

Cite as 6 WTD 69 (1988)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

| | |
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| In the Matter of the Petition) | <u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u> |
| for Correction of Assessment) | |
|) | No. 88-237 |
|) | |
| . . .) | Unregistered |
|) | Notice of Use Tax Due |
|) | 1986 Mercedes Benz |
|) | . . . |

[1] **RULE 178:** USE TAX -- PURCHASE OF AUTOMOBILE IN OREGON -- AUTOMOBILE USED IN WASHINGTON. The use tax is imposed on the use of tangible personal property in Washington by a consumer. Where a Washington resident purchases a vehicle in Oregon and uses it in Washington, such use subjects the person to tax liability.

[2] **RULE 178:** USE TAX -- EXEMPTION -- NONRESIDENCY -- BURDEN OF PROOF. Persons claiming a statutory exemption from the use tax based on nonresidency in Washington have the burden of establishing that they are not residents here and are residents of another state. Burden not met where taxpayer fails to provide concrete proof of Oregon residency to controvert evidence of Washington residency.

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:

Petitioner protests assessment of use tax on vehicle upon licensing of said vehicle in Washington.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer purchased a 1986 Mercedes Benz, in Oregon in 1987. On September 15, 1987, he was cited by the Washington State Patrol; the officer found that the vehicle was licensed in Oregon by a driver possessing a current Washington driver's license who was apparently a Washington resident. In response to a subsequent letter, dated November 5, 1987, requiring that he show proof of Washington vehicle registration, Taxpayer submitted proof of registration dated December 3, 1987. On that form, he stated that he had entered Washington on October 15, 1987, and that he was exempt from the Washington use tax based on Oregon residency.

In its investigation, the Washington State Patrol found that the taxpayer had and has continued to have power and telephone service to the address listed above since at least April, 1980. He received correspondence regarding this matter, which was mailed to the above address; he also used it as his return address on his petition letter.

Additionally, the compliance officer found that the taxpayer had and has continued to carry a valid Washington Driver's License. Taxpayer himself notes that he was stopped by the Oregon State Police at one point and told to obtain an Oregon Driver's license if he was residing in Oregon; he declined to do so. The compliance officer also found that the address on the Oregon automobile title does not and did not belong to the taxpayer and that the vehicle was financed in Everett through the . . . Credit Union.

Taxpayer claims that he moved to Oregon around January of 1987. Although the compliance officer requested that he submit concrete proof of Oregon residency and Washington nonresidency, Taxpayer has failed to submit such documentation.

DISCUSSION:

[1] The use tax is intended to complement the sales tax by taxing a consumer's use of tangible personal property, where such property has escaped the state sales tax by being purchased out of state and brought into Washington. The use of the property, not the residence of the user, triggers tax liability under RCW 82.12.020. In this case, taxpayer was stopped in September, 1987, for having Oregon license plates and a Washington driver's license. When he was later asked to produce proof of Washington auto licensing or Oregon residency, he chose to license the car in this state. At that

time, he claimed exemption from the Washington use tax based on nonresidency prior to the registration of the vehicle.

[2] RCW 82.12.0251 grants an exemption from liability for the use tax to nonresidents who show that they are bona fide residents of another state and who show that such automobile acquisition occurred more than ninety days prior to the time that such person entered this state. WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax legislation; it has the same legal force and effect at the statute. RCW 82.32.300. Rule 178 states that the exemption does not apply to a

person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time.

Rule 178(7)(c)(i).

The burden of proof is on the taxpayer to show that he was a bona fide resident of another state and that he was not a resident of Washington. In this case, Taxpayer stated, in his petition, that a friend would say that they shared a residence in Oregon; additionally, he said that Washington neighbors would say that he had been absent from this state during the period in question. The Washington State Patrol's investigation showed prior and current utility service to the address listed above in Taxpayer's name and possession by him of a valid Washington driver's license. The compliance officer found that the vehicle was financed through an Everett credit union. Additionally, he requested that Taxpayer provide some concrete proof of ties with Oregon, such as indicators of employment or a job search, proof of an address there, a valid Oregon driver's license; no such proof has been forthcoming. Taxpayer also continues to use the Everett address as his return mailing address and to receive mail there. Although he has indicated that his marital situation might not improve and that he will, in that case, move out of state, this intent is also specifically denied the use tax exemption of RCW 82.12.0251. Because the available evidence clearly shows Washington residency and because this evidence has not, despite repeated requests by the compliance officer, been refuted by any concrete showing of Oregon residency by the taxpayer, his petition is denied.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 17th day of June 1988.