

Cite as Det. No. 03-0315, 24 WTD 468 (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. 03-0315
	)	
...	)	Registration No. . . .
	)	Document Nos. . . .
	)	Docket No. . . .

- [1] RULE 178; RCW 82.12.020: USE TAX – DUAL RESIDENCY. Whether a person is a resident of this state for use tax purposes is fact specific. The Department will consider factors bearing on the person’s intent to live or be located in Washington on more than a temporary or transient basis. For use tax purposes, a person may be a resident of more than one state.
- [2] RULE 238; RCW 82.12.020: USE TAX – WATERCRAFT – EXEMPTION – TEMPORARY USE BY NONRESIDENT. Taxpayer was not entitled to the exemption for watercraft temporarily used in Washington by a nonresident because the taxpayer was found to be a resident

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:

Chartoff, A.L.J. [successor to John Gray, A.L.J.] – A trustee of a revocable trust protests the assessment of use tax . . . on . . . (the Yacht) owned by the trust. The trustee contends he is a nonresident temporarily using the Yacht in Washington and is therefore exempt from use tax . . . on the Yacht. We find that the Trustee is a resident of Washington and uphold the assessments.<sup>1</sup>

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

ISSUE:

Is the taxpayer a nonresident of Washington for purposes of the nonresident exemption to the use tax . . . ?

FINDINGS OF FACT:

. . . (Trustee) is the trustee of a revocable trust (Trust) formed March . . . , 1989, in [State A]. Trustee is the sole grantor, trustee and current beneficiary of the Trust. The Trust provides that the grantor retains the right to demand distribution of any or all assets of the Trust. In addition, the grantor may alter, amend, revoke or terminate the Trust, or add or withdraw assets at any time. Trustee set up the Trust for estate planning purposes. Accordingly, most or all of Trustee's personal and real property have been contributed to the Trust.

This appeal concerns use tax . . . assessed on a Yacht purchased by Trustee on behalf of the Trust. On May . . . , 1999, Trustee entered into an agreement with . . . , a Canadian company, to purchase a motor yacht located in Canada for \$. . . Trustee testifies that he took delivery of the Yacht in international waters. However, the sales contract indicates that the seller will deliver and the purchaser will take possession of the Yacht at the U.S. Customs Dock at . . . , Washington. The Yacht arrived at US Customs in [Washington] on May . . . , 1999 with Trustee and other persons on board. No sales tax was paid on the purchase of the Yacht.

Upon clearing U.S. Customs, Trustee docked the Yacht at Trustee's home in [Washington]. At that time, the boat was undocumented and not registered in any state. Trustee piloted the boat to Canada on July . . . , 1999, after spending 53 days in Washington. In November, Trustee returned to Washington on the Yacht for two days after which he piloted the boat to Canada.

Trustee received his documentation for the Yacht from the U.S. Coast guard on July . . . , 1999 listing its home port as . . . , [State B]. Trustee also registered the Yacht with the [State B] Marine Board on September . . . , 1999. The [State B] Marine Board application for registration requires the applicant to make the following certification: "I hereby certify under penalty of law the information on this application is true, correct, and complete to the best of my knowledge and belief and that **[State B] is the State of Principal Use.**" We note that Trustee never brought the Yacht to [State B] and did not anticipate [State B] being the state of principal use.

Trustee moored the Yacht in . . . , Canada from November through May 1999 and 2000. Trustee testifies that he moors the Yacht in [Canada] because they have better storage facilities and the repair and maintenance personnel are better.

In 2000, Trustee brought the Yacht to Washington in June and stayed for five months. Trustee, in his individual capacity, obtained temporary nonresident permits from the Washington Department of Licensing for the Yacht.<sup>2</sup>

At issue in this case is whether the Trustee is a resident of Washington. In this case, Trustee has significant ties to [State A], [State B] and Washington.

Trustee testifies that his primary residence is in [State A]. Trustee has been living in [State A] for many years. He has a home in [State A] with a tax assessed value of \$. . . .<sup>3</sup> Trustee registered to vote in [State A] in June, 1991, and his registration was current as of 2001. Trustee has two cars registered in [State A]. One . . . he acquired in 2001. The second . . . he reports to the [State A] DMV as non-operational.<sup>4</sup> Trustee had a driver's license in [State A] which the [State A] Department of Motor Vehicle records indicate has expired and been surrendered to [State B]. Trustee owns approximately 11 residential rental real properties in [State A]. No testimony has been provided regarding the length of time each year that Trustee resides in [State A].

