

Cite as Det. No. 18-0049, 37 WTD 243 (2018)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. 18-0049 |
|) | |
| ...) | Registration No. . . . |
|) | |

RCW 82.12.0251. USE TAX – NONRESIDENT –EXEMPTION. To qualify for the nonresident use tax exemption, a taxpayer must prove he is (1) a “nonresident” of this state; (2) the vehicle was licensed in the state where he was a resident; and (3) the vehicle was not required to be licensed in Washington. The Department has long held that a person can have more than one residence for use (and MVET) tax purposes. Where an out-of-state resident was regularly in Washington for work and personal reasons, had a registered business in Washington, and owned property in Washington, all during the relevant time period, the out-of-state resident manifested an intent to live or be located in Washington on more than a temporary or transient basis and was considered a Washington resident, as well. Washington residents are required to license their motor vehicles in Washington. As such, use tax was due with respect to the vehicle at issue.

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.

Roberts, T.R.O. – An individual domiciled [out-of-state] protests the assessment of use tax on a motor vehicle purchased in Washington and registered [out-of-state]. Because the individual owned property in Washington, worked in Washington, and spent significant time in Washington during the period in which the motor vehicle was purchased, he maintained sufficient ties to Washington to categorize him as a dual resident of Washington and [another state]. Therefore, he is not eligible for the nonresident use tax exemption for the motor vehicle in question and the assessment is affirmed.¹

ISSUE

Whether an individual who was regularly in Washington for work and personal reasons, had a registered business in Washington, and who owned property in Washington, all during the relevant time period, is considered a nonresident of Washington for purposes of the personal property use tax exemption under RCW 82.12.0251?

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

FINDINGS OF FACT

In September of 2015, . . . (“Taxpayer”) acquired and accepted delivery of a motor vehicle (“Vehicle”) in Washington.² Immediately thereafter, he drove the Vehicle [out-of-state], licensed it, and registered the Vehicle to the following two addresses: (1) [out-of-state]; and (2) [Washington (“Washington Residence”)]. Taxpayer states that the Vehicle has been in Washington for warranty work but the Vehicle is primarily situated [out-of-state].

On December 15, 2016, the Washington Department of Revenue’s (“Department”) Compliance Division (“Compliance”) observed the Vehicle for sale on an online classified advertisement website. The Vehicle was listed as located in . . . , Washington. Taxpayer states that he also listed the Vehicle for sale in several other locations. However, the photographs of the Vehicle that accompanied the website listing show the [Washington] Residence in the background. Additional photographs of the [Washington] Residence, as associated with an old [realty listing], also depict the Vehicle at the [Washington] Residence.³

On June 2, 2017, Compliance issued Taxpayer a use tax assessment for the Vehicle in the amount of \$ The assessment includes \$. . . in use tax and motor vehicle tax, \$. . . in interest, and \$. . . in penalties. Taxpayer petitioned for review of this assessment and asserts that he became an [out-of-state] resident on February 13, 2015, he is not a Washington resident, and the Vehicle is exempt from use tax.

As relevant here, Taxpayer works in the interstate transportation industry and regularly conducts business in Washington. Taxpayer estimates that in 2015, he spent 2,400 hours in Washington related to business. He is the governing person and in-state registered agent for . . . , a Washington corporation.⁴ Until Taxpayer closed the account during the course of the audit, he operated a sole proprietorship that was registered with the Washington State Secretary of State.⁵ Taxpayer also listed the [Washington] Residence as his mailing address when he applied for a City . . . business license on September 20, 2016. Taxpayer listed a Washington address when reporting to the Department for these businesses.⁶ He maintains a cellular phone number with a Washington area code and owns two additional vehicles that are located and primarily operated in Washington.

Taxpayer and his spouse jointly owned the [Washington] Residence. It is undisputed that Taxpayer’s spouse is a Washington resident. Taxpayer admits that he regularly spends time in Washington. Taxpayer estimates that in 2015, he spent 600 hours in Washington related to personal business.⁷ Taxpayer states that the [Washington] Residence was an “investment property” that Taxpayer leased to tenants and Taxpayer only used a detached accessory dwelling unit for personal use and storage. A one-year lease agreement dated February 1, 2009, between

² The Vehicle is a

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⁴ The address listed for Taxpayer as registered agent is in . . . , WA.

⁵ The registration listed the [Washington] Residence as Taxpayer’s address.

⁶ Taxpayer states that he used a Washington address on his excise tax returns “for purposes as needed by the State of Washington tax code.” It is unclear whether Taxpayer also used the Washington address in filing Federal tax returns.

⁷ We extrapolate this figure based on Taxpayer’s estimate of 2,400 hours in Washington related to business. Taxpayer estimated that 80% of his time in Washington is related to business; thus, for a combination of both business and personal matters, Taxpayer was present in Washington for 3,000 hours, or a total of 4 months.

