

Cite as Det. No. 15-0299, 35 WTD 448 (2016)

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. 15-0299
	)	
...	)	Registration No. ...
	)	

RULE 178; RCW 82.12.020, RCW 82.12.0251: USE TAX – OUT OF STATE VEHICLE PURCHASE – VEHICLE USED IN WASHINGTON. The taxpayers own a home and a business located in Washington. The taxpayers also own a home located in Oregon. The vehicle was registered and licensed in Oregon but the evidence showed regular use and storage of the vehicle in Washington. The primary driver of the vehicle resides in Washington and has a Washington driver's license. Thus, the taxpayers were liable for payment of use tax for use of the vehicle in Washington.

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.

Valentine, A.L.J. – A Washington limited liability company [(LLC)] appeals the assessment of use tax on a motor vehicle it purchased, registered, and licensed [out-of-state]. Petition denied. We conclude that the company is liable for use tax on the vehicle it purchased and licensed in another state, but uses in Washington.<sup>1</sup>

### ISSUE

Pursuant to RCW 82.12.020, RCW 82.12.0251, and WAC 458-20-178<sup>2</sup> (Rule 178), is a Washington [LLC] liable for use tax when it purchased and licensed a vehicle in another state, but uses the vehicle in Washington?

### FINDINGS OF FACT

[Taxpayer] registered with the Washington Secretary of State as a domestic [LLC] in April of 2007. Taxpayer's mailing address, as well as its physical location, is in . . . , Washington.

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

<sup>2</sup> Rule 178 was amended, effective May 11, 2014. All citations in this determination are to the version of Rule 178 in existence during the audit period [and before that amendment].

In November of 2011, Taxpayer purchased a vehicle out-of-state. No retail sales tax was paid at the time of purchase.<sup>3</sup> Taxpayer also registered and licensed the vehicle [out-of-state]. In addition to Taxpayer, the vehicle was licensed to Taxpayer's two principals, [Husband] and [Wife].

Through its Compliance Division, the Department of Revenue (Department) issued Taxpayer an assessment in the amount of \$ . . . (this amount represents the assessment of use tax, [local] motor vehicle tax, penalties, and interest).<sup>4</sup>

[Husband and Wife] own a home out-of-state and a home in Washington. [Husband] is licensed to drive [out-of-state]; [Wife] is licensed to drive in Washington. According to [Wife], she resides in Washington, and [Husband] resides [out-of-state]. The address of their [out-of-state] home was used as the licensing address.

[Wife] asserts that the loan officer approved the purchase loan through the business entity to give them a lower interest rate. [Wife] also asserts that the vehicle was purchased for personal use. [Wife] estimates that she drives the vehicle 75 percent of the time ([Wife] also reports that she opens the business most mornings), and [Husband] drives it for the remainder. In addition, [Wife] reports that the monthly loan installments and insurance are paid with personal rather than business funds.

### ANALYSIS

RCW 82.12.020 imposes the use tax. RCW 82.12.020(1) reads, in pertinent part:

(1) There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property acquired by the user in any manner,

....

The definition of the term "person," for use tax purposes, includes a limited liability company. RCW 82.12.010(5); RCW 82.04.030.

Rule 178 implements the use tax statute and explains that the use tax complements the retail sales tax by imposing a tax of like amount upon the use, within this state, by a consumer, of any article of tangible personal property where the user or other specified persons have not paid retail sales tax. Rule 178(2). In addition, use tax is owed "irrespective of where [the tangible personal property] may have been purchased or how acquired." *Id.* Use tax liability arises at the time the property purchased is first put to use in this state. Rule 178(5)(a).

RCW 82.12.010(6) defines "use" as follows:

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<sup>3</sup> [The other state] does not have a retail sales tax.

<sup>4</sup> The vehicle at issue came to the Department's notice after a Department employee noted it was parked at the U.S. Post Office in . . . , Washington. Compliance then contacted Taxpayer requesting additional information about the vehicle.

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, . . . 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, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

There is no dispute that the motor vehicle at issue was purchased [out-of-state] and that no retail sales tax was paid at the time of purchase. The Vehicle Buyer's Order (Order), a copy of which is contained in the record, shows that the buyer was Taxpayer and not [Husband]. and/or [Wife]. The Order does not list a buyer address. However, Taxpayer has been registered in Washington as a [LLC] since 2007 with a Washington mailing/physical address. In addition, [Wife] reported that her residence is in Washington, she has a Washington driver's license, and that her use of the vehicle at issue equals approximately 75 percent of the total use. She also reported that she opens the store for business most mornings. Thus, it is clear that the vehicle is used in Washington. Therefore, under RCW 82.12.020(1) and Rule 178, Taxpayer owes Washington use tax on the vehicle it purchased and licensed [out-of-state]. The vehicle is used in Washington and no retail sales tax was paid at the time of purchase.

. . .

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 4th day of November, 2015.