

Cite as Det. No. 18-0060, 38 WTD 175 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 18-0060
)	
...)	Registration No. . . .
)	

[1] RCW 82.12.0255; 50 U.S.C. § 4001: USE TAX – NONRESIDENT MILITARY – FEDERAL PREEMPTION. Federal law does not prohibit Washington from assessing use tax against a nonresident member of the armed forces and his spouse who are stationed in Washington under military orders, because the federal statute was only intended to apply to regularly recurring ad valorem property taxes.

[2] RCW 82.12.0251: MOTOR VEHICLES – USE TAX EXEMPTION – NONRESIDENT MILITARY. Taxpayers do not qualify for a use tax exemption on motor vehicles they acquired outside of Washington, when they are residents of another state and stationed in Washington under military orders, because taxpayers did not own the vehicles for more than 90 days prior to first use in 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.

Davis, T.R.O. – An out-of-state active duty U.S. Army officer and his spouse, husband and wife, who reside in Washington under military orders (Taxpayers), petition for correction of an assessment of use tax on two private motor vehicles, issued by the Compliance Division of the Department of Revenue (Department). We deny Taxpayers’ petition.¹

ISSUES

1. Under RCW 82.12.0255 and 50 U.S.C. App. § 4001(g)(2), does federal law prohibit Washington from assessing use tax against a nonresident member of the armed forces and his spouse, who are stationed in Washington under military orders?
2. Under RCW 82.12.0251, do Taxpayers qualify for a use tax exemption on motor vehicles they acquired outside of Washington, when they are residents of another state and are stationed in Washington under military orders?

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

FINDINGS OF FACT

. . . (Taxpayers) are a husband and wife marital community currently living in Washington. [Husband] is a career active duty officer in the U.S. Army. Taxpayers' official state of residence is [out-of-state]. In April 2016, [Husband] received military orders moving him and his family from . . . to Washington, with a report date of August 1, 2016. Taxpayers arrived in Washington in July 2016.

On April 22, 2016, while in transit between duty locations, Taxpayers purchased a new . . . Ford . . . truck, VIN: . . . , valued at \$. . . , in [their out-of-state official state of residence]. [G]overnment records show the vehicle was licensed on June 10, 2016 and title was transferred in July 2016. In early July, Taxpayers drove the newly acquired truck from [their out-of-state official state of residence] to their new home in Washington.

On January 1, 2017, while visiting family during the winter holiday period, Taxpayers purchased and licensed a new Subaru . . . , VIN: . . . , valued at \$. . . , in [their out-of-state official state of residence]. Later that month, Taxpayers drove the newly acquired wagon from [their out-of-state official state of residence] to their home in Washington.

Taxpayers did not report either purchase or pay use tax on either vehicle in Washington.

In April 2017, after a revenue agent observed Taxpayers' Subaru . . . bearing out-of-state license plates while operating in Washington, the Compliance Division of the Department of Revenue (Compliance) began an investigation into Taxpayers' tangible personal property (vehicles) located in Washington State for the period from April 1, 2016, through January 31, 2017 (assessment period).

As a result of the investigation, on June 14, 2017, the Department issued an assessment against Taxpayers for \$. . . , including use tax of \$. . . , motor vehicle tax of \$. . . , interest of \$. . . , a 29% delinquent return penalty of \$. . . , and a 5% assessment penalty for substantial underpayment of \$ Taxpayers timely petitioned for review of the assessment, seeking cancellation of tax.

Taxpayers do not challenge the calculated amounts of tax, interest, or penalties. Taxpayers also have stated that they accept that under the law they owe the assessed amounts. However, Taxpayers contend they should not be liable for use tax in Washington because they are not Washington residents and are living in Washington only because of [Husband's] active duty military service in the U.S. Army. Taxpayers suggest that assessment of use tax by the state in these circumstances is unreasonable and ask that the Department cancel the assessment . . . on the grounds of fairness.

ANALYSIS

The Department's assessment of tax, interest, and penalties is mandatory. Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001). If the Department determines that a taxpayer has paid less tax than is properly due, then the Department must assess the additional amounts found due. RCW 82.32.050(1). The Department must also impose interest and penalties

when the conditions for imposing them are met. *See* RCW 82.32.090(1); Det. No. 01-193, 21 WTD 264 (2002); Det. No. 99-279, 20 WTD 149 (2001); Det. No. 87-235, 3 WTD 363 (1987).

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 purchased property is first put to use in this state. WAC 458-20-178(5)(a). Use tax is generally based on the purchase price of the property. RCW 82.12.010; WAC 458-20-178(4).

RCW 82.08.020 imposes an excise tax of three-tenths of one percent on the selling price of motor vehicles in Washington. RCW 82.08.020(3). This motor vehicle excise tax is applied when either retail sales tax or use tax is due on a motor vehicle. RCW 82.08.020(7); RCW 82.12.020(4)(a). This additional tax is used to fund public transportation infrastructure.

