

Cite as Det. No. 98-142, 18 WTD 98 (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. 98-142
)	
...)	Motor Vehicle Excise Tax
)	Assessment Nos. . . .
)	

[1] RCW 82.44.020; RCW 46.16.028(1) -- MOTOR VEHICLE EXCISE TAX (MVET) -- EXEMPTION -- RESIDENT -- HOME OR DWELLING. Whether a person is a resident of this state is fact specific. When a person has homes in Washington and another state, the amount of time the person spends in Washington is only one factor to be considered in determining whether the person has manifested an intent to live or be located in this state on more than a temporary or transient basis.

[2] RCW 82.44.020; RCW 46.85.040 and .060 -- MOTOR VEHICLE EXCISE TAX (MVET) -- NONRESIDENT -- JOINT OWNERS (WASHINGTON AND IDAHO). The statutory scheme generally requiring Washington residents to pay MVET on vehicles they use on the state's highways, and generally exempting nonresidents who have properly licensed their vehicles in another state from paying MVET for their limited use of the vehicles on Washington highways, does not intend a situation in which a nonresident who has properly licensed a vehicle in another state would lose the MVET exemption solely because the person jointly owns the vehicle with a Washington resident (i.e., when the Washington joint owner never uses the vehicle).

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:

Petition for cancellation of assessment of Motor Vehicle Excise Tax (MVET) on two vehicles that are jointly owned by husband/father who is Washington resident, but used only by wife and

an adult son who live in a second family home in Idaho and have registered the vehicles in Idaho.¹

FACTS:

Prusia, A.L.J. -- The taxpayers (husband and wife) own a home in Spokane, Washington. For several years, a physically disabled adult son (now age . . .) also lived with them in the home. The adult son has his own income -- Industrial Insurance disability payments from the Washington Department of Labor and Industries and Social Security disability benefits, and manages his own affairs.

The taxpayers also own property in Priest River, Idaho. In March 1994, the taxpayers purchased a manufactured home which they had placed on their Idaho property. The taxpayers purchased the manufactured home for use as a vacation home, and planned to eventually use it as a retirement home.

Over the years, the taxpayers and their son have acquired several vehicles. They paid Washington sales tax on all of the vehicles at the time of purchase, and licensed all of the vehicles in Washington at the time of purchase.

This appeal concerns two of those vehicles -- a . . . pickup, and a . . . sedan. The taxpayers purchased the . . . sedan for the taxpayer/wife's use, and licensed it in both their names. The . . . pickup was purchased for the son's use, but licensed in the name of both the father and the son.²

In December 1995, the taxpayer/wife moved into the Idaho vacation home, taking the [sedan] to Idaho for her use. The taxpayer/husband and the adult son continued to live in the Spokane home. In December 1995, the taxpayer/wife licensed the [sedan] in Idaho, transferring the title from Washington. Since then, the taxpayers have not paid Washington MVET on the vehicle. In February 1996, the taxpayer/wife applied for and was given an Idaho driver's license, and surrendered her Washington driver's license. The taxpayer/wife has not worked since moving to Idaho; she receives income from her husband. Although she lives in Idaho, the taxpayer/wife is registered to vote in Washington, and according to the Spokane County Elections Department voted in an election in Spokane in June 1997.

In December 1996, the taxpayers' adult son moved from Spokane to the taxpayer's Idaho vacation home, taking the . . . pickup to Idaho for his use. The taxpayer/husband continued to live in the Spokane home. In December 1996, the taxpayers' son applied for and was given an Idaho driver's license. In December 1996, the taxpayers' son licensed the . . . pickup in Idaho,

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² The taxpayer/father also claims that his name was put on the title to the pickup at the request of the financing institution, because his son was on a fixed income, and that he is merely a cosigner with respect to the vehicle. The taxpayers were asked to provide evidence that the son made the payments, or other evidence tending to show that the son was the actual owner and the father merely a co-signer, but provided no documentary evidence to support the father's assertion.

transferring the title from Washington. Since then, the taxpayers have not paid Washington MVET on the vehicle. The taxpayers' son's only income since he moved to Idaho has continued to be disability benefits. The son apparently has not voted or registered to vote in Washington since leaving the state.

Members of the Washington State Patrol saw the [sedan] at the taxpayers' Spokane home on several occasions during 1997. Taxpayer/husband states that since his wife moved to Idaho, she has driven the 1995 Chrysler to Spokane on visits. The taxpayer/husband claims that he has not used the vehicle at all.

Members of the Washington State Patrol saw the . . . pickup at the taxpayers' Spokane home on numerous occasions during 1997. Taxpayer/husband states that since his son moved to Idaho, the son has driven the . . . pickup to Spokane on visits. The taxpayer/husband states that he has not used the vehicle at all.

Most of the taxpayers' vehicles are still licensed in Washington. These include a . . . pickup, a [car], a . . . travel trailer, and a wood hauler trailer.

