

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Refund of |) | <u>D E T E R M I N A T I O N</u> |
| |) | |
| |) | No. 99-044 |
| |) | |
| ... |) | Unregistered |
| |) | Use Tax Assessment |
| |) | |

- [1] RULE 178; RCW 82.12.020 AND RCW 82.12.0251: USE TAX; AUTOMOBILE; EXEMPTION; ACQUIRED BY GIFT OR BAILMENT BY NONRESIDENT; BROUGHT INTO WASHINGTON MORE THAN NINETY DAYS AFTER. A Washington resident who uses a private automobile on which sales tax has not been paid, is not liable for use tax on the vehicle when the person acquired the vehicle by gift or bailment, and used the vehicle, while a resident of another state, and the acquisition and use occurred more than ninety days before the person moved to 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.

NATURE OF ACTION:

Montana couple who gave a vehicle to their son in Montana as a gift, but for insurance reasons retained title until their son moved to Washington six months later, request refund of use tax assessed on the vehicle when the son registered it in Washington.¹

FACTS:

Prusia, A.L.J. -- The taxpayers (husband and wife) are, and at all relevant times were, residents of Montana. In December 1997, the taxpayers' son, . . . was a college student at Montana State University at Billings, in his senior year. In that month, [the son] . . . received a job offer for a job in Vancouver, Washington, beginning in June 1998. When their son received the job offer, the taxpayers decided to give him a 1994 Honda they had owned since 1994. They gave him the automobile at Christmas 1997. However, for insurance reasons, they decided to keep the title in

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

their names until their son moved to Washington. All of their vehicles were on one policy, and they could save money by continuing to insure the 1994 Honda with the family's other vehicles while their son still lived in Montana.

In January 1998, the taxpayers and their son visited Vancouver. During that trip, the taxpayers phoned the Washington Department of Motor Vehicles to find out whether their son would have to pay Washington sales tax on the vehicle when he moved to Vancouver, and find out whether waiting until May to transfer the title would make any difference. The taxpayers had lived in Vancouver many years before, were aware of Washington's sales tax, and wanted to avoid paying it if they could.

The person at the Washington Department of Motor Vehicles with whom the taxpayers spoke told them that because the automobile was a gift to a family member, there would be no sales tax to be paid at the time of transfer.

The son graduated from Montana State at Billings at the end of April 1998. On May 26, 1998, the taxpayers helped their son move to Vancouver. The next day, they went to an Auto License office in Vancouver to transfer the title and obtain Washington plates for the Honda. They were required to pay Washington use tax of \$. . . They were told use tax was due because they had not transferred the title in Montana at least 90 days prior to their son's move to Washington. The taxpayers paid the tax.

The same day, the taxpayers went to the Department of Revenue's (Department) office in Vancouver to discuss their situation, and inquire whether there was any way around the tax. They explained what the person at the Department of Motor Vehicles had told them in January. They were told "that's been happening a lot, we wish they would stop telling people that."

The taxpayers' petition states the following reason for the request for a refund:

We do not believe that we should have to pay sales tax in Washington on this car as it was a gift to our son more than 90 days prior to his move, no money was exchanged, it is a 1994 model, and we certainly would have transferred the title to his name in Montana 90 days before he moved to Washington to legally avoid paying \$. . .

ISSUES:

1. Is the son's use of the automobile in Washington exempt from the use tax?
2. Does the advice the taxpayers received from the Department of Motor Vehicles estop the Department from assessing the use tax?

DISCUSSION:

RCW 82.08.020 imposes a retail sales tax on each retail sale in this state. RCW 82.08.0264 exempts from the retail sales tax, sales of motor vehicles, trailers, or campers to nonresidents for use outside the state, under specified conditions.

RCW 82.12.020 imposes the use tax. It provides:

There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment

Various use tax exemptions are set out in chapter 82.12 RCW. One exemption, in RCW 82.12.0251, is the following:

The provisions of this chapter shall not apply . . . in respect to the use of household goods, personal effects, and private motor vehicles, not including motor homes, by a bona fide resident of Washington . . . if such articles 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.

WAC 458-20-178 (Rule 178) implements the use tax statutes. It provides, in pertinent part, as follows:

(1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, lease, repossession, or bailment . . . where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.

(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.

(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, . . . is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article Tax liability arises as to that use only which first occurs within the state

(4) Persons liable for the tax. The person liable for the tax is the purchaser, . . . the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, . . .

. . . .

(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

....

(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state . . . if such articles were acquired and used by such persons in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.

The taxpayers' statement that they gave the Honda automobile to their son in Montana in December 1997 is credible. They have provided proof they had owned the automobile since 1994. Their explanation for not transferring title to the automobile at the time of the gift is consistent with a practice commonly followed in families in order to take advantage of multi-car insurance discounts. The focus of the taxpayers' argument in the teleconference was not legalities, but rather the misinformation they were given by the Department of Motor Vehicles.

Misinformation given a taxpayer by another state agency does not bar or estop the Department from collecting a tax that is owed. See Det. No. 87-298, 4 WTD 87 (1987). The determinative issue, then, is whether the taxpayers owed the tax.

The taxpayers gave the automobile to their son in Montana in December 1997, and he began using it in Montana at that time. He was then a resident of Montana, and did not enter Washington to become a resident for more than 90 days thereafter. If the son's acquisition of the vehicle was by gift or bailment, his subsequent use of the automobile in Washington is exempt from the use tax under RCW 82.12.0251.

The essential elements of a gift are: (1) an intention on the part of the donor to make the gift; (2) delivery by the donor of the subject matter of the gift, and (3) acceptance of the gift by the donee. In re Brown's Estate, 122 Mont. 451, 206 P.2d 816 (1949); See Proctor v. Forsythe, 4 Wash. App. 238, 480 P.2d 511 (1971). All of the elements are present here.

However, the attempted transfer of an automobile presents a special circumstance. There are statutory requirements for transferring title. Section 61-3-201 Montana Code Annotated requires that the transferor of a motor vehicle sign in the appropriate place on the certificate of ownership issued by the state, and the transferee forward the endorsed certificate to the county treasurer within 20 days. The jurisdictions have split on the issue whether failure to comply with state certificate of title regulations makes a gift incomplete. In most instances, it has been held that the validity, as between the donor and the donee, of a gift of an automobile is not affected by failure to comply with the statutory requirements regulating the transfer of motor vehicles. See "Gift of Automobile," 100 A.L.R. 2d 1219; Junkin v. Anderson, 12 Wn.2d 58, 120 P.2d 548, 123 P.2d 759 (1941). We do not find any Montana case on point.

We need not attempt to guess how the Montana courts would decide the gift issue. If the taxpayers' gift of the automobile to their son was not complete without the assignment of the title certificate, the son acquired the automobile in December 1997 by bailment.

WAC 458-20-211 (Rule 211), subsection (2)(b), defines the term "bailment" as follows:

The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

In this case, the taxpayer's son was granted the "temporary right of possession to and use" of the taxpayers' Honda automobile "for a stated purpose" of using it until he moved to Washington and was given the title, "without consideration to the grantor." Accordingly, he acquired the automobile by bailment.

Because the son acquired the automobile by gift or bailment and used it while a bona fide resident of Montana, and such acquisition and use occurred more than ninety days prior to the time he moved to Washington, under RCW 82.12.0251 and Rule 178 his use of the vehicle in Washington is exempt from the use tax. Therefore, the use tax the taxpayers paid the Department when they registered the vehicle must be refunded.

DECISION AND DISPOSITION:

The taxpayers' petition is granted.

Dated this 25th day of February, 1999.