Cite as Det. No. 99-009, 18 WTD 246 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment	)	D E T E R M I N A T I O N
	)	No. 99-009
. . .	)	Use Tax Assessment
	)	MVET Assessment No. #. . .

[1] [1] RCW 82.12.020 -- RULE 178: USE TAX -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF A MOTOR HOME LICENSED IN OREGON -- USED IN WASHINGTON. Where there are dual residency owners (Oregon and Washington), any use of the motor home by either joint owner within this state constitutes a taxable incident. The use tax is imposed on the use in this state as a consumer of any article of tangible personal property. Where a Washington resident used a jointly owned motor home in Washington, which was licensed in the name of both owners in Oregon, the first use of the motor home in Washington gives rise to the imposition of use tax.

[2] [2] RCW 82.44.020 – MOTOR VEHICLE EXCISE TAX (MVET) -- JOINT OWNERS (RESIDENT AND NONRESIDENT) OF MOTOR HOME -- LICENSED IN OREGON -- USED IN WASHINGTON. Where a motor home is jointly owned by a Washington resident and a nonresident and the motor home is used by both owners in Washington, the owners must register the motor home in Washington and pay the MVET.

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:

Petition for cancellation of motor vehicle excise tax (MVET) plus interest and use tax, including the delinquency penalty and interest, assessed on a motor home jointly owned by husband, who is a resident of Washington state, and wife, who is a resident of Oregon.[1]

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

FACTS:

Danyo, ALJ -- The taxpayers (husband and wife) purchased a motor home from an Oregon dealership on November 27, 1996 in Oregon. The motor home was subsequently registered and licensed in Oregon. On October 10, 1997, the Compliance Division of Washington state's Department of Revenue (Department) issued an assessment for motor vehicle excise tax (MVET) based on its conclusion that the taxpayers should have registered the vehicle in Washington; and an assessment for use tax based on its conclusion that the taxpayers used the motor home in Washington. The MVET assessment totaled $. . . , consisting of $. . . tax and $. . . interest. The use tax assessment totaled $. . ., comprised of $. . . state use tax, $. . . local use tax, $. . . delinquency penalty and $. . . interest.

The taxpayers protested both assessments, claiming the motor home is not subject to Washington's motor vehicle excise tax, because it is properly registered and licensed in Oregon; and the taxpayer wife is a nonresident whose use of the motor home in Washington is exempt from use tax.

According to the taxpayer, when they purchased the motor home, they were married, but separated. The wife lived in a friend's[2] home in Oregon and the husband lived in . . . , Washington. The husband was (and continues to be) a resident of Washington. At the time of the purchase, he was living in the home he currently resides in; this house is located in . . . , Washington. The taxpayers purchased this home in 1994 and both continue to be listed as legal owners of this property. The wife claims that she was never a Washington resident and has resided in Oregon since 1991. All loan and title documents for the motor home purchased on November 27, 1996 list both husband and wife as owners of the motor home and provide the wife's . . . , Oregon address as the home address.

The taxpayers have acknowledged that the motor home has been frequently located at the husband's [Washington] residence since the date of its purchase in 1996. During the hearing on June 5, 1998, the taxpayer wife stated that the husband makes the payments on the motor home and that the husband continues to provide her with financial support.

According to the Department's records, on June 3, 1997, a Washington State Patrol trooper stopped the wife while she was driving the motor home. The wife produced an Oregon driver's license and the vehicle's registration. The trooper noted that the vehicle's registration also listed the husband, a Washington resident, as the owner. Following this traffic stop the trooper referred the taxpayers' case to the Department's Tax Discovery Unit, which investigated the motor home's presence in Washington. After a preliminary investigation, a Tax Discovery Agent contacted the taxpayers.

[2] During the hearing, the taxpayer indicated that she actually lived in her parent's home in Oregon rather that at the location she had initially stated was her Oregon residence. This factual discrepancy has little effect on the decision in this matter, however, due to the fact that one of the owners of the motor home was a Washington resident.

