visit his daughter. He further explained that in 1999/2000 he was a temporary “right of way agent” contract worker, and that “last year”<sup>2</sup> he worked in Arizona, Indiana, California, Massachusetts, Connecticut, Virginia, and Texas, and paid income tax to both Indiana and Arizona.

Taxpayer further explained that while he was working in Washington in 1998/1999, he was stopped by a Washington law enforcement officer and advised to get a Washington driver’s license. He testified that he lived in Washington with a friend . . . off and on through May 1999, after which time he only comes back to visit.

#### ISSUE:

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<sup>2</sup> We are assuming that, by “last year,” Taxpayer meant the year 2000.

Is a buyer who has a Washington driver's license as well as identification and a driver's license from another state entitled to be treated as a nonresident for retail sales tax purposes?

#### DISCUSSION:

RCW 82.08.0264 provides an exemption from the retail sales tax for nonresidents who purchase motor vehicles in Washington for use outside of Washington. WAC 458-20-177 (Rule 177) requires motor vehicle dealers to document that buyers are bona fide nonresidents by requiring them to procure for their files documentation such as out-of-state driver's licenses and other identification (hunting/fishing licenses, income tax returns, etc), and by requiring nonresident buyers to execute sworn affidavits that they are nonresidents. Such documentation, however, does not relieve the dealer of further inquiry.

The foregoing affidavit will be prima facie evidence that sales of vehicles to nonresidents have qualified for the sales tax exemption provided in RCW 82.08.0264 when there are no contrary facts which would negate the presumption that the seller relied thereon in complete good faith. The burden rests upon the seller to exercise a reasonable degree of prudence in accepting statements relative to the nonresidence of buyers. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required would be indicated, for example, if the seller has knowledge that the buyer is living or is employed in Washington, if for the purpose of financing the purchase of the vehicle the buyer gives a local address, if at the time of sale arrangements are made for future servicing of the vehicle in the seller's shop and a local address is shown for the shop customer, or if the seller has ready access to any other information which discloses that the buyer may not be in fact a resident of the state which he claims. . . .

[Rule 177 (Emphasis added).]

[1] Thus, when a seller receives information contrary to a buyer's assertion that he is a nonresident, the seller may no longer in good faith rely on the buyer's claim.

When the dealer in this case received information that Taxpayer had a Washington driver's license, bank account, and was working in Washington, these constituted "contrary facts." Thus, the dealer was justified in rejecting Taxpayer's nonresidency claim. To have accepted the nonresidency claim, in light of the contrary facts, would have negated the presumption that the dealer was relying on Taxpayer's documentation of nonresidency in good faith. Knowing these facts, continued reliance on Taxpayer's claim of nonresidency would have rendered the dealer potentially liable for any retail sales taxes not collected from Taxpayer. RCW 82.08.050.

The following provisions of the Revised Code of Washington pertain to the issuance of Washington driver's licenses:

RCW 46.20.001: No person may drive a motor vehicle upon a highway in this state without "first obtaining a valid driver's license issued to Washington residents under this chapter."

RCW 46.20.025: “A nonresident driver who is at least . . . sixteen years of age and has immediate possession of a valid driver's license issued to the driver by his or her home state,” is an exception to the above requirement.

RCW 46.04.360: "Nonresident" means any person whose residence is outside this state and who is temporarily sojourning within this state.

RCW 46.04.585: "Temporarily sojourning," as the term is used in chapter 46.04 RCW, shall be construed to include any nonresident who is within this state for a period of not to exceed six months in any one year.

RCW 46.20.021: New Washington residents must obtain a valid Washington driver's license within thirty days from the date they become residents and, to qualify for a license, one must “surrender to the department all valid driver's licenses that any other jurisdiction has issued to him or her” and the department will then notify the previous issuing department that the licensee is now licensed in a new jurisdiction.

RCW 46.20.001(c): A person “may not have more than one valid driver's license at any time.”

RCW 46.21.010 and Mass. Gen. Laws ch. 90 § 30B (2001) (Driver’s License Compact): The licensing authority in the state where an application for a driver’s license is made shall not issue a license to drive to the applicant if the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

RCW 46.20.021: For the purposes of obtaining a valid driver's license, 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 . . . declaring residency for the purpose of obtaining a state license.

Taxpayer’s testimony that he procured his Washington driver’s license only because a Washington law enforcement officer insisted sometime in 1998/99 is not supported by Department of Licensing records that indicate Taxpayer first procured his license in 1996. Taxpayer has admitted to having been an intermittent resident of this state until May 1999. Most persuasive, however, is the fact that even on the very day Taxpayer returned to the dealership and argued he was a nonresident of Washington – October 28, 1999 -- he renewed his Washington driver’s license.

[2, 3, 4] Persons seeking the benefit of a tax exemption bear the burden of proving they are qualified for the exemption. Corporation of Catholic Archbishop v. Johnston, 89 Wn.2d 505, 507, 573 P.2d 793 (1978). By renewing his Washington driver’s license, and thus declaring himself to be a Washington resident on the very day he signed the purchase agreement for his automobile, Taxpayer effectively contradicted the very testimony and documentary evidence he now offers to prove he was a nonresident. The cumulative evidence, at best, suggests Taxpayer may have been a dual resident of both Washington and Massachusetts. Nothing in the taxing

statutes suggests that the Legislature intended to treat dual residency citizens different than single residency citizens. Stuewe v. Washington Department of Rev., 98 Wn. App. 947, 951, 991 P.2d 634 (2000).

[5] Taxpayer has not carried his burden of proof that he was a nonresident of Washington when he purchased his [vehicle] in Washington. The evidence available to the dealership – particularly the existence of a current Washington driver’s license -- justified its conclusion that Taxpayer was not an exempt Washington nonresident, and it correctly asserted the tax. Taxpayer has not, after the fact, persuaded us the tax was erroneously collected and should be refunded.

DECISION AND DISPOSITION:

Taxpayer’s petition for refund is denied.

Dated this 29th day of June 2001.