

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

In the Matter of the Notice of)	<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>
Use Tax Due of)	
)	No. 87-213
)	
)	Registration No. . . .
. . .)	Notice of Use Tax Due
)	Tax Warrant No. . . .

[1] **RULE 178:** USE TAX - MOTOR VEHICLES - NONRESIDENT - WASHINGTON VOTER - BUSINESS USE. The use tax exemption provided by RCW 82.12.0251 and Rule 178 is inapplicable because taxpayers were not nonresidents. Additionally, the motor home, by their own admission, was repeatedly used in this state for business purposes.

[2,3] **RULE 228:** DELINQUENT PENALTY - WARRANT PENALTY- WAIVER - ERRONEOUS WRITTEN ADVICE BY DEPARTMENT. When tax was not paid nor an appeal submitted under Rule 100, despite continuing correct written and oral advice from Department personnel, the twenty percent delinquent penalty and the five percent warrant penalty were properly added to the tax due.

[4] **RULE 228:** WARRANT INTEREST - CANCELLATION - EXTENSION OF DUE DATE FOR SOLE CONVENIENCE OF THE DEPARTMENT. When the publication of a determination has been delayed, for the sole convenience of the department, for more than a reasonable period of time after a taxpayer has submitted an appeal, relief from interest which has accrued after a reasonable time may be granted.

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: January 16, 1986

NATURE OF ACTION:

The taxpayers (husband and wife), who claimed they were residents of Oregon, were assessed use tax on the value of a motor home purchased in Washington.

FACTS:

Burroughs, ALJ -- On February 26, 1985 the Department issued a Notice of Use Tax Due, advising the taxpayers that they were liable for state and local use tax in the amount of \$7,216.96 upon the use within Washington of a 1984 Country Camper Motor Home, Oregon license plate number This amount was not paid, and on October 14, 1985 Tax Warrant No. . . . in the amount of \$7,216.96, plus a twenty percent delinquent penalty of \$1,443.39 and a five percent warrant penalty of \$360.85, for a total of \$9,021.20 was issued. This amount has not been paid, and the taxpayer has appealed. Warrant interest has accrued since the date of the warrant.

The taxpayers purchased the camper in Marysville, Washington in May 1984, stating on a nonresident affidavit that they were residents of Klamath Falls, Oregon, and that the vehicle was being purchased for use in that state. The taxpayers obtained a Washington Trip Permit by which the camper was presumably taken to Oregon. The taxpayers were registered to do business within this state.

The evidence relied on by the auditor in determining the use tax was due includes the following:

1. An anonymous complaint received by the Everett office on January 7, 1985 reporting that a motorhome with Oregon license plates, later identified to be that which is the subject of this appeal, had been parked at . . . Lane and 84th, . . . Condominiums, . . . , Washington for about a year.
2. The affidavit of nonresidency given to the dealer by the taxpayers used a temporary address in Klamath Falls, Oregon.

3. An out-of-state driver's license number was not given on the affidavit of nonresidency as required.
4. Financing for the vehicle was obtained from Everett Federal Savings & Loan, Everett, Washington.
5. The taxpayers voted by absentee ballot in the November 1984 General Election as Washington residents.
6. The taxpayers' address in Washington was in . . . , where they had owned a condominium since July 13, 1973.
7. Utilities were disconnected at the . . . address on March 5, 1985, and utility companies were given a Lynnwood address.
8. Telephone service was moved from the . . . address to the Lynnwood address.

TAXPAYERS' EXCEPTIONS:

The taxpayers in their petition received by the Department on November 14, 1985 set forth the following explanation:

I feel that I owe no tax because I started planning a move to Portland, Or. in Feb 1983. Two listings ran out and we moved first to Klamath Falls, leaving the furnished Condo to be sold.

In May '84 we saw an ad in the paper for a motorhome which we knew and liked. We saw and bought it at a good price, trading the old motorhome in.

In the latter part of Dec. 84 the condo was sold. We went to . . . to dispose of things and gather the rest and clean up to make it ready for the buyers.

