Cite as 3 WTD 177 (1987)

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

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. 87-177
)	
. . .)	Notice of Use Tax Due
)	. . .
)	

[1] **RULE 178 AND RCW 82.12.0251:** USE TAX EXEMPTION -- NON-RESIDENT. For excise tax purposes, a person may be a resident of more than one state.

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.

TAXPAYER REPRESENTED BY: Pro Se

DATE OF HEARING: March 19, 1986

NATURE OF ACTION:

Petition for correction of use tax assessment.

FACTS AND ISSUES:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The taxpayer bought a custom automobile in Florida, in 1985. He paid no sales tax on the purchase. He then licensed the car in Oregon. He paid no sales tax to Oregon, only a minimal registration fee. He used the car in Washington. He paid no sales or use tax to Washington either; and the issue is whether he must.

The taxpayer states that he paid $55,000 for the car. After a report from a citizen that the car had been seen more than once at a Seattle building, the Department assessed use tax. The assessment was dated January 28, 1986, and listed a value of $75,000.

When the taxpayer bought the car, he had two residences, one in Seattle and one in Oregon. He and his wife spent time at each place. Since at least 1976, the taxpayer has owned the Seattle residence.

The taxpayer personally has been registered with the Department since December of 1983, in connection with the lease of his personal property to another business (a construction company). Actually, the personal business began in 1981. At the time of the use tax assessment (and some years prior), he was president of this construction company, which is also registered in Washington.
Because of his duties with the construction business, the taxpayer often travels to Oregon and California. He states that the car is his out-of-state transportation; that it is "primarily" based and driven in Oregon (over 60% of the time); and is "rarely used in Washington."

He states that he also owns three cars and a number of business trucks, all of which are licensed in Washington.

At the hearing, he told the administrative law judge that the car is in Washington 15 to 20% of the time, but is not driven here much (mostly "to run oil through it").

On these facts we must decide if the use tax was due.

DISCUSSION:

The use tax complements the sales tax by imposing a tax equal to the sales tax on an item of tangible personal property used in this state in cases where the retail sales tax was not paid. WAC 458-20-178.

RCW 82.12.020 imposes a tax "for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail." It states, however, that the tax does not apply to the use of tangible personal property purchased outside this state "until the transportation of such article has finally ended or until such article has become commingled with the general mass of property in Washington." The statute further provides that the tax rate shall be "in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax."

RCW 82.12.010 defines "value of the article used" as meaning the consideration (here, money) paid by the purchaser to the

seller. That statute also supplies the definition for the word "using." It means "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) . . . ."

Because of the above two statutes, this taxpayer is liable for use tax based on the cost of the car, unless specifically exempted by another statute. We so conclude because there was use of the car in this state, and because the car had become commingled with property here (notwithstanding that it was also used in other states).

RCW 82.12.0251 contains a use tax exemption. The statute, like many legislative enactments, consists of one long sentence broken up with a series of commas and semicolons. For ease of analysis, we will break the statute down into three parts. The first part reads as follows:

> 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; . . .

The second part reads as follows:

> . . . [the provisions of this chapter shall not apply] 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; . . .

The third part reads as follows:

> . . . [the provisions of this chapter shall not apply] 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 persons 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 the state.

The first and second parts do not apply because we find that the taxpayer was a Washington resident (i.e., not a "nonresident"), for reasons stated below.

The third part is an exemption for Washington residents, but it also does not apply, because the taxpayer did not acquire the car in another state (Florida) while a bona fide resident thereof.

We believe that this is a case of dual residency (Washington and Oregon). Although there are no Washington court cases directly on point, it is the position of the Department that, for purposes of implementing the excise tax statutes, a person may have more than one residence, even though he may only have one domicile. Washington Administrative Code (WAC) 458-20-178 states that the use tax exemption does not apply 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."

The facts here make it clear that the taxpayer is a Washington resident. Not only does he conduct two businesses here, but he actually has a residence (house or apartment) in Seattle. The fact that he may also be an Oregon resident is unimportant under our use tax statute. We thus conclude that use tax is due on the automobile.

There is an unresolved factual question as to the value of the automobile; in fact, a $20,000 difference of opinion. The taxpayer will have 30 days from the date of this Determination to provide adequate documentation of the purchase price of the automobile. Assuming that the purchase price reasonably represents the "value of the article used," as provided in RCW 82.12.010, the Department will prepare an amended assessment.

If the taxpayer does not provide such documentation by June 17, 1987, the Notice of Use Tax Due in the amount of $5,925 will become final.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of assessment is denied, except to the extent that he can verify that the

Department over-valued the automobile, as stated in this Determination.

DATED this 28th day of May 1987.