According to the Tax Discovery Agent's report, the wife stated she was an Oregon resident and owner of the motor home. The wife explained she and her husband were separated, and she had established a residence in Oregon. She stated her estranged husband's name was on the motor home's title and registration because she needed a co-signer to purchase the motor home, as her credit was independently insufficient. The reason she gave for the motor home's presence in Washington and, specifically, at her husband's house was that mudslide problems in the . . . area had created an emergency situation, resulting in a possible need to evacuate the house.

The wife also informed the agent that both she and her husband "used the motor home to take their dogs to dog shows." The agent's summary indicates that the dogs are kept at the Washington home and that the taxpayers are involved in raising and showing dogs. The wife informed the revenue agent that she occasionally spends time at the [Washington] residence to work with the dogs.[3]

The agent's report states that she was never able to contact the wife at the [Oregon] phone number, which the taxpayers alleged was the wife's home. The report also notes that when she inquired after the wife at that number, she was provided with the husband's telephone number at the [Washington] residence. The agent believed it significant that each time she contacted the wife, it was at the [Washington] number. According to the agent, she successfully contacted the wife at the [Washington] home on several occasions. When the agent questioned the wife about her presence at the Washington home, the wife responded that she was there "working with the dogs."

At the conclusion of her investigation, the Tax Discovery Agent determined the taxpayers' motor home needed to be licensed in Washington and use tax was due. Subsequently, the Department issued the assessments to the taxpayers for motor vehicle excise tax (MVET) and use tax, and included late-payment penalties and interest.

The wife appealed the assessments, asserting that as a resident of Oregon she is not required to register the motor home in Washington. To substantiate her claim of Oregon residency, the wife has submitted: a copy of her Oregon driver's license (originally issued 9/6/91 - renewed 6/4/95); a May 1995 summons for jury duty in Multnomah County, Oregon; a copy of a checking account statement; two credit card statements listing an Oregon address; and a June 17, 1991 deed transferring property in Oregon to the taxpayers (both husband and wife). The taxpayer also submitted copies of newspaper articles published between January 27 and March 12 of 1997, reporting on mudslide problems in the area [of the Washington residence].

ISSUES:

[3] We note that although the taxpayer wife claims the motor home is used to transport the dogs to various dog shows throughout Washington and other states, she does not claim that they were (or are) engaged in the business of raising and showing the dogs. We found no evidence to conclude otherwise.

1. If a motor home is jointly owned by a husband and wife who have separated and reside in different states (Washington and Oregon), and both the husband and wife use the vehicle in Washington State, is the motor home subject to use tax in Washington State?

2. Where a motor home is jointly owned by a husband and wife who are residents of different states, and where the vehicle is registered in the wife's state of residence, but used by both individuals in Washington State, are the taxpayers required to pay MVET on the motor home?

DISCUSSION:

Use Tax

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on consumers when they buy tangible personal property. RCW 82.04.050; 82.04.190; 82.08.020; 82.08.050. The use tax is a "compensating" tax; it is imposed when the sales tax has not been paid. *See Henneford v. Silas Mason Co*., 300 U.S. 577, 57 S.Ct. 524, 81 L. Ed. 814 (1937); *Northern Pacific Railway Co. v. Henneford*, 9 Wn.2d 18, 113 P.2d 545 (1941). The use tax imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail" on which Washington's retail sales tax has not been paid, unless an exemption is available. RCW 82.12.020.

WAC 458-20-178 (Rule 178) is the administrative regulation implementing the use tax. It explains that the use tax and the retail sales tax "stand as complements to each other" and "provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired." The rule defines *use* broadly to "include any act by which the taxpayer takes or assumes dominion or control over the article". Rule 178(3).

