

Cite as Det. No. 98-120, 18 WTD 132 (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. 98-120
	)	
...	)	...

- [1] RULE 178; RCW 82.32.0251: USE TAX – REQUIREMENTS FOR EXEMPTION: The requirements for the RCW 82.12.0251 exemption are threefold. Specifically, (1) the user must be a nonresident, (2) the vehicle must be registered or licensed in the state of the user’s residence, and (3) Washington registration of the vehicle must not be required. Det. No. 96-49, 16 WTD 177 (1996).
- [2] RULE 178; RCW 82.12.251: USE TAX – RESIDENCY. A person may be a resident for use tax and MVET purposes in more than one state. Det. No. 87-109, 2 WTD 463 (1987). It is not enough that a person intends to become a nonresident of Washington at a future date, but they must actually be a nonresident in order to qualify for the exemption from use tax under RCW 82.12.0251. Det. No. 87-68, 2 WTD 339 (1987) and WAC 458-20-178(7)(i). They must have completed the process of becoming a nonresident in order to be a nonresident in fact.
- [3] RULE 178; RCW 82.12.251, OREGON REVISED STATUTES 803.360 AND 860.355: USE TAX – PROPERLY REGISTERED. Persons who are not domiciled in Oregon may not, under Oregon law, register his or her motor vehicle in Oregon. Merely, using a friend’s Oregon address for the purpose of vehicle and voter registration does not establish a domicile in Oregon. Thus, persons who so register their motor vehicles in Oregon do not qualify for the RCW 82.12.0251 exemption from the use tax in Washington.
- [4] RCW 82.44.020, 82.44.090, 46.16.030, AND 46.85.060: MVET -- NONRESIDENTS PROPERLY REGISTERED. Nonresidents of Washington are not required to register their vehicles in Washington, if the vehicles are lawfully registered in the state of the owners' residence. If the vehicle is not lawfully registered in the state of the owners' residence, the MVET is applicable.
- [5] RULE 228; RCW 82.32.090: EVASION PENALTY – EVASION VERSUS AVOIDANCE. Evasion occurs when a taxpayer knows of tax obligation and does

something, which is fraudulent or false to avoid that obligation. However, an unsuccessful attempt at tax avoidance is not evasion.

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:

The taxpayers protest the assessment of motor vehicle excise tax (MVET), use tax, and evasion and delinquent penalties relating to their purchase and use of a 1997 . . . Motor Home (Motor Home).<sup>1</sup>

#### FACTS:

A.L.J. Coffman -- The taxpayers<sup>2</sup> moved to Washington in late 1989. Husband retired on February 28, 1997. On March 6, 1997, the taxpayer's purchased the Motor Home from an Indiana dealer. The purchase contract shows the taxpayer's Washington address. The odometer statement also shows the taxpayer's Washington address. However, the Certificate of Origin, Notification of Delayed Delivery Date, Warranty Registration, and Application for Oregon Title show the Portland, Oregon address of a friend of the taxpayers. The husband and/or the wife signed all of these documents.

The taxpayers allege that they first used the Motor Home in Washington on September 29, 1997. Prior to that time, they claim that they traveled around the country. Specifically, the taxpayers claim that they traveled from Indiana to Arkansas, Texas, New Mexico, Arizona, Nevada, California, and Oregon. The taxpayers acknowledge that they returned to their Washington home on a couple occasions prior to September 29, 1997, but claim that they placed the Motor Home in storage during those return trips.

The taxpayers provided copies of their Discover Card statements showing purchases between March 1, 1997 and May 28, 1997 that correspond with their claim that they had not returned to Washington during that period. However, the taxpayers have not provided similar statements for subsequent periods. The taxpayers returned to Washington on May 28, 1997. The Discover Card statement shows the purchase of airline tickets on May 28, 1997.

The taxpayers state that the Motor Home was placed in storage in Watsonville, California from May 22, 1997 until July 8, 1997. To document the storage, the taxpayers provided a copy of a statement of account that shows the taxpayers' payment of rent.<sup>3</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

<sup>2</sup> The taxpayers are husband and wife. When necessary we will refer to them individually, as husband or wife.

<sup>3</sup> In a statement provided to the Department's Compliance Division dated October 28, 1997, the taxpayers state they placed the Motor Home in Storage on April 26, 1997. The statement of account does not verify this. However, the Discover Card statements show that the taxpayers were not in Washington during the period between April 26 and May 22, 1997. Therefore, we find this discrepancy is harmless.

