

BEFORE THE INTERPRETATION AND APPEALS SECTION  
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 Ruling of Tax Liability of)   
 ) No. 87-174  
 )  
 )  
 . . . ) Re: Use Tax  
 ) . . .  
 )

- [1] **RULE 178 AND RCW 82.12.0255:** USE TAX -- EXEMPTION -  
- SOLDIERS' AND SAILOR'S CIVIL RELIEF ACT. Section  
514 of the Soldiers' and Sailors' Civil Relief Act  
(50 U.S.C. + 514) does not prohibit the state from  
collecting retail sales or use tax from nonresident  
members of the armed forces.
- [2] **RULE 178 AND RCW 82.12.0251:** USE TAX -- EXEMPTION -  
- NONRESIDENT -- RESIDENCE -- DOMICILE. While a  
person may have only one legal "domicile," there is  
no reason why he may not have more than one place of  
residence.
- [3] **RULE 178 AND RCW 82.12.0251:** USE TAX -- EXEMPTION -  
- NONRESIDENT -- RESIDENCE -- DOMICILE. Department  
recognizes distinction between "residence" and  
"domicile," thus various use tax exemptions  
available to nonresidents are not available to  
persons residing here, even though they may be  
domiciled elsewhere.

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:

Nonresident member of the armed forces stationed in this state  
pursuant to military orders requests a ruling whether use tax  
applies upon his use within this state of an airplane  
purchased in another state prior to his being stationed here.

## FACTS:

Rosenbloom, A.L.J. -- The taxpayer is an active duty member of the armed forces stationed in Washington pursuant to military orders. The taxpayer claims [state A] as his home state. The taxpayer owns an airplane which he purchased in [state B] in 1984. No sales tax was paid. The taxpayer was transferred to Washington in 1986. The taxpayer has been notified that he will be transferred out of state this summer.

The Washington Department of Licensing notified the taxpayer that he must pay use tax in order to comply with the requirement to register the airplane in Washington. The taxpayer requests a ruling whether he is liable for use tax.

## TAXPAYER'S EXCEPTIONS:

The taxpayer asserts that he is entitled to exemption from use tax under the Soldiers' and Sailors' Civil Relief Act and RCW 82.12.0251.

## DISCUSSION:

[1] The Soldiers' and Sailors' Relief Act does not prohibit the states from collecting retail sales or use tax from nonresident members of the armed forces. Sullivan v. United States, 395 U.S. 169, 23 L.Ed. 2d 182, 89 S. Ct. 1648 (1968).

As enacted in 1942, + 514 of the Soldiers' and Sailors' Civil Relief Act provided that for purposes of state taxation "of any person, or of his [personal] property, income, or gross income" the person shall not be deemed to have lost his residence or domicile in his home state, or acquired a new residence or domicile in another state solely by reason of being absent from his home state in compliance with military orders. The word "personal" was added by amendment in 1944. 58 Stat 722.

Also in 1944, Congress enacted a special subsection under which servicemen are exempt from "licenses, fees, or excises imposed in respect of motor vehicles or the use thereof" if they have paid such levies in their home states. 50 U.S.C. 514(2).

The Sullivan Court determined that the legislative history of + 514 "reveals that Congress intended the Act to cover only annually recurring taxes **on** property--the familiar ad valorem

personal property tax," 395 U.S. at 176; and that "Congress evidently decided in 1944 to extend the exemption of + 514 to motor vehicle registration fees as well as property taxes." Id at 182. The Court held that "+ 514 of the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from the sales and use taxes . . . ." Id at 184.

The Affidavit for Non-Resident Military Exemption of Motor Vehicle Excise Tax furnished with the taxpayer's petition is therefore of no avail. The taxpayer's airplane is not a "motor vehicle." Moreover, the tax at issue is the use tax, not the Motor Vehicle Excise Tax. The use tax, even as it relates to motor vehicles, is clearly permitted under the Sullivan Court's interpretation of + 514 of the Soldiers' and Sailors' Civil Relief Act.

RCW 82.12.0251 provides the following exemption:

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, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; 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 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 ninety days prior to the time he entered this state.

The second and third clauses do not apply because an airplane is not a "motor vehicle or trailer," nor does it fall within the description of "household goods, personal effects, and private automobiles." The only clause which could apply is the first one, which pertains to "tangible personal property" generally.

There are some important qualifications in the first clause: The property must be brought into the state "by a nonresident thereof for his use or enjoyment while temporarily within the state."

[2] The taxpayer is not a nonresident of this state. The taxpayer claims [state A] as his home state or domicile, but that does not prevent him from also being considered a resident of Washington. While a person can only have one legal "domicile," there is no reason why he may not have more than one place of "residence." See, McGrath v. Stevenson, 194 Wn. 160 (1938).

For certain purposes the courts have construed the word "residence" to mean "domicile." Thus a statute providing that wills shall be proved and letters testamentary or of administration shall be granted in the county of which the deceased was a "resident or had his place of abode" was interpreted as referring to domicile. State Ex Rel. Brisbin v. Frater, 1 Wn.2d 13 (1939).

Likewise, the term "resident" appearing in the Dissolution of Marriage Act has been construed to mean "domicile." Sasse v. Sasse, 41 Wn.2d 363 (1952). In fact, the court noted in Sasse that many decisions considering the dissolution statute "have used the terms 'residence' and 'domicile' interchangeably. (citations omitted.) Although these terms usually are not considered to be synonymous, we find that their connotation in all of these cases is that of domicile." 41 Wn.2d at 365.

[3] However, there are no Washington cases holding that "residence" means "domicile" for purposes of the Washington Revenue Act, and the Department in fact recognizes the distinction between these terms in its administration of the Act. Directly on point is WAC 458-20-178, which provides in part:

The exemption set forth in subdivision "1" above [referring to various use tax exemptions available to "nonresidents" pursuant to RCW 82.12.0251], does not extend to the use of articles by a person residing in and regularly employed in this state irrespective of whether or not such person claims a legal domicile elsewhere . . . (Emphasis and bracketed inclusions ours.)

That is, the person may be a "resident" of Washington (i.e., not a nonresident) even though his "domicile" is elsewhere.

Nor is the taxpayer "temporarily within this state," as that term is used in RCW 82.12.0251. The fact that the taxpayer may soon be transferred out of state is immaterial to our determination. If the taxpayer had originally entered the state pursuant to a temporary duty assignment, we might conclude otherwise; however, the taxpayer's Standard Order For Military Personnel provides "this order constitutes a permanent change of station from Lockport, LA to Seattle, WA."

Incidentally, the taxpayer's petition states that no sales tax was paid upon the purchase of the airplane because it was a transaction between private parties. The taxpayer's petition does not state whether use tax was paid in [state B]. If the taxpayer paid use tax in [state B] prior to using the airplane in this state, then he is entitled to a credit in the amount of the tax paid.

Accordingly, we find that the taxpayer is not entitled to the use tax exemption provided in RCW 82.12.0251.

#### DECISION AND DISPOSITION:

We rule that the taxpayer is subject to the use tax in respect to his use within this state of the . . . Aircraft.

DATED this 28th day of May 1987.