Trustee also has significant ties to [State B]. He has an address there.<sup>5</sup> As mentioned above, he has a current [State B] driver's license. Trustee has [seven] vehicles currently registered to his [State B] address: . . . . As mentioned above, Trustee also registered the Yacht at issue to his [State B] address. No testimony has been provided regarding the length of time each year that Trustee resides in [State B].

Finally, Trustee also has significant ties to . . . , Washington. Trustee has spent up to 5 months each year at his home in Washington since 1989. He testified that he intends to make Washington his permanent home at some point in the future, but does not consider Washington to be his permanent home currently. Trustee owns two homes in [Washington]. Trustee purchased the first home in 1988 and used this home until 1997 when he put it up for sale. This home was valued for tax purposes at \$. . . , and has not yet been sold as of early 2003.<sup>6</sup> Trustee, in his individual capacity, purchased the land for the second home in 1993 and built the home in 1997. This home is where Trustee has stayed since 1997 when present in Washington. This home was assessed for tax purposes at \$ . . . and has Puget Sound frontage and a dock.<sup>7</sup> The Yacht at issue has been moored at this personal dock when in Washington.

Trustee has [eleven] vehicles and vessels registered to his [Washington] address: . . . . One of the . . . vehicles currently registered in [State B] was reported by local law enforcement personnel to be frequently present in [Washington]. Trustee has a post office box and phone service in

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<sup>2</sup> RCW 88.02.030(11) states generally that nonresident individuals may obtain permits to bring a boat to Washington for up to six months.

<sup>3</sup> Year 2000 property tax statement.

<sup>4</sup> [State A] charges lower fees to register vehicles that are nonoperational or not operated during the year.

<sup>5</sup> No evidence has been provided as to what type of residence.

<sup>6</sup> Year 2000 property taxes.

<sup>7</sup> Year 2000 property tax statement.

[Washington]. Upon entering the US, he provided to customs his [Washington] address and phone number. This address is also used for property tax statements.

Trustee has filed Nonresident [State A] income tax returns from 1997 through 2002. On the returns, Trustee declares that he is a nonresident of [State A] for the entire year and declares Washington as his full time state of residence.<sup>8</sup> Trustee used Washington as his address on his federal tax returns for 1996 through 1999. In 1995 and 2000 through 2002, Trustee used [State A] as his address for federal tax returns. Trustee does not file tax returns in [State B].

On March 15, 2000, the Compliance Division of the Department of Revenue (Compliance) sent a use tax questionnaire inquiring about the Yacht to Trustee at his PO Box in [Washington]. Compliance received a response from Trustee on March 23, 2000. The response denied liability for the use tax for the following reason:

I am not a Washington Resident. This boat was purchased from a Canadian with an off-shore delivery and cleared through U.S. Customs in [Washington]. It is Federally documented to my [State B] address, registered with the [State B] Marine Board and moored in Canada for the purpose of cruising Canadian waters to Alaska.

Compliance investigated further and concluded that Trustee is a Washington resident due to the vast amount of personal and real property owned by the Trustee in Washington. On February 15, 2001, Compliance issued to . . . , Trustee, a use tax assessment in the amount of \$. . . . Trustee filed this petition protesting the use tax . . . claiming he is not a resident of Washington and uses the Yacht in Washington less than six months per year. In support of his petition, Trustee provided evidence that he is domiciled in [State A].

#### ANALYSIS:

Washington imposes a use tax on the privilege of using tangible personal property within this state. RCW 82.12.020. The use tax is a complement of the sales tax, in that its purpose is to assure that consumers cannot avoid the retail sales tax by purchasing goods outside the state of Washington and then bringing the goods into this state.

The use tax is imposed on any person who uses an item of tangible personal property in this state as a consumer. RCW 82.12.020(1). A “person” for purposes of the use tax is defined to include an individual and a trust. RCW 82.12.010(5); RCW 82.04.030. “Use” is defined as the “first act within this state by which a taxpayer takes or assumes dominion and control over the article of tangible personal property.” RCW 82.12.010(2). A person is exempt from the use tax if he or she paid sales or use tax upon purchasing the item. RCW 82.12.0252.

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<sup>8</sup> [Trustee’s] tax preparer testified on August 6, 2001 that [Trustee] is a [State A] resident and the he used nonresident returns in error. Because this “error” continued for six years, and because the tax preparer used the nonresident return again in 2002 after he testified to us that he used the nonresident return in error, we do not find the tax preparer’s testimony to be credible.

