

Cite as Det. No. 98-117, 18 WTD 110 (1999)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 98-117
)	
...)	Unregistered
)	Use Tax and MVET Assessments
)	

RULE 230; RCW 82.32.090(5): -- EVASION PENALTY -- MOTOR HOME. A husband and wife, who are residents of Washington and who also live at their beach-front property in Oregon several months a year, did not have the necessary intent to act in a false or fraudulent manner to evade their Washington use tax and motor vehicle excise tax obligations when they erroneously believed their motor home needed to be registered solely in Oregon because that is where they used it much of the time.

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:

A husband and wife (the taxpayers) protests evasion penalties assessed against them for their purchase and use of a motor home in Washington.¹

FACTS:

De Luca, A.L.J. -- The taxpayers admit that they are Washington residents. They own a home in Spokane. They have Washington driver's licenses. They are registered to vote in Washington and voted as recently as June 1997. The taxpayers also own a condominium in Hawaii and real property on the Oregon coast. The taxpayers are retired and reveal that they spend approximately six months of the year outside Washington, much of it at their other residences. The taxpayers in January 1997 purchased a high quality used motor home from a Washington dealer. At that time the taxpayers were in the process of purchasing the real property on the Oregon coast. They mentioned this fact to the motor home salesperson and stated that they planned to spend much of the year in the motor home on their property in Oregon. The

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

taxpayers claim that upon hearing this statement, the salesperson informed them if the motor home was located outside Washington most of the time, it would be exempt from Washington taxes. The taxpayers admit that they then signed a statement at the dealer's allowing for out-of-state delivery.

The taxpayers concede they now understand that the salesperson's information and their actions in registering the vehicle in Oregon were erroneous. However, the taxpayers are not blaming the dealer for their resulting tax problems. They recognize that they could have sought advice from an attorney or an accountant about their tax obligations to Washington prior to purchasing the vehicle, but did not. Two days after purchasing the motor home, the taxpayers took it to Oregon and did not bring it back to Washington until four months later in May, 1997.

The Compliance Division of the Department of Revenue (the Department) assessed the taxpayers use tax, a 20% delinquent penalty, and a 50% evasion penalty, amounting to \$. . . , plus motor vehicle excise tax (MVET), a 20% delinquent penalty, and a 50% evasion penalty, amounting to \$. . . , for a total of \$ The taxpayers paid the assessment in full.

The taxpayers protest only the two evasion penalties and seek a refund of \$. . . , the total of those two penalties. The taxpayers assert that they thought what they were doing at that time was completely legal because they were planning on using the motor home almost 100% of the time outside Washington, including parking it most of the time at their property in Oregon where they reside much of the year.

ISSUES:

Did the taxpayers attempt to evade the payment of taxes to Washington, which would allow the Department to assess the 50% evasion penalties?

DISCUSSION:

Evasion penalties are imposed by RCW 82.32.090(5), which provides:

If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

The Department has adopted WAC 458-20-230 (Rule 230), in part, to administer the assessment of evasion penalties. Rule 230(4) provides in part:

Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence which is objective and creditable.

See also Det. No. 90-314, 10 WTD 111 (1990) and Det. No. 92-133, 12 WTD 171 (1992). In Det. No. 90-314, the Department addressed the elements of proving evasion:

In order to sustain an assessment of the evasion penalty, the Department must first present evidence of each of the foregoing elements. The burden is on the Department to prove the existence of these elements by clear, cogent and convincing evidence. In order to meet this burden, the Department must present objective and credible evidence that clearly demonstrates intent to evade a known tax liability. Mere suspicion of intent to evade is not enough to meet this burden.

In upholding an assessment of the evasion penalty we must find that the taxpayer acted with intent. For this purpose, the Department must show that the taxpayer acted with the specific purpose of escaping a tax liability which the taxpayer knew to exist. Although the subjective intent of a person is difficult to ascertain, it may be determined from objective facts such as the actions or statements of the taxpayer. However, intent to evade does not exist where a deficiency was due to an honest mistake, an unsuccessful attempt at legitimate tax avoidance, inefficiency, or ignorance of proper accounting methods. Even gross negligence will not rise to the level of intent to evade. There must be proof of a deliberate attempt on the part of the taxpayer to evade a tax liability.

Furthermore, “unsuccessful attempts to limit one’s obligations or avoid them altogether do not amount to evasion.” Det. No. 92-133, supra. We are not convinced the Department has met its burden by clear, cogent, and convincing evidence that the taxpayers knew they had a tax obligation in Washington and intentionally did something that was false or fraudulent to evade that obligation. The taxpayers acted on the mistaken advice of the salesperson when he informed them that if they kept the motor home most of the time at their residence in Oregon they could avoid Washington taxes. According to their statement, the taxpayers drove the motor home to their Oregon property two days after purchasing the vehicle and kept it there for four months before returning it to Washington. Although, the taxpayers’ belief that the motor home was properly registered solely in Oregon because they kept the vehicle at their Oregon residence months at a time was erroneous, we find that they merely failed in their attempt to limit their Washington tax obligations rather than intentionally acting in a false or fraudulent manner to evade tax their obligations.

DECISION AND DISPOSITION:

The taxpayers’ petition is granted.

Dated this 30th day of June 1998.