The taxpayers' statements show that they were in Washington at their home for the period between May 28 and July 7, 1997. The taxpayers state that they held a moving sale July 4, 5, and 6, 1997. Also, during this period they placed their home on the market for sale. They listed the house with . . . .

They claim that the Motor Home was taken out of California storage on July 7 or 8, 1997 and placed in storage in Troutdale, Oregon on July 19, 1997. The taxpayers did not provide any documentation supporting this storage.

The taxpayers admit returning to Washington in the middle of August 1997 for the purpose of packing their possessions and claim to have moved out of their home on October 17, 1997, the effective date of the sale of their Washington home.

The taxpayers claim that the Motor Home was placed in storage in Oregon for the period September 1 to 29, 1997. They provided a copy of a receipt showing the payment for storage during this period.

On September 29, 1997, the husband obtained an Oregon driver's license, registered to vote in Oregon, and transferred the registration to his Lexus from Washington to Oregon. The address used by the husband with the State of Oregon is the home of a friend. There is no evidence that the taxpayers actually resided at this location on more than a transitory basis when visiting their friend. The wife retained her Washington driver's license until December 1997 when she obtained a Texas driver's license.

The Department's investigation of the taxpayers' use of the Motor Home began after a Tax Discovery Officer (TDO) observed the Motor Home at the taxpayers' Washington home on October 6, 1997. The TDO referred the matter to the Washington State Patrol for investigation. The State Patrol officer traced the Oregon license plate to taxpayers' friend and attempted to contact him, but was unable to do so. The officer also contacted by telephone one of the taxpayers' Washington neighbors who stated that she observed a motor home in the driveway of the taxpayers' home half a dozen times.

The taxpayers provided a signed statement from this neighbor stating that the motor home she had observed was small, but that the Motor Home at issue in this appeal was large. Further, her written statement states that the taxpayers returned to their home in the fall of 1997 with the Motor Home. Additionally, the taxpayers provided copies of written statements from several neighbors who stated that their first observation of the Motor Home in Washington was in late September 1997.

#### ISSUES:

1. When did the taxpayers first use the Motor Home in Washington?
2. Was the use of the Motor Home in Washington exempt from the use tax per RCW 82.12.0251?

3. Were the taxpayers required to register the Motor Home in Washington and pay the MVET?
4. If the use tax and/or MVET were due, did the taxpayers attempt to evade the payment of taxes to the State of Washington?

#### DISCUSSION:

##### **1. When did the taxpayers first use the Motor Home in Washington?**

Based on all the documentation in the file and the numerous statements provided by the taxpayers, we find that the first use of the Motor Home in Washington was on September 29, 1997. While we understand the Department's initial finding that the taxpayers used the Motor Home prior to that date, the additional documentation provided by the taxpayer outweighs any presumption of prior use.

##### **2. Was the use of the Motor Home in Washington exempt from the use tax per RCW 82.12.0251?**

Use by a consumer of tangible personal property in Washington is subject to use tax, unless exempt. RCW 82.12.020(1). The taxpayers claim that their use of the Motor Home is exempt from use tax based on RCW 82.12.0251, which reads, in part:

The provisions of this chapter shall not apply ... in respect to the use by 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, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060;

We stated in Det. No. 93-240, 13 WTD 369 (1993):

We must begin our discussion of this and the following issues by observing that we are considering application for retail sales and use tax exemptions. The state of Washington Supreme Court has laid down the rule that tax exemption statutes must be strictly construed in favor of the application of the tax, Yakima Fruit Growers Association v. Henneford, 187 Wn. 252, 60 P. (2d) 62 (1936); no person should be declared exempt unless it clearly appears that such exemption is required by law, North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P. (2d) 467 (1942); any claim of exemption is to be studied with care before depriving the state of revenue, Alaska Steamship Company v. State, 31 Wn.2d 328, 196 P. (2d) 1001 (1948), and in general tax exemption statutes must be strictly construed in favor of the tax, Miethke v. Pierce County, 173 Wn. 381, 23 P. (2d) 405 (1933); Norwegian Lutheran Church v. Wooster, 176 Wn. 581, 30 P. (2d) 381 (1934); Standard Oil Company v. King County, 180 Wn. 631, 41 P. (2d) 156 (1935), Boeing Aircraft Company v. Reconstruction Finance Corporation, 25 Wn.2d 652, 171 P. (2d) 838 (1946).