Taxpayer and his tenant, is for the tenant's rental of the "lower unit" of the [Washington] Residence. Taxpayer did not provide documents to support his claim that he rented the [Washington] Residence at any time during 2015.⁸

On September 22, 2014, Taxpayer acquired a recreational property located [out-of-state] that Taxpayer intends to build upon. The deed lists Taxpayer's mailing address as the [Washington] Residence. On February 13, 2015, Taxpayer registered to vote [out-of-state]. On April 18, 2015, Taxpayer's Washington driver's license expired.

ANALYSIS

Use Tax

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on each retail sale in this state, to be paid by the buyer to the seller. RCW 82.08.020; RCW 82.08.050. The use tax is imposed "for the privilege of using within this state as a consumer any article of tangible personal property acquired by the user in any manner" on which Washington's retail sales tax has not been paid. RCW 82.12.020(1). "Use" or "using" means "the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property. . . ." RCW 82.12.010(6)(a). Motor vehicle tax is imposed whenever a self-propelled vehicle is subject to retail sales tax or use tax. RCW 82.08.020. The use tax complements the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property unless an exemption is available. WAC 458-20-178.

RCW 82.12.0251, under which the Taxpayer contends he qualifies, provides a limited exemption from use tax, available only to nonresidents. RCW 82.12.0251(2) specifically provides:

The provisions of this [use tax] chapter do not apply in respect to the use . . . [b]y 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

A party claiming a tax exemption has the burden of proving he or she qualifies for the exemption. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989).

Accordingly, in order for Taxpayer to succeed on his exemption claim, he must prove: (1) Taxpayer was a "nonresident" of Washington at the time of the Vehicle was purchased; (2) the Vehicle was licensed in the state where Taxpayer was a resident; and (3) the Vehicle was not required to be licensed in Washington. RCW 82.12.0251(2); Det. No. 96-049, 16 WTD 177 (1996). Should Taxpayer fail to meet any one of the three requirements, use tax is due.

The use tax statutes do not define the term "nonresident." In 16 WTD 177, we applied the definition of "resident" from the vehicle licensing statutes to a use tax exemption analysis, finding that "a resident is a person who manifests an intent to live or be located in this state on more than a temporary

⁸ Taxpayer did provide rental checks covering the period of January through March of 2014.

or transient basis.” 16 WTD at 182; *see* RCW 46.16A.140(1). Evidence of residency includes becoming a registered voter in Washington, receiving benefits under a Washington public assistance program, or declaring residency status in order to obtain a state license or pay a lower rate of tuition. *Id.*

In addition, RCW 46.16A.140(2) creates a presumption of residency for natural persons who meet at least two of the following conditions:

- (a) Maintains a residence in this state for personal use;
- (b) Has a Washington state driver's license or a Washington state resident hunting or fishing license;
- (c) Uses a Washington state address for federal income tax or state tax purposes;
- (d) Has previously maintained a residence in this state for personal use and has not established a permanent residence outside the state of Washington, such as a person who retires and lives in a motor home or vessel that is not permanently attached to any property;
- (e) Claims this state as his or her residence for obtaining eligibility to hold a public office or for judicial actions;
- (f) Is a custodial parent with a child attending public schools in this state.

However, we are not limited to these residency criteria. The Department has also looked to a number of additional factors that may provide evidence of an intent to be in Washington on other than a temporary or transient basis. Such factors include, but are not limited to, business registrations, ownership of residential property, interests in residential property in other states, in-state utility services, locations where tax returns are filed, and the intent to return to this state on other than a temporary or transient basis. *See* Det. No. 86-172A, 2 WTD 253 (1986); Det. No. 93-223, 13 WTD 361 (1994).

Residency is a question of fact, which must be resolved by considering all the relevant facts and circumstances. Det. No. 04-0121, 23 WTD 349 (2004); Det. No. 99-085, 19 WTD 909 (2000) (citing *Park v. Commissioner*, 79 T.C. 252, 286 n.13 (1982), *affd. without opinion*, 755 F.2d 181 (D.C. Cir. 1985); *Adams v. Commissioner* 46 T.C. 352, 358 (1966)). The term “residency” does not have the same meaning as domicile, but to be a resident requires the taxpayer to have some “degree of permanent attachment for the country of which he is an alien.” *Jellinek v. Commissioner*, 36 T.C. 826, 834 (1961); Det. No. 96-049, 16 WTD 177 (1996). By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a “nonresident.” A residence once established is presumed to continue until a new one is acquired. *Polk v. Polk*, 158 Wash. 242, 248, 290 Pac. 861 (1930). Stated differently, an established domicile continues until superseded by a new domicile. *In re Lassin's Estate*, 33 Wn.2d 163, 165, 204 P.2d 1071 (1949); *Sasse v. Sasse*, 41 Wn.2d 363, 366, 249 P.2d 380 (1952). A change in residence does not consist solely in going to and living in

another place but intent to make that place a permanent residence must be present. *Kankelborg v. Kandelborg*, 199 Wash. 259, 262, 90 P.2d 1018 (1939). The Department has long held that a person can be a resident of more than one state for use tax purposes. *See* 16 WTD 177; Det. No. 99-101, 20 WTD 175 (2001).

