

Cite as Det. No. 04-0198, 24 WTD 303 (2005)

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 of)	
)	No. 04-0198
)	
...)	Registration No. . . .
)	Document No. . . .
)	Docket No. . . .
)	

RULE 178; RCW 82.12.0251: USE TAX -- NONRESIDENT MILITARY -- PERMANENT ASSIGNMENT TO WASHINGTON MILITARY BASE. A military officer's use of his motor home purchased and used in Washington while he was on permanent assignment to a Washington military base was held to be subject to use tax even though he was a legal resident of Oregon.

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.

Okimoto A.L.J. – A legal Oregon resident permanently assigned to active duty at [Washington military base] and currently residing in . . . , Washington protests use and/or deferred retail sales tax, interest, and penalties on his purchase of a motor home in Washington. We sustain the tax assessment.¹

ISSUE

Is a military officer's use of his motor home in Washington subject to use tax where he is a legal resident of Oregon but on a permanent assignment to [Washington military base]?

FINDINGS OF FACT

Taxpayer is a military officer on permanent assignment to [Washington military base].^[2] After returning from a tour of duty in Europe, Taxpayer and his family decided to separate.

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

^[2] Taxpayer claims Oregon as his legal residence. For purposes of this Determination, we will accept his assertion that he is a legal resident of Oregon.]

Taxpayer's wife and kids settled in . . . , Oregon while Taxpayer rented a house in . . . , Washington. On March . . . , 2002, Taxpayer was notified that he had been selected to [be transferred to State A.]

Taxpayer accepted the [transfer] and was told that he would need to relocate to [State A]. . . . [by] August . . . , 2002.

In anticipation of his new reassignment, Taxpayer decided to purchase a motor home. Taxpayer thought that a motor home would enable him to drive himself and his kids to [State A] for a . . . house hunting expedition, thus combining relocation with a family vacation.

Pursuant to his plan, Taxpayer began looking at suitable motor homes in late May of 2002. After some effort, Taxpayer settled on a . . . Motor Home for \$ Taxpayer contacted the vendor, . . . of . . . , Washington and began negotiating the terms of the sale. Taxpayer informed the dealer that he was a legal Oregon resident and a military officer on active duty. Although he was permanently assigned to [Washington military base], Taxpayer explained that he was in the process of being reassigned to [State A]. Taxpayer states that the salesman told him he was exempt from retail sales tax because he was an Oregon resident and on military status. On June . . . , 2002, Taxpayer drove to the . . . , Washington, dealership and signed the final papers. The sales invoice shows Taxpayer's address as . . . , Oregon and a purchase price of \$. . . with no retail sales tax being charged. Four days later, on June . . . , 2002 Taxpayer went down to the [Washington] dealership, picked up the motor home, and drove the vehicle back to his residence. Taxpayer signed an out-of-state delivery affidavit at that time listing his residence as . . . , Oregon. The signing location was listed as . . . , Washington, and the place of delivery line was left blank. Although Taxpayer acknowledged at the hearing that he picked up the motor home in [Washington], he states that he drove the motor home to Oregon within ten days after its purchase as he was instructed by the salesman. The motor home was licensed in Oregon on July . . . , 2002 and has always been permanently based in [Oregon].

On August . . . , 2002 Taxpayer received written notice that his scheduled [transfer to State A] had been deferred two years until 2004 Instead, Taxpayer was asked to accept a command position at [Washington military base], which he did.

Taxpayer acknowledged during the hearing that he had occasionally brought the motor home into Washington for brief excursions,³ but never for an extended period of time and not until after one year had expired from the date of purchase.

On January 8, 2003 Taxpayer refinanced the motor home with The Owner/Lessee was listed as [Taxpayer with an address at Washington military base].

³ During the hearing, Taxpayer acknowledged that he had brought the motor home into Washington for a weekend trip to . . . in 2003.

On November 6, 2003, the Department of Revenue's (DOR) Compliance Division sent Taxpayer a letter inquiring as to whether Taxpayer had paid Washington sales or use taxes on the motor home, and if not, why not.

After conferring with Taxpayer, Compliance issued a use tax assessment on the . . . motor home on February 27, 2003 in the amount of: \$. . . in use taxes, \$. . . in penalties, and \$. . . in interest, for a total owing of \$. . . due for payment on March 29, 2004. A letter accompanying the assessment explained that the assessment was made because . . . :

You bought your motor home-untaxed- from [Washington dealer] on June . . . , 2002.
You provided the dealer proof of your service status and Oregon residency.
When you made this purchase you were permanently assigned to [Washington military base].
You did not provide the dealer copies of orders permanently reassigning you elsewhere. . . .

Compliance further acknowledges that it received documents from [Washington dealer] establishing the following facts:

Taxpayer bought this vehicle for \$ He did not have a trade-in.
He provided the dealer a copy of his Oregon driver's license, military ID, proof of insurance, and State of Legal Residence Certificate to prove that he was in the U.S. Military and a legal resident of Oregon.
Based on those documents, the sales manager authorized the dealership to issue taxpayer a Certificate of Out-of-State Delivery and temporary permit authorizing Taxpayer to remove the vehicle from Washington within 10 days.
The dealer did not charge Taxpayer sales tax. . . .

Taxpayer appealed the assessment, and it remains due.

ANALYSIS

Use Tax

RCW 82.12.020 imposes a use tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." The use tax complements the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property used in this state where retail sales tax has not been paid. This includes automobiles and motor homes. WAC 458- 20-178 (Rule 178). RCW 82.12.010 defines the term "Use" to 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)"

In this case, Taxpayer concedes that he has driven, parked, and used the motor home as a consumer in Washington in 2003 . . . , but contends that his use was exempt because he is either

a nonresident of Washington or a nonresident member of the armed forces stationed in Washington pursuant to military orders.

