

Cite as 10 WTD 129

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
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 N</u>
For Refund of )	
)	No. 90-344
)	
. . . )	Registration No. . . .
)	. . ./Audit No. . . .
)	

**[1] RULE 252:** HAZARDOUS SUBSTANCE TAX -- POSSESSION INSTATE -- TEMPORARY STORAGE INSTATE -- PRODUCT EVENTUALLY SOLD AND DELIVERED OUT OF STATE -- THROUGH INTERSTATE MOVEMENT. Instate possession of a hazardous substance is the incidence that gives rise to Hazardous Substance Tax liability. There is an exemption from the Tax where the substance is only temporarily stored or possessed instate "in connection with through, interstate movement of the substance." Where the substance is brought into and stored in Washington until it is eventually sold and delivered out of state, it cannot be said that it was in connection with through, interstate movement of the substance.

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:

Petition protesting assessment of Hazardous Substance Tax on petroleum products alleged to be temporarily stored in the State of Washington and then sold and delivered into the State of Idaho.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is engaged in the business of selling motor oil and lubricants at wholesale and retail.

The Department of Revenue (Department) examined the taxpayer's business records for the period from . . . through . . . . As a result of this audit, the Department issued the above captioned tax

assessment on . . . asserting excise tax liability in the amount of \$ . . . and interest due in the amount of \$ . . . for a total sum due of \$ . . . which was paid in full on . . . . Hence, the taxpayer's petition is being deemed as a petition for refund.

The taxpayer protests the assessment of the Hazardous Substance Tax on petroleum products alleged to be temporarily stored in the State of Washington and then sold into the State of Idaho.

The taxpayer explains that it has a warehouse location in Spokane, Washington which receives products manufactured by it in the State of Oregon. The products were then sold in Washington or stored temporarily before eventually being sold in Idaho. The taxpayer does not protest the imposition of the tax on products sold in Washington.

The taxpayer points to WAC 458-20-252 (Rule 252) as stating that the tax will not apply with respect to possession of hazardous substances that are temporarily stored or possessed in Washington in connection with through, interstate movement of the substances from points of origin to points of destination where both points are outside of Washington. The taxpayer asserts that its situation was intended to be covered by that provision for tax exemption.

The issue is whether hazardous substances entering Washington, temporarily stored in Washington, and then eventually sold and delivered to a point of destination outside of Washington are subject to the Hazardous Substance Tax?

#### DISCUSSION:

[1] Rule 252 in pertinent part provides:

(1) (b)...The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c)...it is the intent of the law that the economic burden of the tax shall fall upon the first such possession in this state.

...

(4) Exemptions. The following are expressly exempt from the tax:

...

(e) (iii) Out of state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f)...There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state. (Emphasis supplied.)

In this case, the taxpayer seeks an exemption from the Hazardous Substance Tax for petroleum products it manufactured and received from out of state, and which it stored in a warehouse in Washington until the products were eventually sold and delivered out of state.

We find that the taxpayer had possession in Washington and that is the incidence of the tax giving rise to tax liability. Rule 252 (1)(b), supra.

We find that the taxpayer is an out-of-state producer of the products delivered to an instate facility owned, leased or controlled by it. As such, the taxpayer is subject to the tax. Rule 252 (4)(e)(iii), supra.

We find that the exemption in Rule 252 (4)(e)(iv), supra, is not available to the taxpayer because the storage and possession cannot be deemed "only temporarily" when it was not "in connection with through, interstate movement." We believe that the products had to be destined for an out-of-state site at the time when the products entered this state to qualify as being in "through, interstate movement." In this case, the products remained in the instate warehouse until eventually sold. Not to be ignored is that some of the products were sold instate and some out of state. Accordingly, it cannot be said that the products were temporarily stored in this state in connection with through, interstate movement.

We do not agree with the taxpayer's contention that its situation was intended to be covered by the tax exemption in Rule 252 (4)(e)(iv). See also Rule 252 (4)(f) where it clearly states that there are no exemptions under the law for any possessions of hazardous substances simply because such substances may later be sold or used outside this state. We believe that the situation intended to be covered for exemption is one where the product enters this state already destined for an out-of-state site, that is, it is already in through interstate movement but because of shipping or scheduling requirements, the product is temporarily stored and then continues its through interstate movement. The well-established rule is that "tax exemptions are not granted by implication" and that such exemptions may not rest on dubious

inferences but must be provided in plain words. Oklahoma Tax Commission v. U. S., 319 US 598 (1943).

For the facts, reasons and law stated, we conclude that the taxpayer's products stored in Washington which were eventually sold and delivered into Idaho were properly subjected to the Hazardous Substance Tax.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 19th day of September, 1990.