

Cite as 3 WTD 73 (1987)

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

| | |
|----------------------------------|--------------------------------|
| In the Matter of the Petition) | <u>D E T E R M I N A T I O</u> |
| N | |
| For Correction of Assessment of) | |
|) | No. 87-138 |
|) | |
|) | Registration No. . . . |
| . . .) | Tax Assessment No. . . |
| . | |
|) | |
|) | |

- [1] **RULE 193D:** MOTOR TRANSPORTATION -- PUBLIC UTILITY TAX -- EXEMPTION -- INTERSTATE COMMERCE. A trucker who is hired and paid by a broker to haul goods from shipside in one city in Washington, to another city here, is not entitled to a deduction for interstate hauling, where there is no through bill of lading.
- [2] **RULE 174 and RCW 82.12.0254:** EXEMPTION -- USE TAX - - MOTOR VEHICLES -- USED IN SUBSTANTIAL PART. To be entitled to the use tax exemption for motor vehicles transporting property for hire across the state's boundaries, a taxpayer must show that the vehicles cross the state's borders at least 25 percent of the time. UPS v. Department of Revenue, 102 Wn.2d 355 (1984).

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: . . .

NATURE OF ACTION

The taxpayer petitioned for correction of an assessment related to trucking income and use tax liability.

FACTS

Normoyle, A.L.J. (Successor to Chandler, A.L.J.)--The taxpayer runs a trucking business. Primarily, he hauls wood products to other states and hauls fruit from Eastern Washington to shipside for foreign export. He also does some short local hauls. During the audit period, one of his local hauls was transporting salmon from a Seattle terminal to Marysville, Washington.

The taxpayer was audited for the period from January 1, 1981 through March 31, 1985. He disputes two parts of the audit, Schedules II and V.

Schedule II relates to taxable income under the Motor Transportation classification of the public utility tax. The taxpayer took deductions for income from trucking services in connection with the Seattle to Marysville hauls, claiming that the income from those hauls was the result of interstate commerce. The auditor disallowed the deductions, relying on that part of WAC 458-20-193D which states that a deduction is not allowed where the freight is billed to one spot (here, Seattle) and then later transported to another location (here, Marysville).

The taxpayer argues that it was a "straight through haul" from Alaska, via Seattle, to Marysville. In support, he supplied two documents. The first is a bill of lading from the water transporter, Sea Land. This document does not mention the taxpayer and does not mention Marysville. Instead, it stated that the salmon was "RATED TO SEATTLE TERMINAL ONLY." The second document is referred to by the taxpayer as a "memo bill of lading." It is from a brokerage company, indicates receipt of the salmon from the consignee, shows the taxpayer as the carrier, and provides for shipment by the taxpayer from Seattle to Marysville.

The taxpayer also states that payment for all of the transportation was as follows: The consignee paid Sea Land for the water transportation and paid the broker for the land transportation. The broker hired and paid the taxpayer for land transportation out of the money it received from the consignee. The original bill of lading stayed with the shipment all the way to Marysville, but the charges on the bill of lading were only for Sea Land's transportation to Seattle.

The other disputed part of the audit concerns use tax on vehicles owned by the taxpayer. He had not paid sales tax for

certain trucks and trailers and believes that he is exempt from use tax, pursuant to RCW 82.12.0254, because the vehicles were used for transporting goods across the boundaries of this state.

The auditor disallowed the exemption because less than 25 percent of the hauls crossed state lines during the 12-month period for which use tax was found to be due.

The taxpayer argues that the Department should have used either a revenue or mileage test. His position is that more than 25 percent (i.e., a "substantial part") of the revenue generated from the use of the vehicles was due to interstate or foreign commerce, and that 25 percent of the mileage of the vehicles was involved in that type of commerce.

ISSUES

1. Was the income from the hauls in dispute, from shipside in Seattle to Marysville, deductible because the taxpayer was engaged in interstate commerce?
2. What is the proper method for determining what constitutes "use in substantial part" under RCW 82.12.0254?

DISCUSSION:

ISSUE No. 1.

WAC 458-20-193D states, in pertinent part:

BUSINESS AND OCCUPATION TAX, PUBLIC UTILITY TAX

In computing tax there may be deducted from gross income the amount thereof derived as compensation for performance of services which in themselves constitute interstate or foreign commerce to the extent that that a tax measured thereby constitutes an impermissible burden upon such commerce. A tax does not constitute an impermissible burden upon interstate or foreign commerce unless the tax discriminates against that commerce by placing a burden thereon that is not borne by intrastate commerce, or unless the tax subjects the activity to the risk of repeated exactions of the same nature from other states. Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging

accommodations, providing funds and the like, by which they engage in such commerce is taxable.

EXAMPLES OF EXEMPT INCOME:

1. Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.

. . .

Insofar as the transportation of goods is concerned, the interstate movement of cargo or freight ceases when the goods have arrived at the destination to which it was billed by the out-of-state shipper, and no deduction is permitted of the gross income derived from transporting the same from such point of destination in this state to another point within this state. Thus, freight is billed from San Francisco, or a foreign point, to Seattle. After arrival in Seattle it is transported to Spokane. No deduction is permitted of the gross income received for the transportation from Seattle to Spokane.

. . .

In this case, the taxpayer performed only the local haul from Seattle to Marysville. Thus, the facts here fit within the example of the rule, and the auditor properly disallowed the deduction. The original bill of lading was to Seattle, not Marysville. The taxpayer was hired and paid by the broker, not the interstate hauler, Sea Land. Under these facts, we find that there was not a through bill of lading to Marysville.

ISSUE No. 2.

RCW 82.12.0254 is a use tax exemption statute. In pertinent part, it reads as follows:

The provisions of this [use tax] chapter shall not apply . . . in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for

hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce; . . . (Bracketed inclusion ours.)

See also, WAC 458-20-174. The taxpayer is entitled to the exemption only if all requirements contained above are met. Here, he cannot meet the requirement that the vehicles be "used in substantial part" in transporting property "across the boundaries of this state." The Department of Revenue routinely utilizes a 25ápercent border crossing test. Although not codified in the Washington Administrative Code, the Washington State Supreme Court has specifically upheld the use of this test. UPS v. Department of Revenue, 102 Wn.2d 355 (1984). Because this taxpayer's vehicles did not actually cross the state's borders at least 25 percent of the time, the exemption is not available.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 29th day of April 1987.