On October 17, 1997, the Department of Revenue (Department) issued two MVET assessments against the taxpayers -- MVET Assessment No. . . . on the . . . pickup, for 1997 MVET, in the amount of \$. . . plus a delinquency penalty of \$. . .; and MVET Assessment No. . . . on the . . . sedan, for 1996 and 1997 MVET, in the amount of \$. . . plus a delinquency penalty of \$. . .

The taxpayer/husband notified the Department's Spokane district office that he wished to appeal the assessments. In his request, he stated that he and his wife had been separated since December 1995, that she moved to Idaho at that time, and that he had no access to the [sedan]. An informal conference was held in the Spokane office on November 26, 1997. The informal conference did not resolve the matter. The taxpayers filed a request with the Appeals Division for correction of the assessment on December 30, 1997.

In the teleconference, taxpayer/husband clarified that although he and his wife have been living separately since December 1995, they have not legally separated nor are they separated in the sense of being estranged from one another. They simply live in separate residences in different states.

Taxpayers provided copies of the electric bills for the Priest River, Idaho, home for July 1994 through April 1998. The bills generally show higher monthly usage in 1996 and 1997 as compared to 1994 and 1995.

Taxpayers provided a statement signed by a neighbor of taxpayer/wife in Priest River, Idaho. The statement says that the taxpayer/wife has lived in the house in Priest River since late 1995.

ISSUES:

1. Has the taxpayer/wife been a nonresident of Washington since December 1995 for MVET purposes?
2. Has the taxpayers' son has been a nonresident of Washington since December 1996 for MVET purposes?
3. If either the taxpayer/wife or the taxpayers' son is a nonresident of Washington, must the taxpayers nonetheless pay the MVET on both vehicles because the vehicles are jointly owned by a Washington resident (the taxpayer/husband) and are used on the highways of the state?

DISCUSSION:

RCW 82.44.020 imposes the MVET. It states, in relevant part, as follows:

(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 [trip permits] as now or hereafter amended, or dealer's licenses. . . .

. . .

(7) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

The annual amount of the MVET is two and two tenths percent (2.2%) of the value of the vehicle. RCW 82.44.020(1) and (2).

RCW 46.16.028 requires a resident of Washington to register a vehicle to be operated on the highways of the state, and defines who is a Washington resident for registration purposes and for purposes of the MVET. It states in relevant part:

(1) For the purposes of vehicle license registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

(a) Becoming a registered voter in this state; or

(b) Receiving benefits under one of the Washington public assistance programs;

or

(c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) The term "Washington public assistance programs" referred to in subsection (1)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and temporary assistance for needy families.

(3) A resident of the state shall register under chapters 46.12 and 46.16 RCW a vehicle to be operated on the highways of the state. New Washington residents

RCW 46.16.030 generally exempts nonresidents who have complied with the vehicle licensing requirements of their home state from Washington's license registration requirements, to the extent the nonresident's state grants like exemptions to Washington residents.

RCW 46.85.040 authorizes the Department of Licensing to enter into reciprocal agreements and arrangements with other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction exemption from payment of the MVET. RCW 46.85.060 provides that in the absence of an agreement or arrangement with another jurisdiction, the Department of Licensing shall declare specified minimum exemptions. One is that nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed six months in any one continuous twelve-month period.

Reading the above statutes together, a person is exempt from MVET if the person is a nonresident of Washington who has properly licensed the vehicle in his or her home state, the person is not employed in this state, and the person does not operate the vehicle in this state for more than six months in any continuous twelve-month period.

The relevant statutes do not define the term "nonresident." By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a "nonresident."

The Department has held that residence for MVET purposes is not the equivalent of "domicile." A person may have only one domicile, but may have more than one residence for MVET purposes. See Det. No. 96-049, 16 WTD 177 (1996), and determinations cited therein. The terms "resident" and "nonresident" are specially defined terms, and must be strictly construed with reference to the language used by the Legislature.

We first consider whether either the taxpayer/wife or the taxpayers' son has been a nonresident of Washington since they moved into what had been the family's vacation home in Idaho. There is no question that both were residents of Washington before moving into the vacation home. The question is whether objective facts show either of them manifested no intent to live or be

located in Washington on more than a temporary or transient basis after the dates they claim to have become residents of Idaho.

We first consider the situation of the taxpayer/wife and the [sedan] that she jointly owns with her husband. Several objective facts indicate that the taxpayer/wife intends to be a resident of Idaho. The taxpayer/wife has a fixed dwelling in Idaho, jointly owns that dwelling, and spends most of her time there. She is physically in Washington only for temporary stays. She surrendered her Washington driver's license and obtained an Idaho license. She licensed the vehicle she drives in Idaho.

Other objective facts indicate that the taxpayer/wife has continued to intend to live or be located in Washington. The taxpayer/wife continues to own residential property in Spokane, and regularly spends time at the Spokane residence. Her husband resides at the Spokane residence, and she and the husband are not separated or estranged from one another. Property that the taxpayers acquired during their marriage continues to be located at the Spokane home. The Spokane home continues to be the center of their domestic life. It also is the center of their civic lives, as shown by the registration of their other vehicles in Washington and the fact that the taxpayer/wife has continued to vote in Spokane after moving.