In this case the taxpayers have asserted they are not subject to use tax because of a specific exemption for motor vehicles used by nonresidents in this state. The exemption is found in RCW 82.12.0251, which reads, in part:

> The provisions of this chapter shall not apply ... in respect to 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, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060;

Use tax liability does not depend upon the residence or domicile of the user, but rather upon the privilege of using tangible personal property as a consumer in Washington on which Washington retail sales tax has not been paid. WAC 458-20-178(1) (Rule 178(1)).

The facts in this case establish that the motor home was purchased without payment of retail sales tax. It is undisputed that the motor home was used in Washington. By the taxpayers' admission it was used by the taxpayers both when they used the vehicle to travel to dog shows and when the vehicle was stored at the [Washington] home pending possible "emergency evacuation" due to potential mudslides. The question then becomes: whether the taxpayers' use of the motor home in Washington is exempt based on the wife's alleged Oregon residency. In other words, is the exemption articulated in RCW 82.12.0251 and explained in Rule 178 available to the taxpayers?

In determining whether the exemption is available to the taxpayers in this case, we must consider that exemptions to taxing statutes are strictly construed in favor of the application of the tax. *Yakima Fruit Growers Association v. Henneford*, 187 Wn. 252, 60 P. (2d) 62 (1936); *Miethke v. Pierce County*, 173 Wn. 381, 23 P. (2d) 405 (1933*); Boeing Aircraft Company v. Reconstruction Finance Corporation*, 25 Wn.2d 652, 171 P. (2d) 838 (1946). It is required that any claim of exemption be studied with care before depriving the state of revenue. *Alaska Steamship Company v. State*, 31 Wn.2d 328, 196 P. (2d) 1001 (1948). Only where an exemption is clearly required by law should an individual be exempt from tax. *North Pacific Coast Freight Bureau v. State*, 12 Wn.2d 563, 122 P. (2d) 467 (1942).

Applying these rules of construction to the use tax exemption articulated in RCW 82.12.0251 results in three necessary requirements, which must be established for the exemption to be available. Specifically, (1) the user must be a nonresident, (2) the vehicle must be registered or licensed in the state of the user's residence, and (3) Washington registration of the vehicle must not be required. Det. No. 96-49, 16 WTD 177 (1996). Should the taxpayer fail to meet any one of the three requirements, then use tax is due.

The taxpayer-wife claims her use of the motor home in Washington is exempt because she is a resident of Oregon.[4] For the exemption from use tax for use by nonresidents to be available,

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[4] Whether or not the wife was an Oregon resident and properly registered the motor home in Oregon requires consideration of the Oregon State laws governing vehicle registration. The Oregon Revised Statute (ORS)addressing vehicle registration, ORS 803.360, provides:

> Domicile in state required; exceptions. (1) No person may register or renew the registration of a vehicle in this state unless the person is domiciled in this state, as described in ORS 803.355.* This section does not apply to persons required by ORS 803.200 or any other provision of law, to register vehicles in this state.
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> (2) Notwithstanding subsection (1) of this section, a person who is not domiciled in this state may register or renew the registration of a vehicle that:
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> (a) Is usually left within the state when the registered owner is absent from the state;
>
> (b) Is used primarily for personal transportation within the state;
>
> (c) Is a private passenger vehicle or a vehicle with a loaded weight of less than 8,000 pounds; and
>
> (d) Is not a motor home or a camper.

however, it must be determined whether the person who has "dominion and control" over the motor home is a nonresident of Washington at the time of first use in this state. As RCW 82.12.010(2) defines use in relation to the taxpayer who has dominion and control over the property. In this case there are two owners of the motor home and so the actions of both of the owners must be considered.

Given the wife's continued connections and activities in Washington, it could be concluded that while the wife has established a domicile in Oregon, she has not severed her Washington connections to an extent sufficient to render her a nonresident for tax purposes. Alternatively, however, even if the wife may have established a domicile in Oregon when the motor home was first used in Washington, she was not the sole owner or user of the motor home. Therefore, her assertion of Oregon residency is independently insufficient to avoid the applicability of either use tax or MVET. The actions and ownership interest of the husband, a Washington resident, must also be considered. There is no question that he was, and continues to be, a Washington resident. Therefore, it is necessary to determine whether use of the motor home in Washington by the resident co-owner requires the motor home's registration in this state and payment of use tax and MVET.