This is the time we met and talked with them.

[A Department employee] was firm in his opinion that I owed the use tax. [Another Department employee] felt that if I could prove our intention to move before the purchase, we were on safe ground. The next time I met them they said I must pay.

I would like to meet the appeals board and see if you agree with them or me and explain what I have done that justifies the tax and penalties.

At the hearing the taxpayer (husband) explained that he travels five states, including Washington, for business purposes, and represents a tobacco jobbing company in San Francisco by brokering. It is a retirement job.

A review of the file and the taxpayer's testimony reveals the sequence of events to have been as follows:

2/12/83 - Listed condominium in . . . for sale after deciding to move to Oregon. Two listings eventually ran out.

3/3/84 - Taxpayers moved to Klamath Falls, Oregon to stay with friend who was having health problems. Daughter moved into condominium to house sit while realtors continued to try to find a buyer.

5/25/84 - Purchased new motor home here at issue for \$109,899.00. Both taxpayers still had Washington drivers licenses. Taxpayers claim that although they had taken their tests for Oregon drivers licenses, they had both failed their tests. They did later obtain Oregon drivers licenses. Insurance was booked out of Oregon.

7/84 - Friend in Klamath Falls died, and taxpayers moved to Portland, Oregon.

11/84 - Taxpayer voted in Washington election by absentee ballot.

12/20/84 - Earnest money agreement signed. Taxpayers returned to Seattle to sign paperwork. Wife's mother died in Bellingham at Christmas.

2/26/85 - Letter from Department (enclosing tax warrant) advising that use tax was due on the motor home, attaching the Notice of Use Tax Due (based on estimated value), and asking for bill of sale so the value could be accurately adjusted. The letter was sent to the . . . condominium address where the motor home had been reportedly parked for an extended length of time, and was forwarded to Klamath Falls.

2/28/85 - Taxpayer came into Everett office to discuss tax liability and to explain sequence of events.

3/1/85 - Closing on condominium. Taxpayers returned to Seattle to remove their furniture.

3/6/85 - Summons issued to taxpayers to obtain documentation as to sales price of motor home, such information having not been supplied as requested in the February 26 letter¹.

3/29/85 - Department, by letter to taxpayer's . . . address, requested further documentation as to claimed Oregon residency.

4/22/85 - Taxpayer came to Everett office to again discuss use tax liability. No further proof was provided that tax was not due.

4/23/85 - Department letter advised taxpayers that use tax would be due in twenty days and again further explained appeal procedures under Rule 100 (letter sent to Klamath Falls address).

5/28/85 - Taxpayers' business tax account closed with Department of Revenue.

7/12/85 - Department mailed "Notice of Intent to Issue Warrant" to taxpayers at . . . address.

7/29/85 - Taxpayers called Everett office from Portland concerning the status of their "appeal." The taxpayers apparently thought that those arguments made to Department officials on 2/29/85 and 4/22/85, which arguments had been answered in the 4/23/85 letter, constituted an "appeal". The taxpayer claimed that he had never received the 4/23 letter. Taxpayer was advised to appeal to Interpretation and Appeals.

10/14/85 - Warrant was issued.

11/12/85 - Taxpayer finally appealed to Interpretation and Appeals.

Throughout this period the taxpayers continued to visit Washington in their motor home for both business and personal reasons. They claim that most visits in Washington were from about a week to ten days. They would try to combine condominium visits with business, and they would stop and see

¹ The actual purchase price, as revealed in the documents supplied, was actually \$17,374 higher than that estimated in the original Notice of Use Tax Due. The use tax due, however, has never been adjusted to account for the higher value, a benefit to the taxpayer of \$1,094.56.

friends. They keep a log book of their mileage and purpose in travelling for federal income tax purposes.

The taxpayer explained that the utility companies were given a Lynnwood address because a friend lived there who would forward bills to the taxpayers' accountants in Seattle. These same friends maintain an answering service for the taxpayers, and forward their mail.

