Cite as 3 WTD 99 (1987)

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

In the Matter of the Petition) For Correction of Assessment of)		D E T E R M I N A T I O N
	)	No. 87-145
	)	
	)	Re: Notice of Use Tax Due
. . .	)	1986 Toyota Pickup
	)	. . .
	)	

[1] **RULE 178:** USE TAX -- JOINT OWNERS OF AUTO LICENSED IN OREGON BY WASHINGTON RESIDENTS. The use tax is imposed on the use in this state of any article of tangible personal property by consumers unless statutorily exempted. Where Washington residents bought motor vehicle in Oregon and licensed it there, the first use of the vehicle in Washington gives rise to the imposition of use tax. Where there are joint owners, any use of the vehicle by either joint owner within this state constitutes a taxable incident.

[2] **RULE 178:** USE TAX -- WASHINGTON RESIDENT AS COLLEGE STUDENT IN OREGON -- NONRESIDENT STUDENT AT COLLEGE. A college student from Washington attending an Oregon college becomes a nonresident student of Oregon, not a nonresident of Washington. His acquisition of a vehicle in Oregon and subsequent use of the vehicle in Washington gives rise to use tax liability.

[3] **RULE 178:** USE TAX -- WASHINGTON RESIDENT -- OREGON LICENSED VEHICLE -- POPE AND TALBOT CASE -- TRANSPORTATION FINALLY ENDED. Exemption from use tax on a vehicle brought into Washington under the "transportation finally ended" principle applies only to nonresidents of Washington. Pope and Talbot case discussed.

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: . . .

DATE OF HEARING: September 12, 1986

NATURE OF ACTION:

Petition protesting assessment of use tax on an Oregon licensed motor vehicle registered in the names of the father, resident of Washington, and the 18-year-old son, a college student in Oregon.

FACTS AND ISSUES:

Krebs, A.L.J.--A Notice of Use Tax Due was issued to [a son and his father (taxpayer)] on Juneá13, 1986. Use tax was assessed in the amount of $ . . . because of the taxpayer's and son's ownership and use in Washington of a 1986 Toyota pickup motor vehicle purchased in Oregon. The use tax has not been paid.

The June 13, 1986 Notice of Use Tax Due superseded a June 4, 1986 Notice of Use Tax Due which had assessed use tax . . . plus evasion penalty of 50 percent . . . .

The taxpayer furnished the following information and explanation. The taxpayer's son is a college student attending [a] college [in] Oregon, where he lives while attending school. The son comes home to the taxpayer's residence in [Washington] during the summer vacation. On Decemberá21, 1985, the 1986 Toyota pickup was purchased in . . . , Oregon and registered in Oregon in the names of the taxpayer and his son with their residence stated to be at Linfield College. [An] Oregon license plate . . . was issued to them for the motor vehicle. The vehicle was purchased for $12,000. The taxpayer paid the purchase price. The taxpayer borrowed $9,000 from the [a] credit union who required that the taxpayer's name be on the vehicle registration because the son was only 18 years old.

The taxpayer has a Washington driver's license expiring Aprilá21, 1988. The son has a Washington driver's license expiring Julyá8, 1987. The son has applied for an Oregon driver's license. The 1986 Toyota pickup was purchased for the son's use in Oregon. At Christmas time in 1985, the son

drove the vehicle from Oregon to [the home in] Washington but took it back within a day because it developed a problem. The next time that the son brought the vehicle to [Washington] was on Juneá2, 1986 when the vehicle was stored in the taxpayer's garage. The son then used the taxpayer's 1967 Camaro automobile which is licensed in Washington in the taxpayer's name for the rest of the summer. About Augustá25, 1986, the son drove the 1986 Toyota back to Oregon. Insurance on the 1986 Toyota was suspended while it was garaged at the taxpayer's residence. The taxpayer could not remember if he ever drove the 1986 Toyota in Washington.

The taxpayer asserts that in November 1985 (before the 1986 Toyota was purchased) and in June 1986 he was informed by Department of Revenue personnel that no use tax would be owed on the truck until it was permanently used in the state of Washington. They considered usage of the vehicle in the state to be anything greater than 90 days. The taxpayer further asserts that he had been given five definitions for "use" and that none of them seem to agree.

The taxpayer cites the use tax statute, RCW 82.12.020, as stating:

> 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 . . . This tax will not apply with respect to the use of any article of tangible personal property purchased, extracted, produced or manufactured outside this state until the transportation of such article has finally ended.

The taxpayer contends that the 1986 Toyota is being used only in Oregon by the son and that its transportation has not ended. The taxpayer asserts that the vehicle would not have been purchased if it was known that there would be use tax liability. The taxpayer feels that he has been "victimized" as a result of all the circumstances involved, and that since the vehicle was used only "two or four hours" in Washington, there was no abuse of the law.

For all of the above reasons, the taxpayer believes that the assessment of use tax is improper.

DISCUSSION:

The taxpayer and his son were (and still are) residents of Washington at the time of the purchase by them in December 1985 of the 1986 Toyota pickup in Oregon and its licensing in Oregon. The son, a student at a college in Oregon and living there, is a nonresident student in Oregon. As residents of Washington, they are fully within the taxing jurisdiction of the state and are not entitled to favored treatment as accorded to "nonresidents" under the use tax law.

WAC 458-20-178 (Rule 178), copy attached, is the administrative regulation which implements Use Tax Chapter 82.12 RCW and has the same force and legal effect as the Revenue Act. Rule 178 in pertinent part provides:

> **Use tax.** 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, gift, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the sale to him of the property used.
>
> 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 user or to his 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.
>
> 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, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which the taxpayer takes or assumes dominion or control over the vehicle and shall include installation, storage, withdrawal from

storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person . . .

