

Cite as Det. No. 15-0288, 35 WTD 286 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 15-0288
	)	
...	)	Registration No. . . .
	)	

RCW 82.12.0251; RCW 46.16A.140: USE TAX – MOTOR VEHICLE – NONRESIDENT EXEMPTION. An owner of a vacation home located in Washington is not a resident for use tax purposes because the owner does not intend to live in this state on more than a temporary or transient basis. The owner qualifies for the nonresident exemption from use tax on a vehicle driven 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.

Poley, A.L.J. – A married couple domiciled [out-of-state] seeks a refund of use tax paid on a vehicle purchased and registered [out-of-state], and subsequently brought into Washington during weekend excursions to a vacation home. The petition is granted.<sup>1</sup>

ISSUE

Are [out-of-state] residents, who own a vacation home in Washington, considered nonresidents of Washington for purposes of the personal property use tax exemption under RCW 82.12.0251?

FINDINGS OF FACT

[Wife] and [Husband] (Taxpayers) . . . purchased property [in Washington (WA Property)]. Taxpayers lived on the [WA Property] until 2009, when [Husband] took a position with an employer based [out-of-state]. In September 2009, Taxpayers moved to . . . [out-of-state] where they still reside. Taxpayers obtained [out-of-state] driver’s licenses upon relocating to . . . and are both registered to vote in [that state]. Taxpayers also file . . . individual income tax returns [in that state] as full-year residents. Taxpayers receive all mail at their [out-of-state] residence, including any utility bills or correspondence related to the [WA Property] home.

After moving [out-of-state], Taxpayers rented their [WA Property] residence to tenants from September 2009 through November 2011. Taxpayers attempted to continue renting the house but

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

were unable to find a qualified tenant. In July 2012, Taxpayers decided to remove the property from their property management company's rental inventory and maintain the house as their personal vacation home. Taxpayers furnished the home and stored personal belongings there.

In June 2013, Taxpayers signed a purchase agreement for a [Vehicle] from an [out-of-state] dealership. Taxpayer did not pay sales or use tax on the Vehicle. The Vehicle was subsequently delivered to Taxpayers [out-of-state] and registered [out-of-state] in September 2013.

An employee of the Department of Revenue (Department) observed the Vehicle in the . . . parking lot in . . . , Washington in February 2015. The Department contacted taxpayers for more information. The following facts are alleged by the Department based on their investigation:

- a) On March 12, 2015, [Wife] told an agent of the Department that Taxpayers come into Washington "sometimes on the weekends" . . . .
- b) On June 2, 2015, [Wife] told an agent of the Department that the vehicle enters Washington "most weekends" so taxpayers may physically maintain the [WA Property]. . . .

The Department investigated further and learned that Taxpayers own [another vehicle] that they recently began keeping in the garage of the [WA Property] house for use when they are visiting.<sup>2</sup> The Department also discovered Taxpayers owned a [boat] that had been registered and moored in Washington since 2010. Based on this information, plus Taxpayers' ownership of the [WA Property] residence, the Department concluded that Taxpayers are Washington residents.

On July 29, 2015, the Department issued to Taxpayers a use tax assessment in the amount of \$ . . . . The assessment included \$ . . . in use tax and motor vehicle tax, \$ . . . in interest, and \$ . . . in penalties. Taxpayers paid the assessment in full and filed this appeal seeking a refund.

Taxpayers claim they are not residents of Washington and are entitled to the nonresident exemption from use tax. In support of their appeal petition, Taxpayers provided evidence that they are domiciled [out-of-state]. . . .

## ANALYSIS

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.

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<sup>2</sup> Taxpayers have since re-registered this vehicle in Washington in accordance with RCW 46.85.060(1).

RCW 82.12.0251(2) provides the following use tax exemption:

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 . . . .

(Bracketed material added). 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 Taxpayers to succeed on their exemption claim, they must prove: (1) Taxpayers are “nonresidents” of Washington; (2) the Vehicle was licensed in the state where Taxpayers were residents; 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 the taxpayer fail to meet any one of the three requirements, then use tax is due.

The Department does not dispute Taxpayers’ claim that they are [out-of-state] residents and domiciled [out-of-state]. Indeed, Taxpayers have [out-of-state] driver’s licenses<sup>3</sup> and both are registered to vote in [that state]. But [out-of-state] residency does not necessarily exclude an individual from also being considered a resident of Washington. We have 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).

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 or transient basis.” 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

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<sup>3</sup> . . . vehicle licensing laws require that a person must be domiciled in or a resident of . . . in order to obtain an . . . driver’s license. ORS 807.062(1).

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.

Here, Taxpayers are not registered to vote in Washington, do not receive Washington public assistance, and have not declared themselves to be Washington residents for licensing or tuition purposes. Further, Taxpayers cannot be presumed residents under RCW 46.16A.140(2) as they only meet one of the listed conditions: maintaining a residence in Washington for personal use.

Owning property in Washington, and even maintaining a second home in the state, is not alone sufficient to establish intent to be located in this state on more than a temporary or transient basis. In 16 WTD 177, the Department stated:

A person can maintain a vacation home or investment property and use it only on a temporary or transient basis. Similarly, no set amount of time that a person stays in a dwelling, by itself, is sufficient to manifest such an intent. [footnote omitted]. Again, it is possible for a person to have a stay that is only temporary or transient in nature, e.g., as a result of temporary employment in this state. Rather, we must look at various factors related to residency on a case-by-case basis.

16 WTD at 185.

Taxpayers do not receive mail at the [WA Property] and do not use the property for business or civic activities. Taxpayers view the dwelling as a place to find respite on the weekend, and their intention when absent is to return for a future weekend getaway. . . . The situation here is distinguishable from past determinations finding Washington residency . . . . *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).

Viewing the evidence as a whole, we conclude Taxpayers ceased being Washington residents when they moved [out-of-state] in 2009, surrendered their Washington driver's licenses, registered to vote in [the other state], and rented out their former home. We find Taxpayers' actions since July 2012 do not objectively evidence an intent to live in Washington on more than a temporary or transient basis. As nonresidents, Taxpayers have met the first requirement of RCW 82.12.0251(2).<sup>4</sup>

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<sup>4</sup> [Under circumstances that do not appear present here, a taxpayer may be considered a dual resident of Washington and Oregon and subject to tax on vehicles used in Washington. *See, e.g.*, Det. No. 03-0315, 24 WTD 468 (2005); Det. No. 01-098, 21 WTD 25 (2002).]

The second requirement from RCW 82.12.0251(2), that the Vehicle was licensed in the state where Taxpayers were residents, is also met as Taxpayers are residents of [another state] and the Vehicle is registered in [the other state].

The last component of RCW 82.12.0251(2) is that the Vehicle was not required to be licensed in Washington. There is a general requirement that a vehicle must be licensed if it is operated on a public highway of this state. RCW 46.16A.030(2). However, nonresident persons not employed in this state are exempt from the requirement if the vehicle is currently licensed in another state and the nonresident does not operate it in this state for a period exceeding six months in any continuous twelve-month period. RCW 46.85.060(1). Here, Taxpayers are not employed in Washington and do not operate the Vehicle in Washington more than six months in a twelve-month period. Thus, the Vehicle is not required to be licensed in this state.

As Taxpayers have met all three requirements of RCW 82.12.0251(2), they are entitled to the nonresident exemption from use tax owed on the Vehicle.

#### DECISION AND DISPOSITION

Taxpayer's petition is granted. The assessment is canceled.

Dated this 23rd day of October, 2015.