Tax Exemptions

In general, “[t]axation is the rule and exemption is the exception.” *Budget Rent–A–Car*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). However, there are a number of deductions available to taxpayers. Exemptions and deductions are “tax preferences” under RCW 43.136.021, and must be “strictly construed, though fairly, and in keeping with the ordinary meaning of their language, against the taxpayer.” *Lacey Nursing v. Dep’t of Revenue*, 128 Wn.2d 40, 905 P.2d 338 (1995). Further, “[w]hen interpreting . . . deduction provisions, ‘the burden of showing qualification for the tax benefit . . . rests with the taxpayer’” *Simpson Investment Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149-50, 3 P.3d 741 (2000), (quoting *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967)). *See Stroh Brewing Co. v. Dep’t of Revenue*, 104 Wash. App. 235, 240, 15 P.3d 692 (2001) (“[t]he taxpayer has the burden of establishing eligibility for an exemption”); *see also Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000) (“exemption statutes are construed strictly against the taxpayer, and the taxpayer has the burden of establishing any exemption”). Every taxpayer is therefore responsible for being able to demonstrate that they qualify for each claimed deduction under a strictly construed interpretation of the rules.

Here, because of Taxpayers’ nonresident military status, we look to federal preemption and one of our statutory use tax exemptions to see if either apply to Taxpayers’ purchase of the two vehicles at issue.² We consider each of these in turn below.

² As described above, the motor vehicle excise tax is imposed and collected based upon underlying use tax liability and therefore we analyze the applicability of the state use tax exemption herein.

1. Federal Preemption

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. The federal Servicemembers' Civil Relief Act (SCRA)³ 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.

50 U.S.C. § 4001(a)(1). The SCRA pre-empts states' ability to assess certain types of taxes. The term "taxation" is defined in the SCRA 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." 50 U.S.C. § 4001(g)(2). However, the United States Supreme Court currently interprets this definition of "taxation" to mean annually recurring license fees and taxes, but not one-time sales or use taxes. *Sullivan v. United States*, 395 U.S. 169, 176 (1969).⁴ In its *Sullivan* decision, the Supreme Court held that the term taxation in the SCRA was intended by Congress to mean "only annually recurring taxes on property -- the familiar ad valorem personal property tax." *Id.* at 177.

Washington's use tax is a one-time tax on the privilege of using tangible personal property. It is not an annual recurring tax and is not levied on the property itself, but on the use of the property. Therefore, as a matter of law, the State of Washington is not preempted from assessing and collecting use tax from military personnel while stationed in Washington. *See* Det. No. 13-0175, 34 WTD 144 (2015); Det. No. 04-0128, 24 WTD 98 (2005); Det. No. 01-003, 20 WTD 367 (2001); Det. No. 93-017ER, 14 WTD 001 (1994); Det. No. 93-019, 13 WTD 233 (1994); Det. No. 91-106, 11 WTD 149 (1991); and Det. No. 87-174, 3 WTD 171 (1987); *see also*, ETA 3141.2009.

2. State Use Tax Exemption

RCW 82.12.0251 provides an exemption from the use tax for nonresident members of the armed forces under certain circumstances. The statute states, in pertinent part:

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

. . .

³ We note that the Military Spouses' Residency Relief Act (Public Law 111-97), enacted in 2009, amended the SCRA to allow the same residency benefits to apply to the spouse of a military member under most circumstances. Under the facts of this case, the SCRA applies to both the military member and spouse. *See, e.g.*, 50 U.S.C. § 4001(a)(2). Therefore, as used herein, the terms "military personnel" or "military member" include the spouse unless otherwise noted. At the time of this writing, the public information the Department provides to assist military members has not been updated to incorporate this change.

⁴ [The *Sullivan* court interpreted a section of the United States Code created by legislation under the title Soldiers and Sailors Civil Relief Act of 1940 (SSCRA), which was updated by the SCRA in 2003 and by later amendments. The *Sullivan* analysis continues to apply here because the language of the code section at issue in *Sullivan* remains substantially the same today as it was when the court made its decision.]

(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.

RCW 82.12.0251 (emphasis added). To help educate military 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.

Thus, as shown, the statute requires that a bona fide resident of another state, including a military servicemember, both acquire and use the motor vehicle more than ninety days prior to the time the person enters Washington in order to be eligible for the exemption. *See* Det. No. 13-0175, 34 WTD 144 (2015); Det. No. 05-0077, 26 WTD 109 (2007). Here, Taxpayers did not acquire or use either vehicle in another state for more than ninety days prior to entering Washington. Taxpayers took possession of the vehicles upon purchase in their official state of residence, and either entered Washington or returned to Washington with each vehicle within two months of acquiring ownership. Thus, Taxpayers do not qualify for the use tax exemption authorized by RCW 82.12.0251(3).

3. Tax Waiver

Finally, Taxpayers have requested waiver of the assessed use tax on the grounds of fairness. The Department’s authority to waive properly assessed tax is limited to only those cases where a taxpayer has detrimentally relied upon specific written instructions issued by the Department to that taxpayer. RCW 82.32A.020(2). Here, Taxpayers do not assert, and the facts do not show, that the Department issued any such written communication prior to issuing its assessment. No other grounds exist that provide authority to waive properly assessed tax. Therefore, we find the Department lacks the ability to waive Taxpayers’ assessed tax liability here.

Under the facts presented, no additional use tax exemptions are applicable to Taxpayers' case, and the Department has no available legal grounds to cancel the assessed use tax. Because use tax is due on Taxpayers' vehicles, the law also requires the Department to collect the additional motor vehicle excise tax.

...

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 2nd day of March 2018.