[1] Thus, the taxpayers will receive the benefit of the exemption only if, the use of the Motor Home fits precisely within the exemption. The requirements for the RCW 82.12.0251 exemption are threefold. Specifically, (1) the user must be a nonresident, (2) the vehicle must be registered or licensed in the state of the user's residence, and (3) Washington registration of the vehicle must not be required. Det. No. 96-49, 16 WTD 177 (1996). If the taxpayers fail to meet any of the three requirements, then use tax is due.

[2] A person may be a resident for use tax and MVET purposes in more than one state. Det. No. 87-109, 2 WTD 463 (1987). It is not enough that a person intends to become a nonresident of Washington at a future date, but they must actually be a nonresident in order to qualify for the exemption from use tax under RCW 82.12.0251. Det. No. 87-68, 2 WTD 339 (1987) and WAC 458-20-178(7)(i). They must have completed the process of becoming a nonresident in order to be a nonresident in fact. The taxpayers were attempting to become nonresidents of Washington. As the taxpayers' petition explained:

Hundreds of thousands of people, some of whom jokingly call themselves "escapees," do what [the taxpayers] have done. They live during their working years in the state where they happen to be employed. . . . When they retire, as [husband] did in February [1997], they escape. Many of them, like [the taxpayers] purchase new homes – motor homes. [The taxpayers] purchased theirs in Indiana, because that is where the home was manufactured. They registered the motor home in Oregon because the laws of that state are "escapee" friendly. They did not bring their new home – the motor home – to Washington until September 29, 1997. By September 29, 1997, they had sold the house they owned in Washington, had registered their other motor vehicles in Oregon, [husband] had obtained a drivers license in Oregon, and had registered to vote in that State.

The issue is whether the taxpayers had become both nonresidents of Washington and residents of Oregon when they registered the motor home there and first used it in Washington.

The Department carefully reviews claims of non-residence by former Washington residents, especially when the claimed abode has never been used by the taxpayer for more than a transitory basis when visiting friends or relatives. This is precisely the case in this appeal. The taxpayers' only connection with Oregon was the friend's address that they used to register their vehicles and husband used for his driver's license and voter registration. They chose this address because the laws of Oregon were "escapee" friendly". The documents provided to the TDO, however, showed that the taxpayers looked at property to purchase in New Mexico, Arizona, and California--not Oregon. There is no evidence that they sought to purchase property in Oregon. The taxpayers have not demonstrated that they intended to reside in Oregon. Rather, they have demonstrated that Oregon was chosen merely because of its tax laws.

[3] Oregon Revised Statutes (ORS) 803.360 states:

**Domicile in state required; exceptions.** (1) No person may register or renew the registration of a vehicle in this state unless the person is domiciled in this state, as

described in ORS 803.355. This section does not apply to persons required by ORS 803.200 or any other provision of law, to register vehicles in this state.

(2) Notwithstanding subsection (1) of this section, a person who is not domiciled in this state may register or renew the registration of a vehicle that:

- (a) Is usually left within the state when the registered owner is absent from the state;
- (b) Is used primarily for personal transportation within the state;
- (c) Is a private passenger vehicle or a vehicle with a loaded weight of less than 8,000 pounds; and
- (d) Is not a motor home or a camper.

(Emphasis added.)

ORS 803.355 states:

**"Domicile" described.** For purposes of ORS 803.350 to 803.370 and 807.045, a person is domiciled in this state if the person's place of abode is in the state and the person intends to remain in the state or, if absent, to return to it.

The taxpayers have not established an abode in Oregon. Nor have they demonstrated that they intend to remain in or return to Oregon. The State of Oregon's Department of Transportation issued a news release on April 2, 1998<sup>4</sup> that states, in part:

Three people in Eugene were convicted this week on federal charges of illegally registering recreational vehicles in Oregon for out-of-state residents.

This practice not only enabled the owners to avoid any tax or registration fee in their home states, but took valuable revenue away from those states as well.

Illegal registration by out-of-state residents is not new. Oregon's relatively "low" registration cost of \$15 per year on most passenger vehicles makes illegal registration very tempting -- especially to persons from other states where the registration fee can be hundreds of dollars when based on the value of the vehicle.

But recreational vehicle registration is the "big ticket" item for this illegal activity. Many states charge a registration fee or tax on RVs based on the vehicle's value. For instance, in California, a 38-foot motor home valued at \$100,000 would cost more than \$10,000 to register for the first year. That figure includes licensing and registration fees, plus a county tax of between 7 and 8 percent. In Oregon, the same motor home would cost just \$224 to register for *two* years, with a base fee of \$84, plus \$5 for every foot over 10. According to Lana Tribbey, manager of DMV's Vehicle Programs, DMV employees look out for suspicious addresses on registration applications, but it's difficult to determine.