The taxpayers object strenuously to the twenty percent delinquent penalty, the the five percent warrant penalty, and warrant interest which has since accrued, since they had not intended to do anything wrong in the first place and claim that the office in Everett did not advise them that they had to appeal in writing. The taxpayers argue that, since they had not intended to evade taxes, they shouldn't be penalized.

ISSUE:

The issues to be determined in this appeal are:

1. Whether the use tax is due and owing on the taxpayers' motor home, and if so,
2. Whether the twenty percent delinquent penalty was correctly assessed,
3. Whether the five percent warrant penalty was correctly assessed, and
4. Whether the warrant interest should be excused.

DISCUSSION:

The issues will be discussed in the order presented.

The taxpayer does not dispute that the motor home was purchased in Washington without payment of retail sales tax, but contends that no sales was due on the original sale by virtue of the exemption provided by RCW 82.08.0264:

The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state

under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160², or (2) said motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

Thus, in determining whether or not this particular exemption from the retail sales tax is applicable the dealer must establish the facts, first, that the purchaser is a bona fide nonresident of Washington and that the vehicle is for use in the state of the purchaser's residence and, second, that the vehicle is to be driven from his premises under the authority of either (a) a one-transit permit, or (b) valid license plates issued to that vehicle by the state of the purchaser's residence.

The use tax is imposed upon the privilege of using within this state as a consumer any article of tangible personal property purchased at retail without payment of retail sales tax. RCW 82.12.020. The taxpayers, however, claim that the provisions of RCW 82.12.0251³, which for the time period in question read as follows, provided an exemption from use tax liability:

The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into the state 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 in respect to the use by a nonresident of this state of a motor vehicle or trailer which is registered or licensed under the laws of the state of his residence, and which is not required to be registered or licensed under the laws of this state; or in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are

² The "One-transit Permit" is now called a "Washington Trip Permit" by the Department of Licensing.

³ Formerly 82.12.030(1).

stationed in this state pursuant to military orders, 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 thirty⁴ days prior to the time he entered this state.

(Emphasis provided.)

It is clear that the taxpayers erroneously claimed that they were "nonresidents" for retail sales tax exemption purposes when they purchased the motor home, since subsequent to their motor home purchase, the taxpayers were still representing that they were Washington residents in order to vote in the November 1984 general election.

Chapter 29.36 RCW, which concerns absentee voting in the state of Washington, provides strict requirements for the procurement of absentee ballots. In addition to verifying Washington residence on the application (RCW 29.36.020), an absentee voter must return to the election officer along with his ballot a statement which is outlined by RCW 29.36.030 as follows:

State of _____)
County of _____) ss.

I, _____, do solemnly swear under the penalty as set forth in RCW 29.36.110 (see below), that I am a resident of and qualified voter in _____ precinct of _____ city in _____ county, Washington; that I have the legal right to vote at the election to be held in said precinct on the ____ day of _____, 19____: That I have not voted another ballot and have herein enclosed my ballot for such election.

(signed)

Voter

(date of oath)

⁴ This time period was extended to ninety days in 1985.

PENALTY PROVISION: Any person who violates any of the provisions, relating to swearing and voting, shall be guilty of a felony and shall be punished by imprisonment for not more than five years or a fine of not more than five thousand dollars, or by both such fine and imprisonment.

Coordination with the Snohomish County Auditor has verified that both taxpayers, in applying for their absentee ballots almost six months after purchasing the motor home, claimed residency at their . . . condominium address. This, and the facts that the motor home was reported to have been parked there for extended lengths of time, and that the taxpayers maintained a phone listing in Washington, indicate that at the very least the taxpayers continued to maintain a residence in Washington as well as Oregon. Although not an issue herein, we must note that because the retail sales tax exemption provided by RCW 82.08.0264 extends only to "nonresidents of this state," retail sales tax was properly due and should have been paid on the motor home's purchase.

