

Cite as Det. No. 04-0128, 24 WTD 98 (2005)

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. 04-0128
...	)	
	)	Registration No. . . .
	)	USE TAX
	)	Docket No. . . .
	)	

- [1] RCW 82.12.0255: USE TAX -- FEDERAL PRE-EMPTION -- SERVICE MEMBERS CIVIL RELIEF ACT. The Service Members Civil Relief Act (formerly the Soldiers and Sailors Civil Relief Act) prohibits the imposition of “licenses, fees, or excise imposed on motor vehicles and their use” if the service member paid the license, fee or excise to the state of domicile. This prohibition applies to annual fees and taxes, but does not apply to use tax.
- [2] RCW 82.12.0251: USE TAX -- RESIDENCE. For the purposes of use tax, a serviceman stationed and living in Washington is considered a Washington 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.

STATEMENT OF CASE

Coffman, A.L.J. – A military officer protests the use tax assessed on his use of [vehicle], which he purchased and used in Washington while stationed in this state. We conclude that the use tax was properly assessed and deny his claim for refund.<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.

## ISSUES

1. Whether the Service Members Civil Relief Act (SMCA), specifically 50 U.S.C. app. § 571,<sup>2</sup> pre-empts Washington use tax law (Chapter 82.12 RCW) so that a military officer, whose official residence for military purposes is in Oregon and who was stationed in Washington for 10 years, is exempt from the obligation to pay use tax.
2. Whether 50 U.S.C. app. § 571(a)'s residence provision applies to the Washington's use tax.
3. . . .<sup>3</sup>

## FINDINGS OF FACT

The Taxpayer is a career military officer. His official residence for military purposes is in Oregon. In 1993, he was transferred to a base in Washington and he purchased a home in Port Orchard, Washington. He lived in Port Orchard for the next ten years and thus was a Washington resident. He retained his Oregon driver's license, which showed his address as his Port Orchard home.<sup>4</sup> On . . . , 2003, he purchased [vehicle] from a private party in Washington. The Taxpayer states that he then immediately drove the [vehicle], which was still licensed in Washington, to Oregon where he licensed the [vehicle] using his Washington address. He did not pay use tax on the [vehicle].

[Approximately six weeks later], the Taxpayer was transferred to a base in Connecticut. The Taxpayer's wife continues to live in Washington and the [vehicle] has remained here. For military purposes however, he continues to claim Oregon as his official residence.

The Department of Revenue (Department) discovered that the Taxpayer had acquired the vehicle. After an investigation, the Department assessed use tax on the Taxpayer's use of the [vehicle]. The Taxpayer appealed the assessment. The Taxpayer paid the tax assessment . . . and petitioned for refund.

## ANALYSIS

RCW 82.12.020 imposes a use tax on the first use of tangible personal property used in Washington.

1. Federal Pre-emption.

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<sup>2</sup> The Act was formerly referred to as the Soldiers and Sailors Civil Relief Act and the specific section was formerly codified as 50 U.S.C. app. § 574.

<sup>3</sup> Nonprecedential portions of this determinations have been redacted.

<sup>4</sup> Retaining his Oregon driver's license is permitted under federal law.

[1] RCW 82.12.0255 provides that the use of tangible personal property is exempt from the use tax if such a tax is prohibited by the laws of the United States. 50 U.S.C. app. § 571(a) states:

A servicemember shall neither lose or acquire a residence or domicile for the purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

On the surface it appears that the Taxpayer has a valid argument. However, the term "taxation" is defined in 50 U.S.C. App. § 571(f)(2) as "licenses, fees, or excise imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence." This definition of "taxation" has been interpreted to mean annually recurring license fees and taxes, but does not apply to one time sales or use taxes. *Sullivan v. United States*, 395 U.S. 169, 176-7 (1969).

Therefore, the State of Washington is not pre-empted from assessing and collecting use tax from military personnel while stationed in Washington.

## 2. Taxpayer's Residence.

[2] The Taxpayer agrees that, but for the fact that the Taxpayer is a member of the armed forces of the United States, the Taxpayer would be considered a Washington resident. However, the Taxpayer claims that the 50 U.S.C. App. 571(a) specifies that a member of the armed forces does not lose or acquire a residence "for the purposes of taxation" while absent or present in any state "solely in compliance with military orders."

In *Sullivan v. U.S.*, 395 U.S. 169, 177-8, the court held that the term taxation in the SMCA means "only annually recurring taxes *on* property -- the familiar ad valorem personal property tax." The use tax is a one time tax on the privilege of using tangible personal property. The use tax is not an annual recurring tax and is not on the property, but on the use of the property. Therefore, the Taxpayer's claim that he is exempt from the use tax based on the SMCA is denied. See Det. No. 87-174, 3 WTD 171 (1987); Det. No. 91-106, 11 WTD 149 (1991); Det. No. 93-019, 13 WTD 233 (1994); Det. No. 93-017ER, 14 WTD 001 (1994); and Det. No. 01-003, 20 WTD 367 (2001); see also, ETA 361.08/12.177.

The Taxpayer also claims that he is entitled to the benefit of RCW 82.12.0251, which provides three exemptions from the use tax for nonresidents. Specifically, RCW 82.12.0251 states, in part:

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 non-transitory 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 [do] not include motor homes.<sup>5</sup>

In August 2003, when he first used the [vehicle] in Washington, the taxpayer resided in Washington. Because the Taxpayer was not a nonresident for the purposes of the use tax, he was not entitled to the RCW 82.12.0251 exemptions.

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#### DECISION AND DISPOSITION

The Taxpayer's petition for a refund is denied.

Dated this 28<sup>th</sup> day of May 2004

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<sup>5</sup> RCW 82.12.0251 was amended in 2003 to (1) separately state the three exemptions and (2) include within the exemptions the value of retail services. The first change reflected the Department's interpretation that the three exemptions were to be separately evaluated.