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<sup>4</sup> The entire news release is attached to this determination.

"Sometimes, local addresses or drop box numbers will be identified as being used for illegal registration, but since customers can do business at any DMV office statewide, the staff in another town may not be aware of the scam," Tribbey says.

. . .

"We want to get the word out that you can't register a vehicle in Oregon unless you live here," she says. "With more public awareness, we can assure that vehicles registered in Oregon truly belong here -- and help restore some of the revenue other states lose when people register their vehicles in Oregon illegally."

So what is legal registration in Oregon? State law says that only residents who live (or are "domiciled") in Oregon can register their vehicles here.

"You become domiciled by moving to and making your home in Oregon," Tribbey says. "Simply declaring to be a resident is not sufficient. Neither is renting a post office box or claiming a friend or relative's address as your own. If you don't live in Oregon, you can't register your vehicles here. It's against the law."

A person becomes a resident of Oregon by being gainfully employed in the state or doing any one of the following:

- Remaining in the state for a consecutive period of six months or more
- Placing children in a public school without paying non-resident tuition fees
- Declaring to be a resident to get a state license or resident rate tuition fees at an educational institution maintained by public fund
- Maintaining a main office, branch office or warehouse facility in Oregon and operating motor vehicles in the state
- Or operating motor vehicles in intrastate transportation for a living (other than seasonal agricultural work).

"Somehow there has been a misconception that Oregon is the place to register your vehicle to avoid other states' taxes or fees," Tribbey says. "We want people to know that isn't true. Oregon is serious about finding and prosecuting people who knowingly register vehicles illegally here."<sup>5</sup>

Although the above-quoted news release states that obtaining an Oregon license is a method of becoming an Oregon resident, this provision must be read in light of the earlier statement that simply declaring yourself to be an Oregon resident is not sufficient. The facts in this appeal show that the taxpayers were not residents of Oregon when they brought the Motor Home into Washington. They did not have a place of abode in Oregon. They merely used the address of a friend for the purpose of obtaining certain tax benefits. Thus, the taxpayers were not allowed, under Oregon law, to register and license the Motor Home with the State of Oregon. Therefore,

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<sup>5</sup> Entire news release is attached.

their use of the Motor Home in Washington did not qualify for the exemption found in RCW 82.012.0251.

**3. Were the taxpayers required to register the Motor Home in Washington and pay the MVET?**

Washington imposes MVET for the privilege of using a motor vehicle on the public roads of Washington. RCW 82.44.020. As a practical matter, the MVET is enforced through the vehicle licensing and registration process in such a manner that MVET is imposed (insofar as is relevant in this appeal) only on persons who are required to register and license their vehicles in Washington. See RCW 82.44.090. If a motor vehicle is owned by a Washington resident and used here, it must be licensed and registered in Washington.

[4] Nonresidents of Washington are not required to register their vehicles in Washington, if the vehicles are lawfully registered in the state of the owners' residence. RCW 46.16.030<sup>6</sup>. The extent of this exemption from registration is explained in RCW 46.85.060, which states:

[T]he extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdictions, or to owners of such vehicles . . . shall include at least the following:

(1) Nonresident persons not employed in this state may operate a vehicle in this state ...

(Emphasis added.) RCW 46.85.020(3) states:

“Properly registered,” as applied to place of registration, means:

(a) The jurisdiction where the person registering the vehicle has his legal residence; ...

Thus, if the vehicles are not lawfully registered in the state of the owners' residence, the MVET is applicable. As stated above, the taxpayers were not legal residents of Oregon at the time the Motor Home was brought into Washington. Therefore, the MVET was due upon their use of the Motor Home in Washington.

Thus, the motor home was not properly registered in Oregon because the taxpayers' legal residence was not Oregon. MVET was, therefore, due in Washington when the taxpayers' first brought the motor home into this state.

**4. If the use tax and/or MVET were due, did the taxpayers attempt to evade the payment of taxes to the State of Washington?**

The evasion penalty is imposed if by RCW 82.32.090(5), which states:

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<sup>6</sup> RCW 46.16.030 states in part: “[T]he provisions relative to the licensing of vehicles . . . shall not apply to any vehicles owned by nonresidents of this state if the owner thereof has complied with the laws requiring the licensing of vehicles . . . in force in the state . . . of his or her residence.