The Department of Revenue has specifically addressed the applicability of use tax in circumstances of joint ownership by a Washington resident and a nonresident. It has been determined that when property is jointly owned and at least one of the joint owners is a resident of Washington, any use of the tangible personal property upon which no sales tax has been paid, by either of the joint owners within this state constitutes a taxable incident. In Det. No. 86-321, 2 WTD 105 (1986), the Department held that where there are joint owners of a vehicle who are residents of different states (e.g., Oregon and Washington), any use of the vehicle by either joint owner within this state constitutes a taxable incident, even if the vehicle was properly purchased and licensed in the other state. The Department stated: "[t]he operation of such property within this state and attendant benefits and liabilities realized therefrom spin off and attach to each registered owner of the property jointly and severally." The Department repeated the same principles in Det. No. 87-145, 3 WTD 99 (1987); *see also* Det. No. 86-321, 2 WTD 105 (1986). Thus, use by either the husband or wife within Washington is sufficient to constitute a taxable incident. In this case, the facts establish use by both the husband and wife.

The documentation provided by the taxpayer unequivocally establishes that the husband is a registered joint owner of the motor home. It is not disputed that husband was a Washington resident at the time the motor home was purchased, registered and licensed in Oregon. There is also no dispute that he was a Washington resident when the motor home was first used in Washington. The wife explained that her husband is not the true owner but is only listed as an

*The definition of domicile is provided by ORS 360.355, which states: Domicile' described. For purposes of ORS 803.350 to 803.370 and 807.045, a person is domiciled in this state if the person's place of abode is in the state and the person intends to remain in the state or, if absent, to return to it.

owner of the motor home because he "loaned his credit" to her to allow the purchase of the motor home. She asserts that by virtue of their separation, she is the true owner of the motor home. While this provides an explanation for why the husband is a joint owner of the motor home, it does not alter or mitigate the husband's ownership interest.

Further, the vital fact for the use tax analysis is that both owners used the motor home in Washington and that one owner is, unquestionably, a resident of this state. The husband's use of the motor home to travel to dog shows in and of itself is sufficient to establish use for use tax purposes. Additionally, storage of the motor home at the [Washington] home also constitutes use. The definition of "use" provided in RCW 82.12.010(2) expressly includes storage:

> "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean 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, or any other act preparatory to subsequent actual use or consumption within this state; (Emphasis added.)

The wife has stated that the motor home was stored at the [Washington] residence for the express purpose of being available to the husband in case the landslide dangers required evacuation. The fact that the vehicle was stored at the residence to be used should emergency evacuation become necessary does not negate meeting the statutory definition of use. The statutory definition of use quoted above does not qualify use by its purpose or intent, nor does it provide an exemption for emergency use. Just as the fact that the wife's limited credit provides an explanation for the joint ownership, so, too, does the potential emergency situation explain the reason for the storage of the motor home during the threat of mudslide conditions. Yet, neither of these explanations alters the pivotal facts, which are determinative for tax analysis. Namely, the husband, a Washington resident, was an owner of the vehicle, and he exercised dominion and control over the motor home while it was stored at the [Washington] home. Thus, when joint-owner husband stored the motor home at the [Washington] residence, use under the statutory definition was established. Additionally, as stated above, the husband used the motor home to travel to dog shows. Independent of the "use" established by the storage, this use of the motor home in Washington also falls within the statutory definition of "use" and supports the use tax assessment.