[1] Taking all the circumstances shown by the objective facts into consideration, we find that the taxpayer/wife has continued to manifest an intent to live or be located in Washington on more than a temporary or transient basis since making the family's Idaho vacation home her principal place of abode. We find the facts that (1) the taxpayers are not estranged, and one continues to reside in the family home in Spokane; (2) the taxpayer/wife continues to use the Spokane residence as a second home; (3) much of the couple's joint property is at the Spokane home, and the taxpayer/wife has access to and the use of the joint property; and (4) the taxpayer/wife continues to vote in Spokane, outweigh the facts that she spends most of her time at the couple's vacation home in Idaho, has obtained an Idaho driver's license, and has registered the vehicle she drives in Idaho.

Both of the taxpayers are residents of Washington. Therefore, neither taxpayer can claim the exemption from payment of the MVET provided for in RCW 82.44.020 and RCW 46.85.060. Both are subject to the requirement to pay the MVET imposed by RCW 82.44.020.

We next consider the situation of the taxpayers' son and the . . . pickup that he jointly owns with the taxpayer/husband. The scant evidence presented generally is consistent with an intent to be a resident of Idaho. The son has a place of abode in Idaho. He does not own a home in Washington. He surrendered his Washington driver's license and obtained an Idaho driver's license. He licensed the vehicle that he drives in Idaho. His regular visits his parents' home in Spokane are not inconsistent with the son's stated intent to live in Idaho.

Taking the circumstances shown by the objective facts into consideration, we find that the son has manifested no intent to live or be located in Washington on more than a temporary or transient basis since December 1996. Therefore, the son is exempt from payment of the MVET.

This finding with respect to the son requires that we consider the joint ownership issue. When a vehicle is jointly owned by a Washington resident and a nonresident and licensed in the state of the nonresident, does use of the vehicle in Washington by the nonresident constitute a taxable incident?

The Department has addressed this issue in at least two determinations. In Det. No. 86-321, 2 WTD 105 (1986), the Department held that where there are dual residency owners (e.g., Oregon and Washington), any use of the vehicle by either joint owner within this state constitutes a taxable incident, even if the vehicle is properly purchased and licensed in the other state. The Department stated: “[t]he 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.” The Department repeated the same principles in Det. No. 87-145, 3 WTD 99 (1987).

Neither determination is controlling authority in this case. Both determinations involve only use tax. The facts in Det. No. 86-321 distinguish it from the present case, in that in Det. No. 86-321 the Washington resident also used the vehicle in Washington. In the present case, the Washington resident does not use the vehicle. The language in Det. No. 87-145 is only dictum; the Department determined that both owners were residents of Washington. We find no determination that squarely holds that use in Washington by a nonresident owner of a vehicle that is jointly owned with a Washington resident constitutes a taxable incident for MVET purposes, even if the vehicle is properly licensed in the nonresident’s state and the Washington joint owner does not use the vehicle.

[2] Examining the statutory scheme, clearly it is the intent of the statutes that Washington residents pay the MVET for vehicles that they use on the state’s highways, and that they not escape payment of the MVET by licensing a vehicle in another state. RCW 82.44.020(1) and (7). It also clearly is the intent of the statutes that nonresidents who have properly licensed their vehicles in their home states not incur MVET liability for their limited use of the vehicles on Washington highways. RCW 82.44.020(1); RCW 46.85.040 and .060. We do not believe that the statutory scheme intends a situation in which a nonresident who has properly licensed a vehicle in its home state would lose its exemption solely because it jointly owns the vehicle with a Washington resident (i.e., when the Washington joint owner never uses the vehicle).

In this case, there is no evidence of use in Washington by the Washington joint owner, the circumstances do not raise a presumption of use by the Washington joint owner and are consistent with the claim that the Washington joint owner does not use the vehicle, and the nonresident has properly licensed the vehicle in his state. If the joint owners were husband and wife, we might presume that both use the vehicle. Here the joint owners are father and adult son. If the vehicle were the only vehicle the taxpayer/husband owned, or if it were a motor home, trailer, sole pickup, or other vehicle that is of a type likely to be shared, the circumstances would not be consistent with a claim that the taxpayer does not use the vehicle. That is not the case. The father owns several other vehicles, including another pickup. The father states that 1991

pickup was purchased for the son's use and that the father does not use it. Under the circumstances, that statement is credible. Because there is no evidence of use in Washington by the Washington joint owner, the circumstances are consistent with a claim that the Washington joint owner does not use the vehicle, and the non-resident has properly licensed the vehicle in his state, we conclude that the nonresident's use of the vehicle in Washington is not a taxable incident for MVET purposes.

DECISION AND DISPOSITION:

The taxpayers' petition is granted as to the . . . pickup and the associated delinquency penalty. MVET Assessment No. . . . is canceled.

The taxpayers' petition is denied as to the [sedan]. This file will be remanded to the Compliance Division for collection action.

Dated this 31st day of July 1998.