Cite as Det. No. 98-144, 18 WTD 93 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| In the Matter of the Petition For Correction of Assessment of | ) | D E T E R M I N A T I O N |
| | ) | No. 98-144 |
| . . . | ) | Registration No. . . . |
| | ) | FY. . . /Audit No. . . . |

[1] RULE 178; RCW 82.12.020; RCW 82.12.0251: USE TAX – CONSUMER – USE OF VEHICLE BY NONRESIDENT – WASHINGTON OWNER. A corporate officer's use of a vehicle owned by the Washington taxpayer on a daily basis in conducting the taxpayer's business affairs in Washington constitutes use of the vehicle by the taxpayer in Washington.

[2] EQUITABLE ESTOPPEL: If the taxpayer previously purchased a vehicle at retail, without paying retail sales tax, and subsequently used it in Washington without paying a use tax, the auditor's failure to assess the tax was certainly an oversight. An omission of a tax in a previous audit will not prevent the state from collecting the tax in subsequent audit.

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:

Taxpayer, a Washington corporation, protests a use tax assessed on a corporate vehicle it purchased at retail and seeks a nonresident exemption. The vehicle is used by a corporate officer, an Oregon resident, as part of his daily commute to work in Washington.[1]

FACTS:

Sharp, A.L.J. -- . . . (Taxpayer) is a Washington corporation with offices in Vancouver, Washington. Taxpayer represents manufacturers, and its business activities include receiving commissions for its services. The Department of Revenue (Department) audited Taxpayer's

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

records for the period January 1, 1992 through June 30, 1996. As a result of the audit, the Department assessed a use tax in the amount of $. . . .and $. . . for interest.

The Department assessed the use tax on a corporate vehicle, a . . ., purchased at retail by Taxpayer. Taxpayer holds title to the vehicle and registered it in Oregon. A corporate officer, who is a resident of Oregon, drives the vehicle every day from his home in Oregon to Taxpayer's offices in Vancouver, Washington. Taxpayer did not pay Washington retail sales tax or use tax.

Taxpayer argues that since an Oregon resident uses the vehicle as an employee of the corporation, it is exempt from the use tax. Taxpayer also argues that the Department is estopped from asserting the tax because it allowed a similar arrangement, without question, during a prior audit. The Department takes the position that, since a Washington corporation owns the vehicle and the vehicle is used in Washington, the taxes are due.

## ISSUES:

1. May a use tax be asserted on a corporate vehicle purchased at retail by a Washington corporation and used by a corporate officer, an Oregon resident, as part of his daily commute to work in Washington?

2. If the Department upholds the tax, is it equitably estopped from asserting the tax because it allowed a similar arrangement during a prior audit of Taxpayer?

## DISCUSSION:

This case raises two issues. We will begin this discussion by first analyzing the use tax assessment and then we will turn to a discussion and analysis of Taxpayer's equitable estoppel argument.

### 1. USE TAX ASSESSMENT

RCW 82.12.020 imposes the use tax and provides:

> There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail... .

The statute further defines two key terms in this provision: "use" and "consumer." "Use" is defined as "...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)." RCW 82.12.010(2). The term "consumer" is defined as "[a]ny person who purchases, acquires, owns, holds or uses any article of tangible personal property irrespective of the nature of the person's business . . ." RCW 82.04.190(1). Collectively, under these provisions the first use as a consumer in Washington is the incident that gives rise to use tax liability.

The Department promulgated an administrative rule, WAC 458-20-178 (Rule 178), which explains the nature of the use tax, when tax liability arises, persons liable for the tax and it provides a long list of exemptions available to taxpayers. Under Rule 178, the use tax applies upon the use of any tangible personal property, not previously subjected to the Washington retail sales tax. WAC 458-20-178(2). The person liable for the tax is the purchaser. WAC 458-20-178(4).

Taxpayer contends that because an Oregon resident commuter drives the vehicle to work in Washington each day it is not subject to the use tax. Taxpayer claims that, in this case, the corporate officer is the only employee who operates the vehicle. Taxpayer further asserts a "substance over form" argument and claims that the asset's use determines use tax, not form of ownership.

We will note that a nonresident is not immune from use tax by virtue of their nonresidency status, alone. The tax applies to anyone who uses tangible personal property as a consumer in Washington, irrespective of whether it is a resident or a nonresident. Det. No. 87-105, 3 WTD 1 (1987). However, we will consider below exemptions from use tax granted based upon residency.

In applying the statutes and rule to the facts in this case, we find that the use tax assessment was correct. Taxpayer did not pay retail sales tax when it purchased the vehicle. It should have paid use tax when the vehicle was first used in Washington. By not paying the retail sales tax, Taxpayer risked paying use tax once the vehicle was brought into and used in Washington. We further conclude that Taxpayer is a consumer because it purchased and used the vehicle. RCW 82.04.190. As a consumer, Taxpayer used the vehicle in Washington, by acting through one of its corporate officers. The corporate officer used the corporate vehicle on a daily basis in conducting Taxpayer's business affairs in Washington. We also find that Taxpayer, as the vehicle's titled owner, exercises dominion and control over it, thereby using it. We, therefore, conclude that Taxpayer used the vehicle in Washington as a consumer and is fully subject to the use tax. RCW 82.12.010(2).

