

Cite as 10 WTD 375 (1990).

APPEALS DIVISION

BEFORE THE INTERPRETATION AND  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment)   
of ) No. 91-009  
)   
 )   
 . . . ) Unregistered  
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)

- [1] RETAIL SALES TAX -- MOTORHOME. A former employee of an RV dealer was liable for retail sales tax on the purchase of motorhome from the dealer. Earlier demonstration use by a taxpayer as an employee of the dealer under the dealer's direction did not constitute use by the taxpayer, but by the dealer.
- [2] RCW 82.32.050 -- PENALTY -- EVASION -- INTENT TO EVADE: A former RV salesman and Washington resident who failed to pay retail sales tax on a motorhome purchased was subject to the 50% evasion penalty. A false statement on the Alaskan application for title a month later that he was an Alaskan resident proved that he intended to evade tax.
- [3] RCW 82.44.020 -- MVET -- USE ON PUBLIC ROADS. A showing of use on private property alone during the period that the taxpayer owned the vehicle is insufficient to impose motor vehicle excise 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.

TAXPAYER REPRESENTED BY: . . .  
. . .  
. . .

DATE OF HEARING: November 30, 1990

## NATURE OF ACTION:

The taxpayer petitions of the correction of assessment of use tax and motor vehicle excise tax as well as the 50% evasion penalty.

## FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer, a Washington resident, worked as a salesman for a recreational vehicle (RV) dealership. His employer asked him to take RVs to shows to sell them or take orders for similar RVs. The employer's dealer plates were used for such trips which occurred in 1986 and 1987.

After the trips, the taxpayer would remove the dealer plates and keep the RV at his house with no other license plates. This was done for the convenience of the dealer according to the dealer's testimony. Potential buyers would be shown the motor home there.

The taxpayer advanced the employer money and considered the RV to be security on the advances. The taxpayer physically held the Manufacturer's Statement of Origin (MSO for transferring its title). He indicated in later correspondence that he held the title for ease of selling the RV when at RV shows. No interest was charged on the money advanced and no record was kept of the amount.

The RV in question was a 1986 [motorhome]. The retail sales price of a new model was [over \$60,000] in 1986. The employer did not pay use tax on use of the RV as a demonstrator.

According to the Certificate of Origin for a Vehicle, title of the motor home transferred from the manufacturer to the dealer [in March 1986]. [That month], the dealer and the taxpayer signed a warranty registration certifying that the unit was delivered to the owner (taxpayer) [then]. The dealer explained that RVs were registered in employees' names in case warranty work was necessary while travelling to shows. The dealer and the taxpayer contend that the dealer retained ownership. A call to the manufacturer indicated that warranty work would be done even if the vehicle was still in the dealer's name.

However, the taxpayer points out that while the manufacturer would do the warranty work, it required the taxpayer to have the RV repaired at one of its dealerships (often hundreds of miles away if the taxpayer was attending a show [away from home]) unless the warranty was registered. If the motorhome

was not in the name of the dealership that the taxpayer worked for, the warranty work could be done by any dealer of the component requiring repair. For instance, if the Chevrolet engine or chassis developed a problem, if the warranty registration had been sent in in his name, he could take it to any Chevrolet dealer. If it had not been registered, he'd have to find a [specific motorhome] dealer to do the repairs.

According to the taxpayer's testimony, the RV was taken to [many] shows from July of 1986 through the Fall of 1987.

. . .  
. . .

He attended these shows as an employee of the dealer under the dealer's direction. No personal use by the taxpayer was shown. In all, over 15,000 miles were put on the RV that year. [By 1987, the dealership was closed].

The dealer explained that it could not sell the motor home because of mechanical problems. . . . The taxpayer kept it at his house and did not drive it for three years.

[In July 1989], the dealer gave the taxpayer a bill of sale for the RV in the amount of \$17,200, the amount they claimed was owed by the dealer to the taxpayer. Since they had been unable to sell it they explained, this was a fair price. At that time, the motor home had over 15,000 miles on it and the warranty was expired. The taxpayer indicated that the motorhome was not running and substantial mechanical repairs were necessary.

The taxpayer said that he was interested in starting a business in Alaska, . . . Consulting. In August, 1989, he flew to Alaska to investigate business opportunities. He registered the vehicle with the State of Alaska under the name . . . Consulting, using a friend's Alaska address for mailing purposes and wrote, "SAME" in the box for the owner's residence address.

While in Alaska, he was very sick and diagnosed as having diabetes. The plans to move to Alaska were cancelled. The RV has never been to Alaska. He says that he never put Alaskan plates on the motor home. The taxpayer states that in 1990, he traded the motor home for personal property which he did not describe in detail. During the period from 1987 until he disposed of the motorhome, he states that he never drove it on public roads.

The Compliance Division assessed the taxpayer use tax based on [the manufacturer's suggested retail sales price in 1986]. Motor vehicle excise tax was also assessed. Evasion penalties were assessed both on the use tax assessment as well as the motor vehicle excise tax assessment.

#### DISCUSSION:

[1] RCW 82.12.020 imposes use tax for the privilege of using within this state as a consumer any article of tangible personal property. RCW 82.12.010(2) defines "use" as the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property.

