

Cite as Det. No. 98-129, 18 WTD 143 (1999)

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. 98-129
	)	
...	)	Unregistered
	)	Motor Vehicle Excise Tax
	)	and Evasion Penalty

- [1] RCW 46.16.160; RCW 82.44.020 -- TRIP PERMITS -- ALTERNATIVE TO MVET -- MOTOR HOME -- WASHINGTON RESIDENT. When a motor home is co-owned by a Washington resident and a resident of another state and is licensed in the other state, the Washington co-owner may not operate the vehicle in Washington under trip permits in lieu of licensing it in Washington and paying the MVET.
- [2] RCW 82.44.020 -- MVET -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF MOTOR HOME -- LICENSED IN OREGON -- USED IN WASHINGTON. When a Washington resident who is a co-owner of a motor home that is registered in another state uses the vehicle in Washington, the Washington resident must register the vehicle in Washington and pay the MVET.
- [3] RCW 82.32.050 -- EVASION PENALTY -- INTENT TO EVADE. The Department will not assess an evasion penalty unless there is clear, cogent, and convincing evidence that the taxpayer intended to evade the tax.

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.

NATURE OF ACTION:

Washington residents who used a motor home in Washington that they jointly owned with a nonresident who licensed the vehicle in his state of residence, protest assessment of motor vehicle excise tax (MVET) and evasion penalty.<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

### FACTS:

Prusia, A.L.J. -- The taxpayers (husband and wife) are residents of Washington. In 1994, the husband formed a partnership (“... Associates”) with an Oregon resident for the purpose of acquiring, owning, and operating for the production of income a motor home. The partners then purchased a motor home in Oregon. The Oregon partner licensed the vehicle in Oregon. The partners decided to license the motor home in Oregon, rather than in Washington, because Oregon has more favorable tax laws.

Although the partners’ original purpose had been to rent the motor home to the public in addition to using it for personal use, the partnership never engaged in business activities. Instead, the individual partners separately used the motor home for personal use from time to time. The motor home was garaged principally at the Oregon co-owner’s residence. The taxpayers used the motor home in Washington for various periods of time from 1994 to 1997 and sometimes garaged it in Washington. At all times when taxpayers operated the motor home on Washington highways, they did so under the authority of trip permits issued by the State of Washington.

On May 23, 1997, the Department of Revenue (Department) assessed MVET in the amount of \$ . . . , delinquency penalty of \$ . . . , evasion penalty of \$ . . . , and interest of \$ . . . , for a total of \$ . . . The Department also assessed use taxes against the taxpayers. The taxpayers resolved the use tax issue with the Department. The taxpayers filed a timely request for correction of the MVET assessment and the associated evasion penalty and interest.

### ISSUES:

1. May a Washington resident use a motor home in Washington under trip permits in lieu of licensing the vehicle in Washington and paying MVET, when the motor home is properly licensed in another state by a co-owner who resides in that other state?
2. Did the taxpayers intend to evade the MVET by licensing the motor home in Oregon and operating it under trip permits in Washington?

### DISCUSSION:

#### 1. MVET

A resident of Washington is required to register “a vehicle to be operated on the highways of the state.” RCW 46.16.028(3). As an alternative to license registration, the owner of an unlicensed vehicle may operate the vehicle on Washington highways for brief periods under authority of a trip permit issued by the Department of Licensing. RCW 46.16.160; Chapter 308-97 WAC. Nonresidents generally are exempted from Washington’s license registration requirements. See RCW 46.16.030 and WAC 308-99-040.

RCW 82.44.020(1) imposes an excise tax, the MVET, “for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 as now or hereafter amended [authorizing operation under a trip permit], or dealer’s licenses.” The annual amount of the MVET is two and two tenths percent (2.2%) of the value of the vehicle. RCW 82.44.020(1) and (2). Under specified circumstances, reciprocity provisions exempt nonresident owners of vehicles that are licensed in the nonresident’s state from payment of the MVET. See Chapter 46.85 RCW, and particularly RCW 46.85.040 and RCW 46.85.060.

The taxpayers contend that their operation of the motor home in Washington falls under the trip permit exceptions to Washington’s licensing and MVET requirements. They argue that it is clear under RCW 46.16.160 that if an owner is operating a vehicle properly licensed in another state, the owner may, as an alternative to registering the vehicle in Washington, operate it under trip permits. They argue that because they were operating the vehicle under trip permits, under RCW 82.44.020 they are not liable for the MVET.

RCW 46.16.160 provides, in relevant part:

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits may also be issued for movement of mobile homes pursuant to RCW 46.44.170. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days. . . .

Effective January 1, 1997, RCW 46.16.160 was amended, adding the following language to the last-quoted sentence: “, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period.” The taxpayers state, and the statement is accepted for purposes of this determination, that they did not use more than two trip permits for the motor home during 1997.