When at least one of the joint owners is a resident who has exercised dominion or control over the property acquired at retail upon which the Washington retail sales tax has not been paid, use tax liability arises. Under the law, any use of tangible personal property by the Washington resident constitutes a taxable incident. *See* Det. No. 86-321, 2 WTD 105 (1986). This use tax liability, once incurred, also applies to the nonresident joint owner. The Department has consistently held that a tax liability imposed upon one joint owner of a vehicle who is a resident of Washington can be imposed upon the other joint owner of the vehicle, even though the latter is not a resident of Washington. *See* Det. No. 86-321, 2 WTD 105 (1986); and Det. No. 87-145, 3 WTD 99 (1987).

At the time of its first use in Washington, a co-owner who used the motor home was a Washington resident. This ownership interest is sufficient to trigger use tax liability upon the first use of the motor home in Washington and renders the exemption for use by nonresidents, articulated in RCW 82.12.0251, unavailable. The use tax assessment was, therefore, appropriate and is hereby sustained.

The use tax assessment also includes an assessment of a delinquency penalty and interest. RCW 82.32.100(2), in mandatory terms imposes penalties for the failure to file a tax return and states that:

> As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing to the superior court as hereinafter provided. The department shall notify the taxpayer by mail of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within thirty days from the date of such notice.

Thus, where it is found that a return should have been filed and the corresponding tax liability paid, the department is required to collect the necessary information in order to issue a proper tax assessment, including any applicable penalties and interest. It is this procedure that led to the assessment of the tax at issue. Upon the provision of information and investigation, the department determined that the taxpayers were required to pay use tax on the motor home.

Should the taxpayer dispute the tax assessment, RCW 82.32.160 provides for the appeal of the assessment by the filing of a written petition for "correction of the amount of the assessment, and a conference for examination and review of the assessment." RCW 82.32.160 also states that "[i]f no such petition is filed within the thirty-day period the assessment covered by the notice shall become final." The filing of a timely petition therefore prevents an assessment from becoming final and the collection of the assessment is deferred until the conclusion of the review of the taxpayer's petition. The taxpayers timely filed an appeal of the assessment issued on October 10, 1997. This timely filing precludes the accrual of penalties on the assessment while the taxpayers' appeal is under consideration. The penalty at issue here arises not from late payment of the assessment, but rather from failure to file a use tax return.

The use tax assessment includes a 20% delinquency penalty. This penalty was assessed pursuant to RCW 82.32.090, which addresses late payment of a tax due. These penalties, referred to as late-payment or delinquency penalties, are mandatory. RCW 82.32.090(1).

The 20% penalty on the assessment was charged for the taxpayers' failure to pay the use tax upon first use of the motor home in Washington. The first acknowledged use of the motor home in Washington was its storage at the [Washington] home due to the hazardous situation created

by mud slides in the area. The taxpayers submitted newspaper articles, which establish that this situation began late in December of 1996, and continued through March of 1997. The taxpayers have admitted the motor home was at the [Washington] home off and on since its date of purchase and expressly admitted to its storage at the home during the period of the mud slide danger. Thus, the first admitted use of the motor home in Washington occurred in late December of 1996. Giving the benefit of any doubt to the taxpayers as to the time of first use, we find a first use date of January 1, 1997.

Rule 178, the administrative regulation implementing the use tax, specifies when a use tax return is due. In this instance the taxpayers did not have an obligation to register and so the due date of their use tax return is specified by section 16 of Rule 178. This section states:

> (16) Returns and registration. Persons subject to the payment of the use tax, and who are not required to register or report under the provisions of chapters 82.04, 82.08, 82.16, or 82.28 RCW, are not required to secure a certificate of registration as provided under WAC 458-20-101. As to such persons, **returns must be filed with the department of revenue on or before the fifteenth day of the month succeeding the end of the period in which the tax accrued**. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices. (Emphasis added.)

January 1, 1997 is the date when liability accrued. Thus, a use tax return would have been due on or before February 15, 1997. As no return was filed, or payment was made by two months after the due date, the 20% mandatory penalty of RCW 82.32.090(1) was applied.