In Det. No. 99-101, 20 WTD 175 (2001), we sustained a use tax liability of a husband who worked and resided in Idaho and also owned community property in Washington with his wife who was solely a Washington resident. The taxpayer in that case regularly visited and spent time in Washington, and we therefore sustained the use tax liability based in significant part on his use of the vehicles at issue to regularly commute to Washington to visit his family at the property he jointly owned in Washington. Similarly, in Det. No. 99-347, 19 WTD 627 (2000), we sustained a use tax liability concluding that renting living quarters in another state, coupled with the stated intent to make that location the husband's primary residence was insufficient to relinquish his status as a Washington resident where there were still significant connections to and community property owned in Washington. These determinations indicate that ownership of community property and regular visits to Washington can establish a basis for dual residency.⁹

We conclude that Taxpayer was a dual resident of Washington and [another state] in 2015, the year in which the Vehicle was purchased. That Taxpayer is a resident of [another state] is undisputed. Indeed, Taxpayer is registered to vote in [the other state]. But [out-of-state] residency does not necessarily exclude Taxpayer from also being considered a resident of Washington. The facts amply demonstrate evidence of an established Washington residency in 2015 as well.

In 2015, Taxpayer has established residency by maintaining a residence in Washington for personal use, using a Washington address for state tax purposes, listing himself as an in-state registered agent for a business registered in Washington, and using a Washington address to receive mail regarding his Vehicle's registration, tax correspondence, and his business activities. Taxpayer, by his own admission, spent approximately 4 months in Washington in 2015 for both business and personal reasons. The situation here is similar to past determinations finding Washington residency in situations involving similar time spent in Washington. *See* 16 WTD 177 (finding taxpayers spent three months per year in Washington, received mail in Washington, and held an in-state clamming permit); Det. No. 03-0315, 24 WTD 468 (2005) (finding taxpayer spent five months per year in Washington, received mail in Washington, and owned eleven Washington registered vehicles).

Based on the evidence submitted, we find Taxpayer has not met his burden of proving that he is a nonresident of Washington. The facts and the surrounding circumstances demonstrate that Taxpayer manifested the requisite intent to live and be located in Washington on more than a temporary or transient basis, and therefore was a Washington resident in 2015. Although Taxpayer is an [out-of-state] resident, the Department has long held that a person can have more than one residence for use (and MVET) tax purposes. *See* 16 WTD 177; Det. No. 99-101, 20 WTD 175 (2001).

⁹ It is notable that in both of these cases there was substantial evidence of connection to the other state, including property ownership and operation of a business in one case and rental and utility payments in the other.

Since Taxpayer has failed to satisfy the first requirement of establishing that he was a “nonresident” of Washington at the time the Vehicle was purchased in 2015, the Department need not consider the other two requirements of RCW 82.12.0251(2) that are necessary for Taxpayer to succeed on his exemption claim.

Waiver of Penalties

The Taxpayer also has not established a basis for the waiver of the penalties assessed.

The Washington tax system is based largely on voluntary compliance. Because of that, the Washington legislature has placed upon taxpayers the responsibility to know their tax reporting obligations and to seek instructions from the Department when they are uncertain about those obligations. RCW 82.32A.005(2) and RCW 82.32A.030(2).

RCW 82.32.105 allows the Department to waive penalties if it finds that the late payment of taxes due resulted from circumstances beyond the control of the taxpayer. WAC 458-20-228 (Rule 228) is the administrative regulation addressing the waiver of penalties and interest. Rule 228(9)(a)(iii)(B) also expressly states that late payment of taxes resulting from a taxpayer’s “misunderstanding or lack of knowledge of a tax liability” are not circumstances beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty. Finally, the Department may not waive tax on the basis of financial hardship. WAC 458-20-100(10)(b)(v); Rule 228(9)(a)(iii)(A).

In this case, Taxpayer failed to file and pay taxes when due on the mistaken belief that he had purchased the vehicle in conjunction with establishing residency [out-of-state]. The basis for the assessment is that the Taxpayer is a resident and so not eligible for the use tax exemption claimed. The Taxpayer’s lack of knowledge that he was not eligible for the exemption does not provide a basis to waive the penalties assessed

We affirm the assessment as issued.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 13th day of February 2018.