[1] Construing RCW 46.16.160 and applying it to the facts of this case, we conclude that the statute does not authorize the taxpayers' operation of the motor home under authority of a trip permit. RCW 46.16.160 allows an owner of a motor vehicle to operate under a trip permit only in two situations. One situation concerns nonresidents who, under reciprocal relations between Washington and their state, would be required to obtain a license registration in this state. While the language of the statute does not expressly limit the situation to nonresidents, whenever the subject of a provision is reciprocity, it concerns the benefits Washington grants to residents of another state in response to benefits the other state grants to Washington residents. See chapter 46.85 RCW (and particularly the definition of "properly registered" in RCW 46.86.020), RCW 46.16.030, and chapter 308-99 WAC. The taxpayers are Washington residents, and therefore the first situation set out in RCW 46.16.160 does not apply to them.

The second situation for which RCW 46.16.160 authorizes a trip permit is when the vehicle is unlicensed. That situation does not apply here, because the motor home, being licensed in Oregon, is not unlicensed.<sup>2</sup> Thus, when a motor home is co-owned by a Washington resident and a resident of another state and is licensed in the other state, the Washington co-owner may not operate the vehicle in Washington under trip permits in lieu of licensing it in Washington and paying the MVET.

In Det. No. 93-144, 13 WTD 291 (1993), we held that the exemption from the MVET for operating a motor vehicle under a dealer license did not apply when the dealer license was improperly used. Likewise, the improper use of a trip permit is not a bar to the collection of the MVET.

[2] The taxpayers do not cite any statute other than RCW 46.16.160 that might exempt a Washington co-owner from Washington's licensing and MVET requirements in a joint ownership situation in which the nonresident co-owner has registered the vehicle in his or her state. We do not find any exemption to that effect in our examination of the licensing and tax statutes. The Department has taken the position that when a co-owner of tangible personal property is a Washington resident, any use of tangible personal property by either joint owner within this state constitutes a taxable incident for use tax purposes. See Det. No. 86-321, 2 WTD 105 (1986); Det. No. 87-145, 3 WTD 99 (1987). We reach the same conclusion with respect to licensing and payment of the MVET. When a Washington resident who is a co-owner of a vehicle that is properly registered in another state uses the vehicle in Washington, the Washington resident must register the vehicle in Washington and pay the MVET.

This conclusion is consistent with the policy underlying WAC 308-99-040(4), which provides that a Washington resident cannot even operate a borrowed vehicle currently licensed in another jurisdiction for more than ten days in a calendar year without registering and licensing it in Washington.

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<sup>2</sup> Had the motor home been unlicensed, the taxpayers could have operated it in Washington under trip permits for up to nine days per month prior to January 1, 1997, and for up to six days per year after January 1, 1997.

The taxpayers do not claim that their use of the motor home in Washington was for business purposes on behalf of the Oregon partnership, or that they were operating the motor home under a lease with the Oregon partnership. Because we are not presented with a claim that the use was by a nonresident business or under a lease by a nonresident lessor, we do not consider issues that such claims might raise.

We sustain the assessment of MVET.

## 2. Evasion penalty

The Department will impose an evasion penalty when the failure to pay the proper amount of the tax “resulted from an intent to evade the tax.” RCW 82.32.090(5). The Department has the burden to show the elements of evasion by clear, cogent, and convincing evidence. Det. No. 90-314, 10 WTD 111 (1990). Clear, cogent, and convincing evidence has been described as evidence convincing the trier of fact that the issue is “highly probable,” or, stated another way, the evidence must be “positive and unequivocal.” Colonial Imports, Inc. v. Carlton Northwest, Inc., 121 Wn.2d 726, 735, 853 P.2d 913 (1993).

The elements of evasion are: (1) the taxpayer knew the tax was due; and (2) the taxpayer attempted to escape detection by deceit, fraud, or other intentional wrongdoing. Det. No. 90-314.

The taxpayers admit that they intended to avoid paying Washington’s MVET by licensing the motor home in Oregon and using trip permits whenever they used the vehicle in Washington. However, tax avoidance is not the same as tax evasion. See Det. No. 93-223, 13 WTD 361 (1993); Tax Fraud and Evasion, Harry Graham Balter, 5th Ed., 1983, page 2-2. We do not find clear and convincing evidence to support a conclusion that the taxpayers acted with the intention of evading Washington’s taxes by registering the vehicle in Oregon. We are not presented with a case in which the taxpayers made false statements or provided a false address in order to register the motor home in Oregon. Contrast Det. No. 86-223, 1 WTD 43 (1986); Det. No. 93-169, 13 WTD 328 (1994); Det. No. 93-223, 13 WTD 361 (1994). Here the motor home was registered in the state of residence of a bona fide co-owner who had possession and control of the vehicle most of the time after purchase. Our statutes do not explicitly say what is required of a Washington resident with respect to licensing and payment of MVET in that situation. We cannot say that the evidence is unequivocal on the issue of intent to evade.

## DECISION AND DISPOSITION:

The taxpayers’ petition for cancellation of the MVET is denied. The taxpayers’ request for cancellation of the evasion penalty is granted.

Dated this 20<sup>th</sup> day of July 1998.