

Cite as 6 WTD 5 (1988)

BEFORE THE DIRECTOR  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )  
For Correction of Notice of Use )  
N

F I N A L  
D E T E R M I N A T I O

Tax Due of )

)

No. 87-68A

)

. . . )

)

Unregistered

)

Tax Warrant No. . . .

)

[1] **RCW 82.32.050: USE TAX - EVASION PENALTY -  
NONRESIDENT -INTENT.** Intent to evade tax is not  
necessarily determined by what a taxpayer says  
he/she intended to do. Intent is determined by all  
of the surrounding facts and circumstances. Where  
the taxpayer has used the address of a friend  
located outside of the State of Washington and in  
conjunction with other factors are all sufficient to  
establish the intent to evade taxes.

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:

Appeal has been taken from the findings and conclusions of  
Determination 87-68 which affirmed the assessment of the 50%  
evasion penalty.

FACTS AND ISSUES:

The following is a chronology of events:

8/85        The taxpayer, living in [city in Washington] and a  
             member of the city council, was contacted by a . .

. , Oklahoma business to talk about prospective employment. Taxpayer had not been employed since 1984.

- 10/1/85 The taxpayer was invited to . . . , [Oklahoma] for an interview. While in . . . , [Oklahoma] the taxpayer also spent three days looking for an apartment. One was found and a deposit made.
- 10/14/85 The taxpayer attended [city in Washington] city council meeting.
- 10/15/85 The taxpayer "officially" accepted the job in . . . , Oklahoma (Taxpayer's exhibit 3 supporting this statement was not actually included in the petition.)
- 10/22/85 The taxpayer bought a pickup for \$11,355.00. The purchase was financed through a Washington credit union with [city in Washington] identified as the taxpayer's address.

Taxpayer claims that the address stated was unfortunate, because the credit union used the address of his other accounts and did not find it important to use his new out-of-state address. He claims that they knew of the out of state address, because he was required to produce "contract documents rental receipts etc." [Sic]

- 10/23/85 The taxpayer secured a one transit permit using his new address in . . . , Oklahoma
- 10/28/85 The taxpayer took possession of the truck under the authority of the one transit permit. At this point, the taxpayer and his wife allegedly separated. His wife and children stayed in [city in Washington] where she taught and the children attended school, respectively. The taxpayer did not attend the city council meeting held on this day.
- 10/29/85 The taxpayer packed his gear into the vehicle and left for Oklahoma

- 11/1/85 The taxpayer arrived at the work site, worked for 5 days and then was terminated by his employer.
- 11/8/85 The taxpayer arrived in . . . , Oregon to start a new consulting business since he no longer had a job in Oklahoma. He secured an apartment as evidenced by rental receipts for Nov. 1985 through June 1986.<sup>1</sup> Taxpayer also secured a temporary registration in . . . , Oregon for the pickup.
- 11/11/85 The taxpayer returned to Washington to visit his kids. He also talked to the [local] chief of police to let him know what he was doing if in case one of the officers saw his Oregon licensed vehicle too often at the [local] address.
- 11/12/85 The taxpayer attended the [city in Washington] city council meeting.
- 11/25/85 The taxpayer attended the [city in Washington] city council meeting.
- 12/9/85 The taxpayer attended the [city in Washington] city council meeting.
- 12/23/85 The taxpayer attended the [city in Washington] city council meeting.

The taxpayer subsequently resigned after this meeting from the city council after learning that he must be a resident of [city in Washington] to be on the council.

- 1/1/86 WSP Trooper Ramirez was made aware of the local presence of the taxpayer's vehicle which was licensed in Oregon; he referred the matter for investigation.
- 1/17/86 WSP Trooper Peterson sent a letter to the taxpayer advising him that a Washington license should be obtained.

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<sup>1</sup> One is dated in November for \$250, another in December for a like sum and finally, one dated in January for the months of January through June in the amount of \$1500.

1/21/86 The taxpayer called Trooper Peterson and the trooper discovered that the taxpayer already had a Washington driver's license. The taxpayer told the trooper that he was separating from his wife and that he was moving his things to . . . , Oregon but that he had not obtained residency yet.

Taxpayer claims he was dealing with Trooper Koehler, not Peterson.

1/23/86 Trooper Peterson referred the matter to Department of Revenue (DOR) for investigation.

1/24/86 DOR's Tucker sent the taxpayer a use tax notice.

1/86 The . . . , Oklahoma employer sent the taxpayer's W2 statement of earnings to the address in [city in Washington].

2/2/86 The Tucker letter was received by taxpayer informing the taxpayer of the use tax and penalties.

2/3/86 The taxpayer was stopped by a WSP trooper and cited for being improperly licensed.

2/7/86 The taxpayer established voter registration in Oregon

2/21/86 The taxpayer called Tucker and claimed a 90 day exemption. Also he informed Tucker that the value on the truck was too high. Tucker asked for proof of non-residency status.

The taxpayer claims the 90 day exemption evidence was never requested.

4/21/86 Hearing nothing further from the taxpayer, Tucker sent an amended notice of use tax.

