

Cite as Det. No. 04-0042, 23 WTD 292 (2004)

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. 04-0042
)	
...)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .

RULE 106, RULE 178, RULE 203; RCW 82.12.0251; ETA 086.04.201/203: --
USE TAX-- EXEMPTION NOT TRANSFERABLE -- PRIVATE MOTOR
VEHICLE. The use tax exemption provided a husband and wife in RCW
82.12.0251 for their privately owned motor vehicle is not transferable to their
closely-held corporation when the couple contributed the automobile to their
corporation as a capital asset.

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 closely-held corporation doing business in Washington protests the
assessment of use tax on an automobile previously exempt from use tax that the corporation's
owners contributed as a business asset to the corporation. We sustain the use tax assessment and
deny the refund claim for the amount of use tax the taxpayer paid on the automobile.¹

ISSUE:

Is a closely-held corporation that was doing business in Washington exempt from use tax on an
automobile that the corporation's owners acquired in Oregon for their personal use more than
ninety days prior to becoming Washington residents and who later contributed the automobile to
the corporation as a business asset while residing in this state?

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

FACTS:

The taxpayer is a closely-held corporation with its principal place of business in Oregon, but is registered to do and has done business in Washington. The taxpayer provides accounting services. The taxpayer is owned by a husband and wife who reside in Washington. While residents of Oregon the husband and wife purchased a used automobile in Oregon in 1996 and registered it there for their personal use. The couple did not pay retail sales tax or use tax when they purchased the automobile. The couple became residents of Washington and located their accounting business in Washington approximately three years after purchasing the used automobile. The husband and wife did not pay use tax on the vehicle when they moved to Washington.

Beginning January 1, 1999, the husband and wife, as owners and corporate officers of the taxpayer, contributed the used automobile as a capital asset to their corporation, which was located in Washington at the time. The husband and wife did not transfer legal title of the vehicle to the taxpayer, but, from that date on, the taxpayer declared the automobile was used solely for corporate purposes and it depreciated the vehicle as a business asset on its federal income tax returns.

The Audit Division of the Department of Revenue (DOR) reviewed the taxpayer's books and records for the period January 1, 1999 through December 31, 2001 and assessed the taxpayer \$. . . in use tax and interest. The taxpayer paid the assessment in full, but protested \$. . . in use tax and interest assessed against the value of the automobile and seeks a refund for that amount.

ANALYSIS:

When the husband and wife became residents of Washington, they arrived here with the automobile they had purchased years earlier in Oregon without paying either retail sales tax or use tax on it while they were residents of that state. Pursuant to RCW 82.12.0251 their private motor vehicle was exempt from Washington's use tax because they had purchased and used the vehicle in Oregon more than ninety days prior to moving to Washington. *See also* WAC 458-20-178(7)(c) (Rule 178). After they and their business (the taxpayer) relocated to Washington, the husband and wife contributed the automobile to the taxpayer as a capital asset. The taxpayer claims the automobile is exempt from use tax. We disagree.

The use tax exemption in RCW 82.12.0251 applied only to the husband and wife. The exemption is not transferable to another person. Their corporation, the taxpayer, is a separate person for excise tax purposes. WAC 458-20-203 (Rule 203), RCW 82.04.030, and Excise Tax Advisory 086.04.201/203. Once the husband and wife contributed the automobile to the corporation, it became the corporation's property, as witnessed by the use of the vehicle solely for corporate affairs and the depreciation of the vehicle as a business asset by the taxpayer for federal income tax purposes. Thus, the corporation acquired and used the automobile in Washington. The use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, the

use tax does not apply upon the use of any property if the sale to the present user or to the present user's donor has been subjected to the Washington retail sales tax and such tax has been paid on it. Rule 178(2). Use tax liability arises at the time the property purchased or received as a gift is first put to use in this state. Rule 178(3). Persons liable for the use tax include the donee if the donor has not paid the tax. Rule 178(4). If this were an outright gift to the corporation, use tax would be applicable in this matter because the husband and wife had not paid retail sales tax or use tax on the automobile prior to contributing it to the taxpayer.

In this matter, we find the husband and wife contributed the automobile to the taxpayer as a capital asset. WAC 458-20-106 (Rule 106) declares where there has been a transfer of capital assets to or by a business, the use of such property is not deemed taxable for use tax purposes to the extent the transfer occurred through an adjustment of the beneficial interest in the business, provided the transferor previously paid sales or use tax on the property transferred. As discussed, the husband and wife, as transferors, had not previously paid retail sales tax or use tax on the automobile when they contributed it to the taxpayer as a capital asset. Therefore, the taxpayer was liable for use tax on the value of the automobile when it first used it in Washington. Det. No. 87-105, 3 WTD 1 (1987). Moreover, the fact that the husband and wife enjoyed the use tax exemption did not bar DOR from subsequently imposing use tax on the taxpayer once the property lost its tax exempt status due to the transfer. Det. No. 93-240, 13 WTD 369 (1994).

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

Dated this 26th day of February 2004.