The taxpayer contends that he never had dominion and control over the RV in Washington until he purchased it from the dealer in 1989. Prior to 1989, he asserts that he was operating the RV under the dealer's direction and control as his employer. The 1989 bill of sale showed a purchase price of \$17,200 which the taxpayer contends reflected the motor home's value and the taxpayer paid use tax on that amount. The warranty registration indicated that the taxpayer was the owner [in March 1986]. However, no other records of ownership indicate that title transferred. The primary document for transferring title, the Manufacturer's Statement of Origin, remained in the name of the dealer. Both the dealer and the taxpayer testified that they considered the dealer to be the owner. There is no evidence that the taxpayer represented to anyone (potential buyers, insurers, etc.) other than the manufacturer with the warranty registration that he was the owner. They gave a plausible explanation for signing the warranty registration as well as the taxpayer's physical possession of the motorhome. Their account of these facts to the Department of Licensing detective, tax discovery officer and at the hearing did not vary.

This is a difficult factual question in which we could arrive at a different result with slightest variation of the facts or credibility of the testimony. We find that under the facts and circumstances particular to this case, the dealer was the owner until title transferred to the taxpayer under the bill of sale [in July 1989]. The taxpayer was controlled as an employee of the dealer and all the uses shown appear to be for the benefit of the dealer. Use tax for use of the vehicle as

a demonstrator<sup>1</sup> should have been collected from the dealer, not the taxpayer.

However, when title was transferred from the dealer in 1989, retail sales tax was not paid. RCW 82.04.050 defines "retail sale" as every sale of tangible personal property to all persons irrespective of the nature of their business. The taxpayer indicates that it was his intent at that time was to fix the RV and drive it from his home in Washington to Alaska. He clearly took delivery in Washington. He provided no resale certificate, trip permit, or valid out-of-state license plates with affidavit<sup>2</sup> to exempt the transaction from retail sales tax. Retail sales tax was clearly due in July of 1989.

[2] Rather than pay the tax when the vehicle was purchased, a month later the taxpayer used a business name and applied for an Alaska license certifying that he, the owner, resided in Alaska. He never lived or resided at the address given. While he may have intended to start the business operation in Alaska, that does not excuse his failure to pay Washington retail sales tax a month earlier. His signature under the statement, "I CERTIFY UNDER THE PENALTY OF LAW THAT ALL STATEMENTS contained in this application are true and correct." on the Alaskan application for title & registration should have alerted him that the application be factually correct. Yet it showed the owner's mailing address and residence as Alaska. This was clearly an attempt to evade the payment of retail sales tax.

RCW 82.32.050 states, "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 the ongoing fifty percent of the additional tax found to be due shall be added." Therefore, the 50% penalty was correctly added to the assessment.

The taxpayer did pay use tax based on the \$17,200 stated invoice price. However, this was in 1990 after contact by a Department of Licensing detective when it was obvious an assessment would be made.

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<sup>1</sup> Under ETB 332.12.178 ( . . . ) use tax applies to articles substantially used for sales promotion purposes. Articles are deemed substantially used when used so extensively that they can no longer be sold as new merchandise. Use by the dealer in excess of the warranty is substantial use.

<sup>2</sup> See WAC 458-20-177 (Rule 177).

Considering that both the taxpayer and the dealer had been in the business of selling these vehicles to buyers from locations within and without Washington they should have been aware of their tax obligations. They must have had some understanding that unless they obtained a resale certificate, trip permit, or valid out-of-state license plates with affidavits attesting to the buyer's residence, retail sales tax was due at the time of sale.

We must be able to rely on statements that taxpayers certify are true and correct to administer a tax system based on voluntary compliance. The evasion penalty serves as a deterrent to taxpayers contemplating false, inaccurate statements.

[3] RCW 82.44.020 imposes the motor vehicle excise tax stating in subsection (1):

(1) An excise tax is imposed 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, or dealer's licenses. The annual amount of such excise tax shall be two percent of the fair market value of such vehicle.

However, RCW 82.44.010 in defining motor vehicles excludes those vehicles used entirely on private property, stating in part:

"Motor vehicle" means all motor vehicles, trailers and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include . . . (3) motor vehicles or their trailers used entirely upon private property.

In order to impose the motor vehicle excise tax, the vehicle must be used on public property. The taxpayer has stated that after acquiring the vehicle in 1989, it was never used on public roads. There is no evidence in the file to the contrary. The assessment was based on extensive use on public roads (over 15,000 miles) by the dealer prior to its sale to the taxpayer. Unless evidence of use off of private property

is shown during the period the taxpayer had title, motor vehicle excise tax cannot be imposed.

There is an issue regarding the value of the motorhome or the sales price at that time. The taxpayer asserts that the value was \$17,200 the amount stated on the bill of sale. However, the actual amount paid has not been verified and this does not appear to be an arms-length transaction. The taxpayer worked for the dealer and advanced him cash. Wages, interest, or other unresolved matters could have been involved in the transaction. However, we have no evidence that the seller received more than the stated amount.

The "blue book" value of the used RV was higher than the stated selling price. Yet the taxpayer indicates that it was in a state of disrepair and asserts that numerous attempts to sell it at a higher price failed. The taxpayer stated that he sold the motorhome a year later receiving personal property, but did not produce a bill of sale regarding that transaction. Perhaps valuing the personal property received then, or checking the amount of tax paid on that transaction could shed light on the value of the motorhome in July of 1989. The Compliance Division can accept the taxpayer's figure of \$17,200, or develop its own figure based on all the facts and circumstances, since the original assessment appears to be based on the suggested 1986 retail selling price of a new RV rather than its used value in 1989.

#### DECISION AND DISPOSITION:

The case is remanded to the Compliance Division for a revised Notice of Use Tax Due with the evasion penalty after considering any additional information regarding the value of the vehicle. The taxpayer will receive credit for the use tax paid. Motor vehicle excise tax is not due unless the use off of private property can be shown during the period it was owned by the taxpayer.

DATED this 16th day of January, 1991.