[1] The use tax exemption provided by RCW 82.12.0251 is similarly inapplicable to the taxpayers in this case, as it also applies to "tangible personal property brought into the state 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;..." (Emphasis added.) Not only were the taxpayers not nonresidents, but the motor home, by their own admission, was repeatedly used in this state for business purposes⁵.

Because the value of the motor home was underestimated by the Department, the issue of valuation will be referred back to the Audit Division for a new assessment based on the sales receipts which were supplied by the taxpayers.

The twenty percent delinquent and the five percent warrant penalties to which the taxpayers have objected are mandated by RCW 82.32.090, which provides in pertinent part:

If payment of any tax due is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount

⁵ The taxpayers had maintained a business registration here since 1982.

of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than two dollars.

. . .

If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars.

(Emphasis added.)

Thus, if an assessment is not paid within sixty days of the prescribed due date, a twenty percent penalty is mandated. Likewise, if a warrant is issued, a five percent penalty must be added. The only situations in which penalties may be excused are set forth in WAC 458-20-228 (Rule 228). The only situation in that rule which would possibly apply the taxpayer's claims in this case is as follows:

2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.

A review of the synopsis of events reveals that the taxpayers were repeatedly advised of their tax liability and of correct appeal procedures. The first Notice of Use Tax Due was mailed to the taxpayers in February. A second copy of the Notice was mailed to the taxpayers' last known address, accompanied by Rule 100 and the advice to appeal under the provisions of that rule within twenty days, by the Everett office on April 23, 1985.

The taxpayers during this and subsequent periods clearly made no real effort to voluntarily supply meaningful documentation as to their correct use tax liability (which was actually more than the Department's original estimate) or to submit a written appeal to the proper authorities. Even when on July 29 the taxpayers were again orally advised by Everett personnel to appeal in writing to Interpretation and Appeals (already approximately two months past the last of the appeal

period), the taxpayers did not appeal. Only approximately thirty days after the warrant was issued was a written appeal received by this office on November 14⁶.

[2,3] Thus, by October 14, the day the warrant was issued, the tax still had not been paid, nor an appeal submitted under Rule 100, despite continuing written and verbal advice from personnel of the Everett office. Clearly, the twenty percent delinquent penalty and the five percent warrant penalty were properly added to the tax due.

As to the taxpayer's argument that warrant interest should not be payable, we must likewise disagree. RCW 82.32.210 mandates the assessment of interest when the Department has exercised its discretion to issue a warrant. RCW 82.32.210 provides in pertinent part as follows:

If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant under its official seal in the amount of such unpaid sums, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant.

(Emphasis added.)

Thus, if a warrant is issued, interest is required to be assessed.

RCW 82.32.105 provides only limited relief from the payment of interest:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties

⁶ The appeal, even though accepted by this office, was not received by the department of revenue "within twenty days after the issuance of the original notice of the amount of the deficiency or within the period covered by any extension of the due date granted by the department." The granting of this appeal by the Department, then, was gratuitous.

imposed under this chapter with respect to such tax. The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter.

WAC 458-20-228 provides for the cancellation of interest in only two circumstances:

1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

In this case, the first situation clearly does not apply, as the taxpayer has never received any written Departmental guidance to indicate that the tax or assessment was not due and owing.

[4] The second situation for waiver of interest applies here only in the limited sense that the publication of this determination has been delayed, for the sole convenience of the department, for more than a reasonable period of time after the taxpayer had submitted his appeal. Accordingly, the taxpayer will be entitled to limited relief in this respect.

DECISION AND DISPOSITION:

The taxpayer's petition as to the first three issues is denied. The Use Tax Section, after making the adjustment indicated by this determination regarding the measure of the use tax, will issue an amended assessment, payment of which will be due on the date indicated therein.

The taxpayer's petition as to the fourth issue is granted in part and denied in part. Because the due date of payment of the assessment and warrant has been extended for the sole convenience of the Department, warrant interest will be waived for the period from May 14, 1986 through the new due date.

DATED this 24th day of June, 1987.