RCW 82.12.0251 provides a limited exemption from use tax for nonresidents and to some nonresident military personnel assigned to Washington. It states:

The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, personal effects, and private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services 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 or she entered Washington. For purposes of this subsection, private motor vehicles does not include motor homes.

See also Rule 178. RCW 82.12.0251 and Rule 178 contain three separate but limited use tax exemptions for nonresidents and [nonresident members of the armed forces who are stationed in Washington pursuant to military orders]. If a taxpayer satisfies any one of the three exemptions, his use of the property is exempt, and no use tax is due. However, a party claiming a tax exemption has the burden of proving that he qualifies. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Comm'n*, 72 Wn. 2d 422, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989).

The first use tax exemption contained in RCW 82.12.0251(1) and Rule 178(7)(a) is an exemption for tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington. This exemption requires that the person be a nonresident of Washington, that he only be temporarily within the state of Washington, and that the property not be used in conducting a nontransitory business within Washington. Taxpayer fails the first two requirements of this exemption. First, Taxpayer is not a nonresident of Washington. [Regardless of whether] Taxpayer is a legal Oregon resident, he is also a resident of Washington. The terms “resident or nonresident” are not defined

in the use tax statutes, but DOR has generally applied the definition for “resident” found in the motor vehicle excise tax statutes, *i.e.*, “a person who manifests an intent to live or be located in this state on more than a temporary or transient basis.” Det. 99-049, 20 WTD 136 (2001); Det. No. 96-049, 16 WTD 177 (1996). Determining intent is to be done on a case-by-case basis considering a variety of factors including but not limited to the nature and use of property in Washington, state licenses applied for, voter’s registration location, public assistance applications, business registrations, ownership of residential property, interests in residential property in other states, in-state utility services, locations where tax returns are filed, and any acknowledged intent to return to this state on other than a temporary or transient basis. Det. No. 96-049.

In Taxpayer’s case, he rented a permanent residence in [Washington] for several years. During that time he has utilized Washington utility services. He is on permanent, not temporary, assignment to [Washington military base] and receives his mail at that location. . . . Based on the above facts, we conclude that at the time Taxpayer purchased the motor home, he intended to remain in Washington on more than a temporary or transient basis. Consequently, we conclude that Taxpayer was a resident of Washington at the time of purchase and also not temporarily in this state. Therefore, he was not entitled to the nonresident exemption contained in RCW 82.12.0251(1). *See*, Det. No. 87-174, 3 WTD 171 (1987).

The use tax exemption contained in RCW 82.12.0251(2) and Rule 178(7)(b) is also limited to nonresidents of Washington. We have previously concluded that Taxpayer was not a nonresident of Washington and so he is also not entitled to this exemption.

Finally, although the use tax exemption contained in RCW 82.12.0251(3) and Rule 178(7)(c) applies to both residents and nonresident members of the armed forces who are stationed in this state pursuant to military orders, the exemption is limited to only household goods, personal effects, and private motor vehicles (not including motor homes). Since Taxpayer’s acquisition is a motor home, it is not eligible for this exemption. RCW 82.12.0251(3) Furthermore, in order for these items of tangible personal property to be exempt, they must have been first acquired and used by the owner in another state while a bona fide resident of that other state and thereafter brought into Washington. In Taxpayer’s case, the exemption does not apply because the motor home was initially acquired by Taxpayer in Washington and not brought into this state from another state where Taxpayer was a bona fide resident. Accordingly, we conclude Taxpayer can not claim this exemption.

Taxpayer also claims that he is exempt from sales and use taxes under RCW 46.16.480. That provision states:

The original purchaser of a motor vehicle, for which a temporary license as provided in RCW 46.16.460 has been issued, shall not be subject to the sales tax, use tax, or motor vehicle excise tax during the effective period of such license or thereafter unless the motor vehicle, after the effective period of such license, is still in this state or within a period of one year after the effective period of such license is returned to this state.

A prerequisite to this exemption, however, is that the original purchaser must have actually been issued a temporary motor vehicle license as provided in RCW 46.16.460. RCW 46.16.460 states:

Upon the payment of a fee of ten dollars therefore, the department of licensing shall issue a temporary motor vehicle license for a motor vehicle in this state for a period of forty-five days when such motor vehicle has been or is being purchased by a nonresident member of the armed forces of the United States and an application, accompanied with prepayment of required fees, for out of state registration has been made by the purchaser.

In Taxpayer's case, he has not documented that he was actually issued a military nonresident temporary motor vehicle license from the Department of Licensing under RCW 46.16.460. On the contrary, the preponderance of evidence suggests that he was not. We first note that a nonresident military temporary motor vehicle license covers a period of forty-five days, whereas Taxpayer testified that he had only ten days to transport the vehicle to Oregon. This suggests that Taxpayer did not receive a nonresident temporary motor vehicle permit. Instead, Taxpayer most likely received a one transit permit issued by the Department of Licensing, which is used to allow unlicensed vehicles to move from one location to another. In addition, we note that neither Taxpayer nor the automobile dealer completed a "sale to nonresident affidavit" under Rule 177 showing that the vehicle was being registered and licensed in Oregon. Instead, the dealer incorrectly completed a certificate of out-of-state delivery. Therefore, since Taxpayer has not documented that he was actually issued a nonresident military temporary motor vehicle license under RCW 46.16.460, we conclude that Taxpayer is not entitled to the exemption from sales and use tax contained in RCW 46.16.480. . . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of August 2004