

Cite as 3 WTD 219 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Refund of)	
)	No. 87-188
)	
. . .)	Use Tax Assessment
)	(1986 Mercedes)
)	

[1] **RCW 82.32.050:** EVASION PENALTY. Intent may be inferred from a taxpayer's conduct; that is, an inference of intent to evade can arise solely from the facts of the case. The taxpayer, once such an inference is established, shoulders the burden of rebutting that inference.

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.

TAXPAYER REPRESENTED BY: Pro Se

DATE OF HEARING: May 19, 1987

NATURE OF ACTION:

The taxpayer petitions for a refund of a 50 percent penalty assessed for non-payment of the use tax.

FACTS AND ISSUE:

Normoyle, A.L.J. -- On June 16, 1986, the taxpayer, a Washington resident, ordered a new Mercedes automobile from an Oregon dealer. The taxpayer put his own name and his Washington address on the order form. On August 4, 1986, the taxpayer applied for Oregon title and registration. On the application form, the taxpayer showed himself as the owner and stated that he resided in Oregon. The address he gave was his father's. The taxpayer signed the application, immediately under this certification: "I CERTIFY THAT THE INFORMATION

CONTAINED ON THIS APPLICATION IS TRUE AND CORRECT." He then obtained Oregon plates. Oregon does not impose a sales tax, so he had to only pay the nominal Oregon registration fee of approximately \$21. Had the car been licensed in Washington, he would have been required to pay the registration fee plus sales tax of \$1,600.

The taxpayer was a Washington resident at the time. He had been employed in Auburn since 1981. He had been a registered voter in Washington since August, 1981. He had a Washington driver's license, but not one from Oregon. The car was purchased with a loan he (not his father) obtained through his credit union. The loan is billed to his Washington address.

The taxpayer states that he bought the car for his father, who does reside in Oregon, as stated above. The father, then aged 79, had cataract surgery around the time of the car purchase and was unable to drive for six weeks. The taxpayer drove it to Washington, where he used it without payment of the use tax. On September 9, 1986, the State Patrol began an investigation, which eventually resulted in a citation for failure to register and license the car in Washington, a criminal-traffic charge. The taxpayer states that he was found to be guilty, but that the fine was reduced.

Meanwhile, the Department of Revenue was conducting its own investigation. On September 19, 1986, use tax and a 50 percent tax evasion penalty were assessed, both of which the taxpayer eventually paid, after an adjustment. He does not dispute the use tax, but does petition for a refund of the penalty. The basis for the petition is that he did not intentionally evade the tax. He states that he made attempts to pay the use tax in Washington but was told by the Department of Licensing that he could not have both a Washington and Oregon registration, and that he could not pay the use tax unless the car was going to be registered here. Because of his intention to return the car to Oregon and give it to his father after he had recovered from the eye surgery, the taxpayer deemed it best to continue to license the car in Oregon, if he had to make a choice between the states, as advised by the Department of Licensing.

The issue is whether or not the penalty may be waived, under these circumstances.

DISCUSSION:

Under RCW chapter 82.12, the taxpayer was required to pay use tax on the car, in an amount equal to the sales tax, when it was first used in this state. Having failed to do so, the use tax was properly assessed.

As to the penalty, RCW 82.32.050 provides as follows, in pertinent part:

If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

Our task, then, is to decide whether the evidence is sufficient to sustain a finding that the taxpayer intended to evade payment of Washington use tax. We are not guided by any appellate court decisions. However, there have been many appeals to the Department concerning this issue. By administrative rule (Washington Administrative Code 458-20-200(12)), we are directed to:

. . . make such determination as may appear to [the Administrative Law Judge] just and lawful and in accordance with the rules, principles and precedents established by the department of revenue
 . . .

Prior Department Determinations establish the following principles applicable to this case:

1. The tax evasion statute is not part of the criminal code; therefore, the burden of proof is a preponderance of the evidence, not proof beyond a reasonable doubt.
2. To sustain a 50 percent penalty assessment, the Department must find that the taxpayer intentionally acted to avoid paying the tax with the knowledge or belief that he or she in fact owed it. Put another way, the word "intent" presupposes knowledge.
3. Intent may be inferred from a taxpayer's conduct; that is, an inference of intent to evade can arise solely from the facts of the case. The taxpayer, once such an inference is established, shoulders the burden of rebutting that inference.

Applying these guidelines to this case, we conclude that the facts support a finding of intentional tax evasion, by a

preponderance of the evidence. The taxpayer licensed the car in Oregon through use of a knowingly false Oregon address. A critical fact is that the taxpayer certified, on the application, that he was an Oregon resident, when in fact he was not.

We believe that principle #3 above is controlling. We further believe that the taxpayer has not met his burden of rebutting the inference of intent to evade. Despite his efforts to do so, he has been unable to substantiate his claim that he attempted to pay use tax in Washington prior to the tax assessment. It is regrettable that he was apparently given poor advice by the Department of Licensing, but in the absence of proof of that misinformation, we cannot ignore the established facts. Accordingly, we must uphold the penalty assessment.

DECISION AND DISPOSITION:

The petition for refund is denied.

DATED this 4th day of June 1987.