[1] WAC 458-20-238 (Rule 238) describes an exemption to the use tax for nonresidents and provides, in pertinent part: “Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents for use while temporarily within the state.”

In this case, Trustee, on behalf of the Trust, purchased the Yacht at retail from a Canadian citizen with delivery at US Customs in [Washington] on May . . . , 1999. No sales tax was paid on the purchase. The Trust, through the actions of Trustee, first used the Yacht in Washington by taking possession of it at the US Customs dock in Washington and motoring it to his private dock at his residence. Therefore, use tax may be imposed on the Trust for its use of the Yacht in Washington, unless an exemption applies.

Trustee does not dispute that he used the Yacht in Washington. He argues however, that he qualifies for the exemption to the use tax for nonresidents temporarily in the state. Trustee contends that he is exempt from use tax because he is domiciled in [State A], and therefore, a nonresident of Washington.

We have long held that a person may have more than one residence for tax purposes. WAC 458-20-178(7)(c)(i); Det. No. 96-049, 16 WTD 177 (1996). We have held that “residence,” as used in the Revenue Act, is construed broadly and can include one’s domicile, but may also include one’s secondary residence. In other words, a taxpayer may have only one domicile, but may have more than one residence. . . .

A resident is defined as “a person who manifests an intent to live or be located in this state on more than a temporary or transient basis.” Det. No. 96-049, *supra*. We look to various factors related to residency on a case-by-case basis.

A taxpayer is generally presumed to be a resident of this state if he has declared himself a resident for the purpose of obtaining state licenses, registering to vote, or obtaining public assistance in Washington. We also consider various other factors that provide evidence of intent to be in Washington on more than a temporary or transient basis. Such factors include, but are not limited to: maintaining a residence in this state for personal use; using a Washington address for federal or state income tax purposes; location of bank accounts; address used to obtain financing, insurance, or other benefits; location of professional service providers; employment and/or active business involvement; active involvement in clubs and organizations; situs of vehicle, aircraft and watercraft registrations; nature and level of any telephone and utility services; address used to receive mail; citations as to domicile in wills and other legal documents; length of time spent in this state compared to time spent out of this state; and nature and use of property maintained in this state. Det. No. 96-049, *supra*; Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994).

Ownership of a residence in this state, without more, is not generally sufficient to cause residency. We have held that a person may maintain a vacation home or investment property and use it on a transient or temporary basis. In distinguishing between a vacation residence and a home for use on more than a temporary or transient basis, we look to the following factors:

1. Its physical characteristics;
2. The time he spends therein;
3. The things he does therein;
4. The people and things therein;
5. His mental attitude towards the place;
6. His intention when absent to return to the place;
7. Other dwelling places of the person concerned and similar factors concerning them.

Det. No. 96-049, *supra*.

[2] In applying the above factors to the facts at issue, we find that Trustee is clearly a resident of Washington. Trustee maintains a home in Washington for his personal use. Trustee has spent two to five months each year in Washington since 1989 and intends to return eventually on a permanent basis. Trustee has 11 vehicles and vessels registered to his Washington address, compared with 7 in [State B], and only 2 in [State A], one of which he intends to keep garaged and non-operational. Trustee has mail, phone, and utility services in Washington. These facts indicate that Trustee has established a home in Washington for use on more than a temporary or transient basis.

As further proof of residency, we note that Trustee filed “nonresident or part year resident” [State A] income tax returns from 1997 through 2002 on which he claimed to be a full year resident of Washington. In addition, Trustee provided his Washington address on his federal tax returns from 1996 through 1999.

The above facts clearly demonstrate that Trustee is a resident of Washington. We note that Trustee may also be a resident of [State A] and [State B]. However, as explained above, we have long held that a taxpayer may be a resident of more than one location. Because Trustee is a resident, we find that the Trust is also a resident. *See* AGO 67-03, No. 28; Det. No. 01-002R, 22 WTD 65 (2003).<sup>[9]</sup> ] Therefore we uphold the use tax assessment issued to Trustee. . . .

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 7<sup>th</sup> day of November 2003.

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<sup>[9]</sup>For sales and use tax purposes, a revocable trust is generally not considered to be an entity separate from its grantors. *See* Det. No. 02-0145R, 22 WTD 257 (2003).]