4/28/86 The taxpayer called Tucker to find out how Tucker concluded that the taxpayer was a Washington resident.

5/5/86 The taxpayer went to his court hearing on the citation. The action was dismissed.

The taxpayer argues that the dismissal is sufficient evidence that the taxpayer was a non-resident.

5/21/86 Tucker sent a new use tax notice amending the value downward, because the taxpayer had received a \$250 rebate.

6/25/86 The taxpayer went to the [county in Washington] County Auditors office to register the vehicle, but did not have sufficient documentation to complete the registration.

6/27/86 The taxpayer returned to the [county in Washington] County Auditors office. An employee in the auditor's office processed the application. She asked when he entered the state and he said June 27, 1986. The application indicated that the vehicle was exempt from use tax.

The taxpayer states that the exemption box was checked (marked) by the auditor's office, not by him.

7/7/86 Tax warrant was issued by DOR's Compliance Division.

7/16/86 Tax warrant was sent to taxpayer.

7/22-23 The taxpayer returned to the auditors office and realized  
1986 that a certain supervisor was there. He wanted to know when she [the supervisor] would not be there and left. (Statement by a [county in Washington] County Auditor's Office employee)

7/25/86 The taxpayer returned and claimed that the [county in Washington] County employee had misunderstood him and that he wanted dual licensing. He wanted to pay the tax and asked the employee "to catch the transaction in Olympia." The taxpayer used his parent's address in Prosser and paid the tax.

3/6/87 The Department issued its determination upholding the penalty. Det. No. 87-68.

- 4/26/87 The taxpayer appeals Det. No. 87-68 to the Director and files copies of rent receipts from an Oregon landlord.
- 3/1/88 The department verified the validity of the rent receipts and found that (1) the neighbors indicate that a person other than the taxpayer resides at the . . . , Oregon address; (2) one neighbor indicates that he/she had no recollection of seeing a vehicle matching the description of the one owned by this taxpayer at this residence; (3) the owner of the home (that is claimed to be the residence of this taxpayer) indicates that no money has ever been received for rent ("rent" was paid in the form of barter); (4) the owner of the home indicated that the taxpayer ". . . never had a closet in the house where he hung his clothes . . ." and that he never stayed more than four nights at in a week - usually only two or three nights at a time.
- 3/11/88 After learning of the department's verification of these facts, the taxpayer wrote to the Director stating that the investigation violated numerous laws in both the states of Washington and Oregon.

TAXPAYER'S EXCEPTION:

The taxpayer objects to the decision of Judge Frankel for the following reasons:

- I.A. The purchase took place on October 29, 1985, not October 22, because that is when consideration for the vehicle actually took place and when the taxpayer gained possession.
- I.A. The taxpayer's home address at the time of purchase was not given as [city in Washington], but rather . . . , Oklahoma according to the retail order, credit union information, and a one transit trip permit.
- I.B. Judge Frankel was incorrect when she said that the taxpayer was looking for work in Oregon; he insists that he went to Oregon to establish a business.
- I.C. Judge Frankel was incorrect when she said that the vehicle was licensed in Oregon in December of 1985; the license was secured on November 8, 1985.

- I.D. Judge Frankel's findings that the taxpayer failed to send any information regarding the 90 day exemption is correct, but then the DOR never asked for the information. The taxpayer claims that the Judge's findings cannot be verified.
- I.E. Findings that the taxpayer lived in Washington are contested in light of the evidence that the taxpayer has rental receipts for an apartment in Oregon.
- I.F. Reliance by the Judge on the "exemption box" on the licensing form, because the form was prepared by the auditor and the taxpayer did not check the box personally or ask that the box be checked.
- I.G. The Judge's reference to the taxpayer's entrance into Washington was misleading; the taxpayer wants the record to reflect that he certifies that he was a bona fide resident of another state before he licensed the vehicle in Washington.
- I.H. The taxpayer does not agree that the fact that the taxpayer's wife and children reside in [city in Washington] creates residency status for the taxpayer. The taxpayer is aware of no law that makes his residency dependent upon his family's residence.
- I.I. The taxpayer does not agree that the community property laws can be a basis for the assessment, because the vehicle is owned under the laws of Oregon by an Oregon business.
- I.J. The taxpayer believes that voter registration in Oregon establishes the necessary intent to become a resident in Oregon. The taxpayer notes that he did not vote in Washington in November or 1985, because he believed that he was no longer a Washington resident.
- I.K. The residency definition is unconstitutional because it regulates commerce in another state.
- I.L. The subsequent verification of the taxpayer's statements was in violation of numerous state laws.

#### DISCUSSION:

The taxpayer has raised numerous other issues but they are not identified, because even if believed or correct, they would not necessarily be dispositive of the issue now before us. In fact many of the points, hereinabove identified, to which the taxpayer has raised exceptions, are not dispositive of this dispute. All of the taxpayer's lengthy correspondence, exhibits and memorandum have been thoroughly reviewed and while not all aspects will be addressed in this Final Determination, they have not been ignored, but rather, we deem them not essential in determining the liability for the evasion penalty.

