

Cite as Det. No. 18-0124 38 WTD 75 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 18-0124
)	
...)	Registration No. . . .
)	

RCW 82.12.010; RCW 82.12.0251: USE OF MOTOR VEHICLES BY NONRESIDENT WHILE RESIDENT OF OTHER STATE EXEMPTION. Washington residents are not eligible for the use tax exemption for use of private motor vehicles unless the person was not a bona fide resident of Washington at the time of the acquisition or use of the motor vehicle. A person is a resident of a state where the person manifests an intent to live or be located in a state on more than a temporary basis. Such intent may be inferred from working in a state, living at an address within a state, and addresses shown on tax forms. A person can have residency in 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.

Fisher, T.R.O. – An individual petitions for correction of an assessment of use tax. The individual argues she is exempt from use tax because she bought the vehicle while she was not a resident of Washington. The petition is denied.¹

ISSUE

Under RCW 82.12.010(6)(a) and RCW 82.12.0251(3), is a person subject to use tax when bringing in a vehicle from out of state for trips into Washington where that person manifests an intent to stay in Washington on more than a temporary or transient basis?

FINDINGS OF FACT

. . . (“Taxpayer”) owns a . . . (“the car”). According to Taxpayer, she purchased the car sometime in 2015.

The Department of Revenue (“Department”) found the car listed online for sale with a listed location in Washington. The Department contacted Taxpayer to discuss the car. [D]uring the call,

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

Taxpayer stated her federal tax return had her Washington address on it. Following the discussion with the Department, Taxpayer submitted several documents: her insurance documentation showing an [out-of-state] address, 2015 W-2 forms from her employer showing a Washington address, a motor vehicle purchase agreement for the car dated April 11, 2015, and registration documents from [the other state] [dated June 2, 2015].

The Department concluded Taxpayer was a Washington resident at the time she purchased the car and that she had used the car in Washington. The Department assessed \$. . . in use tax, \$. . . in motor vehicle tax, \$. . . in penalties, and \$. . . in interest on November 2, 2017.

Taxpayer timely sought administrative review. In her petition, Taxpayer explains that she moved to Washington full time in 2017 and, before then, she used to commute on and off between [the other state] and Washington. Taxpayer further explains that her employer is in [Washington] and most of the time she worked remotely [out-of-state]. Taxpayer also states: “I used to share my [living] room with my friends, and I had residence in Washington too where I stayed when I attended important meetings.”

At the hearing, Taxpayer further explained that the [out-of-state] address was her cousin’s address and the [Washington] address was her address. Taxpayer stated that she moved to Washington towards the end of 2016. Taxpayer disputed that she ever listed her car for sale in Washington.

ANALYSIS

Washington imposes both a retail sales tax and a use tax. Retail sales tax is imposed on tangible personal property purchased by a consumer in this state. RCW 82.08.020; RCW 82.04.050. The use tax complements the retail sales tax and is imposed “for the privilege of using within this state as a consumer . . . [a]ny article of tangible personal property . . . acquired by [the user in any manner] . . .” on which Washington retail sales tax has not been paid unless there is an applicable statutory exemption, deduction or exclusion. RCW 82.12.020(1); RCW 82.12.020(2).

RCW 82.12.010(6)(a) broadly defines “use”:

“Use,” “used,” “using,” or “put to use” have their ordinary meaning, and shall mean: (a) With respect to tangible personal property, [except for natural gas and manufactured gas,] 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, distribution, or any other act preparatory to subsequent actual use or consumption within this state.

RCW 82.04.190(1) defines “consumer” as “[a]ny person who purchases, acquires, owns, holds, or uses any article of tangible personal property . . . other than for purpose of (a) resale as tangible personal property in the regular course of business” Use tax liability arises at the time the property is first put to use in this state. RCW 82.12.010(6)(a); *see also* WAC 458-20-178

Thus, the tax applies to the use of motor vehicles in this state, whether for pleasure or for business, by a resident of Washington. *See* Det. No. 87-105, 3 WTD 1 (1987).

Here, Taxpayer explains she drove the car to and from where she was staying [out-of-state] to her residence in Washington. By driving the car in Washington, Taxpayer used the car within Washington.

Having determined that Taxpayer “used” the car within the meaning of RCW 82.12.010(6)(a), we next decide whether the use is statutorily excepted or otherwise exempt from use tax. *See* 3 WTD 1. Taxpayer argues that she qualifies for the use tax exemption in RCW 82.12.0251(3), which exempts from use tax:

[P]rivate motor vehicles . . . [used] by a bona fide resident of Washington . . . if such [vehicle was] acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

(Bracketed material added). A party claiming a tax exemption has the burden of proving he or she qualifies for the exemption. *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967); Det. No. 89-268, 7 WTD 359 (1989). Accordingly, in order for Taxpayer to succeed with her exemption claim, Taxpayer must show: (1) Taxpayer was a bona fide resident of another state when she acquired and used the car; and (2) more than 90 days passed after acquisition and use of the car before the time she entered Washington. RCW 82.12.0251(3). Taxpayer asserts that both elements are met because Taxpayer was at all material times [out-of-state] resident and because Taxpayer did not bring the car into Washington until 90 days after she purchased it.

The use tax statutes do not define the term “resident.” The Department’s longstanding practice is to apply the definition of “resident” from the vehicle licensing statutes, RCW 46.16A.140(1), to a use tax exemption analysis, finding that 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. Det. No. 15-0288, 35 WTD 286 (2016); Det. No. 04-0207, 24 WTD 212 (2005); Det. No. 99-085, 19 WTD 909 (2000); Det. No. 96-049, 16 WTD 177 (1996).

The Department has long held a person can have more than one residence for use tax purposes. *See* Det. No. 99-101, 20 WTD 175 (2001); Det. No. 93-223, 13 WTD 361 (1994); Det. No. 87-174, 3 WTD 171 (1987); Det. No. 87-145, 3 WTD 99 (1987); Det. No. 87-65, 2 WTD 293 (1986).

Here, the facts and circumstances show that Taxpayer manifested an intent to live or be located in Washington on a more than permanent or transient basis when she purchased the car. . . . Taxpayer worked in Washington and stayed in Washington at the address where she registered the car. [Additionally], Taxpayer provided her 2015 W-2 forms showing a Washington address. Finally, in her petition Taxpayer stated she had residence in Washington when she bought the car in 2015.

Accordingly, because Taxpayer was a Washington resident, Taxpayer is not eligible for the non-resident exemption in RCW 82.12.0251(3). The tax was properly assessed.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 8th day of May 2018.