

Cite as Det. No. 13-0175, 34 WTD 144 (2015)

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. 13-0175
...	)	
	)	Registration No. . . .
	)	

[1] RULE 178; RCW 82.12.0251: USE TAX – PRIVATE MOTOR VEHICLE – NONRESIDENT – ACTIVE MILITARY, ARMED FORCES – EXEMPTION: Where no retail sales tax or use tax had been paid in another jurisdiction, the Department denied the taxpayer’s petition for reversal of a use tax assessment, concluding that the taxpayer, a nonresident and an active member of the armed forces stationed in Washington, had not both acquired and used his motor vehicle in another state or foreign country more than 90 days prior to entering Washington.

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.

Valentine, A.L.J. – [Taxpayer] petitions the Department of Revenue (Department) for correction of an assessment for use tax associated with the use, by a nonresident member of the armed forces, of a motor vehicle purchased outside of Washington but registered in Washington. Taxpayer’s petition is denied.<sup>1</sup>

ISSUES

1. Pursuant to 50 U.S.C. App. § 571(g)(2), does federal law prohibit Washington from assessing use tax to a nonresident member of the armed forces stationed in Washington under military orders?
2. Pursuant to RCW 82.12.0251, does Taxpayer qualify for a use tax exemption on a motor vehicle he purchased outside of Washington but took possession of in Washington, when he is a resident of another state and stationed in Washington under military orders?

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

## FINDINGS OF FACT

Taxpayer's official state of residence [is outside of Washington state], but he is currently stationed in Washington as a member of the U.S. Army. Taxpayer purchased his vehicle in the Republic of Korea (a.k.a. South Korea) before he was stationed in Washington.

The Purchase Order/Bill of Sale (PO/BOS) is dated April 21, 2012. The PO/BOS references a requested delivery date of July 20, 2012, and a delivery point of . . . , which is located in . . . , Washington. Taxpayer took delivery of the vehicle when he arrived in Washington in September 2012.<sup>2</sup> Taxpayer registered and licensed the vehicle in Washington. Taxpayer has not paid sales or use tax on the vehicle to any other state or foreign country.

The Department's Compliance Division (Compliance) issued Taxpayer an assessment for use tax on January 3, 2013, with a payment due date of February 4, 2013. Taxpayer timely appealed the assessment.

Taxpayer contends he should not be liable for use tax in Washington because he is a member of the military and [not a resident of Washington]. Taxpayer maintains an [out-of-state] driver's license and contends he pays taxes on the basis of his [out-of-state] residency. Taxpayer points out that he currently lives in Washington only because of his military orders. Compliance contends that Taxpayer's circumstances do not meet the statutory requirements to qualify for a Washington use tax exemption.

## ANALYSIS

RCW 82.12.020 imposes the use tax and provides that the tax shall be collected from every person in this state for the privilege of using, within Washington, as a consumer, any article of tangible personal property. WAC 458-20-178 implements the use tax statute and explains that the use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state, by a consumer, of any article of tangible personal property purchased at retail where the user or other specified persons have not paid retail sales tax on the purchase. Thus, the use tax applies upon the use of tangible personal property where the sale or acquisition has not been subject to retail sales tax. WAC 458-20-178(2) Use tax liability arises at the time the property purchased is first put to use in this state. WAC 458-20-178(5)(a).

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)(1) states:

A servicemember shall neither lose nor 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.

The term "taxation" is defined in 50 U.S.C. App. § 571(g)(2) as "licenses, fees, or excises 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." The United States Supreme Court interpreted this definition of "taxation" to mean annually recurring license fees

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<sup>2</sup> After two years stationed in South Korea, Taxpayer was transferred to . . . , Washington, effective August 10, 2012. Taxpayer took ordinary leave in August 2012 to visit his home state . . . and reported to the Housing Services Office . . . in Washington on September 1, 2012.

and taxes and determined that it does not apply to one-time sales or use taxes.<sup>3</sup> Thus, Washington is not pre-empted from assessing and collecting use tax from military personnel stationed in Washington.<sup>4</sup>

RCW 82.12.0251(3) provides for a use tax exemption with respect to the use “[o]f . . . private motor vehicles . . . by . . . nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles . . . were *acquired and used* by such person in another state . . . and such *acquisition and use occurred more than ninety days prior to the time he or she entered Washington.*”<sup>5</sup> (Emphasis added.)

To help educate taxpayers, the Department issued a Special Notice, dated March 17, 2003, titled *Vehicle Sales Tax and Use Tax Requirements for Persons in the Military Services*. It reads, in pertinent part:

*Use Tax Exemption A – RCW 82.12.0251:* The law provides a limited use tax exemption for the use of private motor vehicles, except motor homes, by a nonresident member of the armed forces. This use tax exemption applies only if all of the following requirements are met:

- The property is used by a member of the armed forces whose home of record is not in Washington (i.e., a nonresident member of the armed forces); and
- The person is stationed in Washington pursuant to military orders; and
- The property was acquired and used outside Washington more than 90 days before the person entered this state. A nonresident member of the armed forces “enters this state” when he or she is both stationed and residing in this state.

Taxpayer acquired the vehicle more than ninety days prior to entering Washington, but he did not use the vehicle in another state more than ninety days prior to entering Washington. “[T]he mere fact that one purchases a motor vehicle in another state more than ninety days prior to the vehicle’s registration in Washington does not meet the exemption’s requirements. Instead, the statute and rule require that a bona fide resident of another state both acquire and use the motor vehicle more than ninety days prior to the time the person enters Washington.”<sup>6</sup> Taxpayer took possession of the vehicle upon his arrival in Washington. Thus, Taxpayer does not qualify for the use tax exemption authorized by RCW 82.12.0251.

#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 11th day of June 2013.

<sup>3</sup> *Sullivan v. United States*, 395 U.S. 169, 176-7 (1969).

<sup>4</sup> See Det. No. 04-0128, 24 WTD 98 (2005).

<sup>5</sup> RCW 82.12.0251 explains, for the purposes of the statute, that the term state “means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof.”

<sup>6</sup> Det. No. 05-0077, 26 WTD 109 (2007).