PERSONS LIABLE FOR THE TAX. As has been indicated, the person liable for the tax is the purchaser, . . .

. . .

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 82.12.030 of the law:

1. Any of the following uses:

a. The use of tangible personal property brought into the state of Washington by a nonresident thereof for his use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

b. the use by a nonresident of a motor vehicle which is currently licensed under the laws of the state of his residence [and is not used in this state more than three months][1] and which is not required to be registered or licensed under the laws of this state, or

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 person in another state while a bona fide resident thereof and such acquisition and use

[1]Effective April 18, 1983, the language "and is not used in this state more than three months" was removed from the statute, RCW 82.12.0251.

> occurred more than thirty days prior[2] to the time he entered this state. (Emphasis supplied.)

In this case, the taxpayer and his son purchased at retail the 1986 Toyota in December 1985 in Oregon. When the son drove the motor vehicle into Washington in December 1985, it was "first put to use in this state," even if the use occurred for only a day. At that time, use tax liability arose. When the son drove the motor vehicle into Washington in June 1986, it was again put to use in this state. If the vehicle had not been brought into Washington in December 1985, it would have been "first put to use in this state" in June 1986.

RCW 82.12.010(2) defines the terms "use," "used," "using," or "put to use" as words that:

> . . . shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state; . . . (Emphasis supplied.)

Without question, the 1986 Toyota was used in this state under the "ordinary meaning" of the terms "use," "used," or "put to use." It is not essential to find that the taxpayer or his son drove the motor vehicle continuously in Washington; use tax liability arises at the time the property is first put to use in this state.

When there are joint owners, whether only one joint owner or both joint owners are residents of Washington, any use of tangible personal property upon which no sales tax has been paid by either joint owner within this state constitutes a taxable incident. The operation of such property within this state and attendant benefits and liabilities realized therefrom spin off and attach to each registered owner of the property jointly and severally.

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[2]Effective May 20, 1985, the length of time was increased from 30 days to 90 days that a Washington resident must have used household goods, personal effects and private automobiles in another state as a bona fide resident of that state in order to claim use tax exemption when they are first brought into Washington. Chapter 353, Laws of 1985.

Rule 178's exemption 1a does not apply to the fact situation in this case because the son was not a "nonresident" of Washington at the time (December 1985 and June 1986) he drove the motor vehicle into Washington. He was a nonresident student in Oregon to attend college. He was coming home for Christmas and summer vacation to the place of his permanent residence.

Rule 178's exemption 1b does not apply to the fact situation in this case because (again) the son was not a "nonresident" of Washington.

Rule 178's exemption 1c does not apply to the fact situation in this case because the vehicle was not acquired and used in another state (Oregon) more than 90 days before the son entered this state with the vehicle. The vehicle was purchased in Oregon on December 21, 1985 and the son used the vehicle several days later in Washington at Christmas time.

Furthermore, as noted earlier, any use of the motor vehicle in Washington by either owner, taxpayer or his son, constitutes a taxable incident affecting the taxpayer who certainly was not a bona fide resident of Oregon. Nor do we concede that the son was a "bona fide resident" of Oregon when he temporarily resided there as a nonresident student to attend college as evidenced by his returning home to . . . whenever his attendance at college was not required and by his retention of his Washington driver's license. Therefore, Rule 178's exemption 1c is not available to the taxpayer nor to the son.

It is unfortunate that the taxpayer received alleged misinformation from the Department that "no use tax would be owed on the truck until it was permanently used in the state of Washington," and five definitions for "use" which did not agree. While such alleged misinformation, if received in writing, would serve to ameliorate the imposition of penalties and/or interest, it cannot cancel a tax that is due by the provisions of law. It is noted that the 50 percent evasion penalty assessed in the first Notice of Use Tax Due dated Juneá4, 1986 has been rescinded. Furthermore, the Department's position is that oral instructions or oral interpretations by employees of the Department are not binding. See ETB 419.32.99 . . . .

Finally, with respect to the taxpayer's argument that RCW 82.12.020, supra, excludes the use tax from application "until the transportation of such article has finally ended," such

contention is entirely inconsistent with the legislature's intention and desire to impose and collect the use tax "from every person in this state . . . for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." See RCW 82.12.020. Since no sales tax or use tax has been paid in connection with the taxpayer's acquisition or use of the vehicle in question, the vehicle falls within the requirements of RCW 82.12.020. The Department has uniformly held that when a Washington resident purchases an article of tangible personal property outside this state and the article is brought into and used in this state, the transportation of such article has "finally ended" in Washington even though the property was kept within this state for a relatively short period of time.

The Washington Supreme Court in Pope and Talbot v. The Department of Revenue, 90 Wn.2d 191 (1978) held that where a foreign corporation used an airplane, purchased in Oregon, in Washington on eight occasions, remaining at Washington airports overnight on two occasions, the transportation of the airplane had not "finally ended." However, the person sought to be taxed was a foreign corporation, that is, a nonresident of Washington. The court stated:

> Under RCW 82.12.020, the transportation of an airplane might be found to "finally end" in Washington when it is home-based here, and thereby acquires a tax situs. In that event, the plane would be subject to the use tax . . .

Thus, the court indicated that if the foreign corporation home-based the airplane in Washington, the use tax would apply even if the corporation was a nonresident.

But, in this case, the taxpayer and his son are residents of Washington. The exemption under the "transportation finally ended" principle is simply not available to residents of Washington.

For the reasons and law set forth, we conclude that use tax was properly assessed.

DECISION AND DISPOSITION:

The taxpayer's petition is denied. Use tax [was properly assessed].

DATED this 6th day of May 1987.