The taxpayers have asserted that they believed the exemption in RCW 82.12.0251, for use by a nonresident while temporarily within Washington, applied to their situation and thereby excused the use tax liability. It was their belief that the wife's Oregon residency excused them from filing a use tax return. As discussed above, the wife's status as an Oregon resident does not render the exemption of RCW 82.12.0251 applicable, given the fact that a co-owner of the motor home was, and is, a Washington resident. The question therefore, is whether the taxpayers' belief of entitlement to a statutory exemption provides a basis for the waiver of the mandatory penalty imposed by RCW 82.32.090(1).

The legislature, through its use of the word "shall" in RCW 82.32.090, has made the assessment of the penalty and additional interest mandatory. The mere fact of nonpayment within a specified period of payment requires the penalty and interest provisions of RCW 82. 32.050 to be applied.

As an administrative agency, the Department of Revenue is given no discretionary authority to waive or cancel penalties or interest. The only authority to waive or cancel penalties or interest is found in RCW 82. 32.105(1) which in pertinent part provides:

> If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any interest or penalties imposed under this chapter with respect to such tax.

WAC 458-20-228(6) (Rule 228), addresses the seven specific circumstances where a cancellation of penalties will be considered by the Department and the two situations where a cancellation of interest will be considered by. However, mere ignorance or lack of knowledge by the taxpayer of the tax liability shall not provide a basis for cancellation of the penalties. **Rule 228(6).** The specific instances in which cancellation of penalties is permissible are narrowly circumscribed by the rule, which provides:

> (b) The following situations will be the only circumstances under which a cancellation of penalties will be considered by the department:
>
> (i) The return was filed on time but inadvertently mailed to another agency.
>
> (ii) The delinquency was due to erroneous written information given the taxpayer by a department officer or employee. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the instructions or information imparted by the department employee, or that the taxpayer fully understood the information received. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of the penalty.
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> (iii) The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.
>
> (iv) The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.
>
> (v) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
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> (vi) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.
>
> (vii) The delinquency penalty will be waived or cancelled on a one time only basis if the delinquent tax return was received under the following circumstances:
>
> (A) The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and
>
> (B) The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant,

> confusion caused by communications with the department, failure to receive return forms timely, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

The facts of this case do not provide a basis for cancellation of the penalty under any of the seven exceptions listed above.

The introduction to Rule 228 states that: "[t]aypayers have a responsibility to become informed about applicable tax laws and to correctly and timely report their tax liability." Rule 228(1). Since one of the owners of the motor home was a Washington resident and the taxpayers were using the vehicle in Washington, there was an obligation for the taxpayers to make inquiries regarding the potential Washington State tax ramifications. See also Title 82A RCW, "Taxpayer's Rights and Responsibilities."

The taxpayers mistaken belief of entitlement to an exemption from use tax does not provide a basis for waiver of the penalty for failing to file a use tax return. There has been no evidence submitted what would support a finding that the failure to file a use tax return was due to circumstances beyond the control of the taxpayers, and so there is no basis for waiving the penalty under Rule 228(6). The penalty portion of the use tax assessment is, therefore, affirmed.

The use tax assessment also included interest. The determination by the department that the taxpayers should have filed a use tax return and paid use tax results in the mandatory imposition of interest on the tax owed pursuant to RCW 82.32.050. The statute in pertinent part states:

> If upon examination of any returns **or from other information obtained by the department** it appears that a tax or penalty has been paid less than that properly due, the department **shall assess** against the taxpayer such additional amount found to be due and . . . **shall add thereto interest** at the rate of nine percent per annum . . . until date of payment. (Emphasis supplied.)

Rule 228(7) discusses the circumstances under which the interest portion on a tax assessment may be waived. The rule provides:

> (7) **Waiver or cancellation of interest.** The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department:
>
> (a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.
>
> (b) Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

There are no facts in evidence, which would provide a basis to waive the interest portion of the assessment under the applicable rules. The interest portion of the assessment is, therefore, affirmed.