Having determined Taxpayer is subject to the use tax, we now turn to an analysis of whether it qualifies for an exemption. The burden is on the Taxpayer to prove it satisfies the conditions for an exemption. Corporation of the Catholic Archbishop v. Johnston, 89 Wn.2d 505, 573 P.2d 793 (1978). In this case, Taxpayer seeks a nonresident exemption from the use tax. RCW 82.12.0251 is the relevant statute that grants an exemption to nonresidents who operate a motor vehicle in this state. The statute provides an exemption for:

> the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington . . .

Rule 178(1)(b) includes within the list of exempt uses:

> The use by a nonresident of a motor vehicle or trailer which is currently licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, . . .

The statute and the rule contain three requirements for entitlement to nonresident exemption from use tax. Det. No. 91-111, 11 WTD 169 (1991). Those are:

1. The use must be by a nonresident.
2. The vehicle must be currently licensed under the laws of the user's state of residence.
3. The vehicle in question must not be required to be registered or licensed here.

After considering the statutes and Rule 178, we find that Taxpayer fails to establish the first element for the nonresident exemption. The use of the [vehicle] was not by a nonresident. As stated above, by acting through its agent, Taxpayer used the vehicle in Washington. A corporation has no personal existence and can only act through its officers and agents. Seattle International Corporation v. Commerce and Industry Insurance Company, 24 Wash. App. 108; 600 P.2d 612 (1979). An act of a corporate officer is an act of the corporation if it is on behalf of the corporation or for the corporation's benefit. Id. "A corporate officer is an agent for his corporate principal." C.B. William v. Queen Fisheries, Inc., 2 Wash. App. 691, 694; 469 P.2d 583 (1970). In this case, the Taxpayer is a person for the purposes of Washington excise taxes. RCW 82.04.030. However, every Taxpayer activity, including use of corporate assets, can only be conducted through its officers and agents. When the corporate officer used the corporate vehicle in Washington for corporate business, he was acting on behalf of and for the benefit of Taxpayer. Thus, any use by the corporate officer for corporate business is a use by the Taxpayer. Since Taxpayer is not a nonresident, it cannot qualify for a nonresident exemption.

We further conclude that the use tax liability necessarily falls on Taxpayer, since it purchased the vehicle. WAC 458-20-178(4). Thus, we reject Taxpayer's argument that the asset's use determines the tax. Taxpayer purchased the [vehicle] at retail in 1992 and is, therefore, ultimately liable for the tax. We carefully reviewed all of the listed exemptions under the statutes and rule and find that Taxpayer does not qualify for any other exemption.

We, therefore, hold that the Department may assess use tax on the [vehicle] purchased at retail by Taxpayer in Oregon and used daily in Washington by its corporate officer, an Oregon resident.

2. EQUITABLE ESTOPPEL

The next issue is whether the Department is equitably estopped from asserting the tax because it allowed a similar arrangement during a prior audit of Taxpayer. For the reason set forth below, the answer is no.

An omission of a tax in a previous audit will not prevent the state from collecting the tax in subsequent audits. Det. No. 90-340, 11 WTD 081 (1990); Det. No. 87-299, 4 WTD 097 (1987).

This identical issue was before the Washington Supreme Court in Kitsap-Mason Dairymen v. Tax Comm'n, 77 Wn.2d 812, 818 (1970). There, the Court ruled:

> This is not a case in which auditors changed their interpretation of a statute or rule. It is one in which they overlooked through ignorance, neglect or inadvertence Kitsap's error in computing the tax. The fact that the oversight only recently has been discovered does not relieve Kitsap of its liability for the correct tax during the audit period now under consideration.
>
> The doctrine of estoppel will not be lightly invoked against the state to deprive it of the power to collect taxes. The state cannot be estopped by unauthorized acts, admissions or conduct of its officers. Wasem's, Inc. v. State, 63 Wn.2d 67, 385 P.2d 530 (1963); Bennett v. Grays Harbor County, 15 Wn.2d 331, 130 P.2d 1041 (1942); see also, 1 A.L.R.2d 338 (1948).

If, in the past, Taxpayer did purchase a vehicle at retail, without paying retail sales tax, and subsequently used it in Washington without paying a use tax, the auditor's failure to assess the tax was certainly an oversight. That set of circumstances relieved Taxpayer of a tax that would have otherwise been properly due, but now it must pay taxes that are properly due.

We further find that Taxpayer has the ultimate responsibility to know its tax reporting obligations. RCW82.32A.030(2). With over 275,000 registered taxpayers in this state, it is not possible for the Department to educate all taxpayers concerning their tax obligations. That responsibility must lie with taxpayers. Det 86-226, 1 WTD 67 (1986), Det. No. 86-278, 1 WTD 287 (1986). Here, Taxpayer must pay taxes that were previously unascertained and overlooked.

For the foregoing reasons, Taxpayer petition is hereby denied.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 31st day of July 1998.