The initial question is whether this taxpayer was a resident of the state when he bought the vehicle. The facts that seem to support his argument are: (1) his attempt to secure work in Oklahoma, (2) the rental receipts, (3) the retail order, and (4) his subsequent stay in Oregon. However, there are many more facts which weigh against him or seem so inconsistent: (1) he attended city council meetings; (2) his family remained in Washington; (3) he "cured" all of the defects after he was cited; (4) his Oklahoma employer of five days sent his W2 to an address in [city in Washington] instead of Oregon; (5) he changed his mind with respect to registration and asked for dual licensing (paying the use tax) when earlier he claimed he was exempt; (6) a further verification of his allegations shows evidence of deceit.

This initial question of residency in Washington must be determined at the time he purchased the vehicle. The taxpayer has no evidence that he was a residence anywhere other than Washington although relies very heavily upon his intent to become a resident of Oklahoma. Intent at the time of purchase does not make the taxpayer a resident of Oklahoma. Clearly, at the time he purchased the vehicle, he could not vote in Oklahoma, he did not have a driver's license in Oklahoma, he did not own real property in Oklahoma, nor any other evidence of his presence in Oklahoma other than an apartment. If an out-of-state address and subjective intent was all that was necessary to create residency in another state, no one would ever have to pay the retail sales tax. There is simply no evidence that this taxpayer was not a resident of Washington and was actually a resident of Oklahoma.

The taxpayer relies upon In Re Mullins, 26 Wn. 2d 419, 174 P.2d 790 (1946) and McCord v. Rosene, 39 Wn. 1, 80 P. 793 (1905) which are jurisdictional cases determining whether the courts of this state has the ability to exercise its in personam jurisdiction over the parties. Jurisdiction is



dependent in these cases upon domicile, not residence. The terms are not the same and the taxpayer's reliance upon them for the proposition that intent determines residence is erroneous. Furthermore, these cases do not apply in this matter, because they do not interpret the meaning of residence for purposes of vehicle license and registration. The state has defined the term in RCW 46.16.028:

(1) For purposes of the vehicle license registration, a resident is a person who:

. . . .

(b) Resides in this state more than six months in any continuous twelve-month period; or

(c) Becomes a registered voter in this state; or

. . . .

The taxpayer was a registered voter in this state on October 22, 1985 when the vehicle was purchased. He has shown no evidence to establish that he was a registered voter anywhere other than Washington State. In fact, at the time of his purchase, he was a city council member, a post he continued to hold until a later point in time when he resigned. The fact that he later resigned does not eliminate the fact that he held the office when the vehicle was purchased. Further, he does not deny nor is there evidence to the contrary that he resided in this state for six months in a continuous six month period. Therefore, under the term residence as define by the legislature for purposes of the vehicle registration, this taxpayer was a resident at the time he purchased the vehicle. As a result he was required to pay the tax. The state has been made whole, because the taxpayer has now paid the tax to the state. The question is whether the evasion penalty should be upheld.

Which facts in the record support a finding of the intention to evade? The department argues the following shows such intent: the taxpayer's wife resided in Washington, his wife worked as a teacher in Washington, the taxpayer was buying a home in Washington, the taxpayer was registered to vote in Washington and the taxpayer had a Washington Driver's license. Further, the taxpayer "was moving around and living in Oregon, driving back and forth to [city in Washington] to attend City Council meetings, visiting his wife and children who lived

there [city in Washington] thereby not constituting valid residency other than Washington." All these facts tend to show that he was a resident of Washington, but not necessarily establish the intent to evade the tax.

Intent is subjective and generally must be determine by objective evidence. Weighing all of the evidence, the issue is really one of veracity: Have all of the people (Washington State Patrol, [county in Washington] County Auditor's Office, the Department's revenue officer and the administrative law judge) who have reviewed this matter been in error? The administrative law judge did not believe this taxpayer, nor do we. Viewing the facts upon which the department and the administrative law judge relied upon to assess the penalty and to uphold the assessment, respectively, together with the March 1, 1988 verification by the department, we indeed find an intent to evade the tax. We believe the statements from the neighbors and the owner of the home where the taxpayer claimed to reside shows deceit on the part of this taxpayer; we see no motive on their part to be untruthful. To the contrary, it would have been a gross misdemeanor for these witnesses to refuse to provide truthful information to the department or to aid and abet another to evade the tax. RCW 82.32.290.

The last point which this decision needs to address is the taxpayer's claim that the department's employees have violated numerous laws. Bold assertions and threats have accompanied this petition through the entire process. We have looked at these matters and conclude that the department and [county in Washington] County employees have done nothing in violation of the laws of this or any other state.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied and the department will entertain no further review of this matter. The taxpayer may appeal this decision to the Board of Tax Appeals pursuant to the laws and rules pertaining to the Board or to file and action in Thurston County Superior Court pursuant to the laws and rules pertaining to the Thurston County Superior Court.

The amount remaining unpaid under Warrant No. . . . of \$ . . . , which includes interest, is due by April 25, 1988. Absent payment of the amount due by that date, the Department will proceed to collect the amount due as provided by chapter 82.32 RCW.

DATED this 25th day of March 1988.