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.

[5] The Department has the burden to show the elements of an evasion penalty by clear, cogent, and convincing evidence. Det. No. 90-314, 10 WTD 111 (1990). The elements of tax evasion are stated in Det. No. 92-133, 12 WTD 171 (1992) as:

(1) Know they have a tax obligation; and (2) intentionally do something which is false or fraudulent to evade that obligation.

“[U]nsuccessful attempts to limit one's tax obligations or avoid them altogether do not amount to evasion.” *Ibid.* Here, the taxpayers went to great efforts to insure that their use of the Motor Home in Washington was proper. They did not bring the Motor Home into Washington until they had completed the steps they believed entitled them to register the Motor Home in Oregon. Although the taxpayers’ belief that the Motor Home was properly registered in Oregon was erroneous, we find that the taxpayers merely failed in their attempt to limit their Washington tax obligations. Therefore, we find that the taxpayers did not attempt to evade the payment of Washington taxes.

#### DECISION AND DISPOSITION:

The taxpayers’ petition is denied as to the use tax and MVET. The taxpayers’ petition is granted as to the evasion penalty.

Dated this 7<sup>th</sup> day of July, 1998.

April 2, 1998

### **Out-of-state auto registration is illegal in Oregon**

Three people in Eugene were convicted this week on federal charges of illegally registering recreational vehicles in Oregon for out-of-state residents.

This practice not only enabled the owners to avoid any tax or registration fee in their home states, but took valuable revenue away from those states as well.

Illegal registration by out-of-state residents is not new. Oregon’s relatively "low" registration cost of \$15 per year on most passenger vehicles makes illegal registration very tempting -- especially to persons from other states where the registration fee can be hundreds of dollars when based on the value of the vehicle.

But recreational vehicle registration is the "big ticket" item for this illegal activity. Many states charge a registration fee or tax on RVs based on the vehicle’s value. For instance, in California, a 38-foot motor home valued at \$100,000 would cost more than \$10,000 to register for the first year. That figure includes licensing and registration fees, plus a county tax of between 7 and 8 percent. In Oregon, the same motor home would cost just \$224 to register for *two* years, with a base fee of \$84, plus \$5 for every foot over 10.

According to Lana Tribbey, manager of DMV’s Vehicle Programs, DMV employees look out for suspicious addresses on registration applications, but it’s difficult to determine.

"Sometimes, local addresses or drop box numbers will be identified as being used for illegal registration, but since customers can do business at any DMV office statewide, the staff in another town may not be aware of the scam," Tribbey says.

Tribbey says that there are legal reasons persons drive Oregon-licensed cars in other states, such as college students living away from home or military personnel who make their home in another state.

But the problem is big enough in Oregon's "border states" that local law enforcement patrol roads and highways looking for residents who have registered their cars in Oregon.

"Many people are doing it out of ignorance, with no intent to cheat," Tribbey says. "But there are definitely some people who know that what they are doing is against the law."

Consequently, the Oregon DMV is gearing up to begin an educational campaign for out-of-state residents and recreational vehicle interest groups about registering vehicles in Oregon.

"We want to get the word out that you can't register a vehicle in Oregon unless you live here," she says. "With more public awareness, we can assure that vehicles registered in Oregon truly belong here -- and help restore some of the revenue other states lose when people register their vehicles in Oregon illegally."

So what is legal registration in Oregon? State law says that only residents who live (or are "domiciled") in Oregon can register their vehicles here.

"You become domiciled by moving to and making your home in Oregon," Tribbey says.

"Simply declaring to be a resident is not sufficient. Neither is renting a post office box or claiming a friend or relative's address as your own. If you don't live in Oregon, you can't register your vehicles here. It's against the law."

A person becomes a resident of Oregon by being gainfully employed in the state or doing any one of the following:

- Remaining in the state for a consecutive period of six months or more
- Placing children in a public school without paying non-resident tuition fees
- Declaring to be a resident to get a state license or resident rate tuition fees at an educational institution maintained by public fund
- Maintaining a main office, branch office or warehouse facility in Oregon and operating motor vehicles in the state
- Or operating motor vehicles in intrastate transportation for a living (other than seasonal agricultural work).

"Somehow there has been a misconception that Oregon is the place to register your vehicle to avoid other states' taxes or fees," Tribbey says. "We want people to know that isn't true. Oregon is serious about finding and prosecuting people who knowingly register vehicles illegally here."

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