MVET

RCW 82.44.020 imposes a motor vehicle excise tax on the privilege of using a motor vehicle in this state. The duty to pay MVET arises with the duty to license one's vehicle in this state, and the duty to license is based upon ownership **and use in Washington** by a Washington resident. A resident of Washington is required to register a vehicle to be operated on the highways of the state. See chapters 46.12 and 46.16 RCW, RCW 46.16.028(3) and WAC 308-99-025. "Resident" for licensing purposes is defined at RCW 46.16.028(1):

> For the purposes of vehicle registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:
>
> (a) Becoming a registered voter in Washington;
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> (b) Receiving benefits under one of Washington's public assistance programs; or
>
> (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition at resident rates.

RCW 46.16.030 generally exempts nonresidents who have complied with the vehicle licensing requirements of their home state from Washington's license registration requirements, to the extent the nonresident's state grants like exemptions to Washington residents.

RCW 46.85.040 authorizes the Department of Licensing to enter into reciprocal agreements and arrangements with other jurisdictions, granting to vehicles or to owners of vehicles, which are properly registered or licensed in such jurisdiction, exemption from payment of the MVET. RCW 46.85.060 provides that in the absence of an agreement or arrangement with another jurisdiction, the Department of Licensing shall declare specified minimum exemptions. One is that nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed six months in any one continuous twelve-month period.

Reading the above statutes together, a person is exempt from MVET if the person is a nonresident of Washington who has properly licensed the vehicle in his or her home state, the person is not employed in this state, and the person does not operate the vehicle in this state for more than six months in any continuous twelve-month period.

The relevant statutes do not define the term "nonresident." By negative implication, a person who does not manifest an intent to live or be located in Washington on more than a temporary or transient basis is a "nonresident." The Department has also long held that a person can have more than one residence for use and MVET tax purposes. See Det. No. 87-65, 2 WTD 293

(1986), Det. No. 87-145, 3 WTD 99 (1987), Det. No. 87-174, 3 WTD 171 (1987); Det. No. 93-223, 13 WTD 361 (1994).

In this case, the facts presented establish two joint owners of a motor home with different states of residence. As discussed above, the husband resides at the family home in Washington, and the wife resides in Oregon. The motor home was present and used in the state of Washington by both taxpayers to travel to dog shows and was also stored at the Washington residence owned by both taxpayers.

In considering the rules Washington has established for the licensing of vehicles, it is the intent of the statutes that Washington residents pay the MVET for vehicles they use on the state's highways, and that they may not escape payment of the MVET by licensing a vehicle in another state. RCW 82.44.020(1) and (7). It also clearly is the intent of the statutes that nonresidents who have properly licensed their vehicles in their home states not incur MVET liability for their limited use of the vehicles on Washington highways. RCW 82.44.020(1); RCW 46.85.040 and .060.

In this case the circumstances are sufficient to raise a presumption of use by the Washington joint owner. The wife stated that she and her husband still jointly travel to dog shows and use the motor home for that purpose. Additionally, the motor home was located at the [Washington] location for the stated purpose of making it available for the use of the Washington resident should an evacuation become necessary. No evidence has been submitted that would support the claim that the Washington joint owner did not use the vehicle. As discussed above, it is a well established rule that tax exemption statutes must be strictly construed in favor of the application of the tax. *Yakima Fruit Growers Association v. Henneford*, 187 Wn. 252, 60 P. (2d) 62 (1936). While the wife has stated an intent to live in Oregon and established residence in that state, the joint ownership of the motor home with a Washington resident and use of the motor home by both owners in Washington renders the statutory exemptions of RCW 82.44.020(1), RCW 46.85.040 and .060, for limited use by a nonresident, inapplicable in this instance. The MVET assessment is, therefore, appropriate.

The MVET assessment also includes interest. As discussed above the facts in evidence do not provide any basis for waiver of the interest mandated by RCW 82.32.050. The interest portion of the MVET assessment is, therefore, also affirmed.

DECISION AND DISPOSITION:

The taxpayers' petition is denied.

Dated this 27th day of January 1999.