

Cite as 6 WTD 243 (1988)

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 Correction of Assessment of)	
)	No. 88-295
)	
. . .)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .

[1] **RULE 193C:** B&O TAX -- WHOLESALING -- EXEMPTION -- EXPORT SALES -- BROKERS LISTED AS PURCHASERS. Although in the final analysis a taxpayer must be taxed in accordance with the actual established substantive nature of its sales, Rule 193C prescribes the method by which sellers must establish through their own documentation that the nature of those sales warrant an exemption from tax.

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: . . .

DATE OF HEARING: March 1, 1988

NATURE OF ACTION

Petition for the deletion of wholesaling tax on the sale of cured hides to foreign purchasers.

FACTS:

Burroughs, A.L.J. -- As a result of an audit covering the period from January 1, 1983 to December 31, 1986, the taxpayer was assessed \$. . . , plus interest in the amount of \$. . . , for a total of \$ The majority of this assessed amount consisted of wholesaling tax on the sale of hides to foreign purchasers, which assessment is the subject of this appeal.

The taxpayer, a Washington corporation, purchases cattle hides from slaughter houses, farmers and butchers. The hides are delivered to its warehouse where they are cured by the process of applying salt to them. Once they are salted, they remain in piles for sufficient

time to allow cure. Once cured the hide will not rot. The hides are then rolled up and bundled and exported to Asian customers, where the hides will be tanned.

Certain of taxpayer's sales documentation during the audit period reflected its Washington brokers to have been the purchasers in these sales, instead of merely the consignors. This is the third audit in which this problem has arisen, and each time the taxpayer has been clearly advised, both orally and in writing, to modify its sales documents to clearly indicate the brokers to be merely the consignors. The taxpayer has chosen until recently, for reasons unknown to the Department, to ignore these instructions.

DISCUSSION:

WAC 458-20-193C (Rule 193C) deals with the taxability of sales of goods to persons in foreign countries and provides in pertinent part as follows:

EXPORTS. A deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream.

In all circumstances there must be (a) a certainty of export and (b) the process of export must have started.

It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel. To be tax exempt upon export sales, the seller must document the fact that he placed the goods into the export process. That may be shown by the seller obtaining and keeping in his files any one of the following documentary evidence:

(1) A bona fide bill of lading in which the seller is shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or

(2) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

(a) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel;" and

(b) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

(c) When available, United States export or customs clearance documents showing that the goods were actually exported; and

(d) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way which is exclusively attributable to goods of export.

Thus, where the seller actually delivers the goods into the export stream and retains such records as above set forth, the tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; but rather, the seller must show that he was required to, and did put the goods into the export process.

[1] Thus, although in the final analysis a taxpayer must be taxed in accordance with the actual established substantive nature of its sales, Rule 193C prescribes the method by which sellers must establish through their own documentation that the nature of those sales warrant an exemption from tax.

In this case, the "sold to" line on the taxpayer's invoices contained the name of the brokers used by the taxpayer instead of the actual foreign buyers. That form has, since this last audit, been altered so that the line in question is labelled "sold through" instead of "sold to." In its petition, the taxpayer has further supplied the Department with adequate information and explanation, affidavits, and other documentary evidence to establish that the designation of brokers as purchasers on sales invoices was simply a continuation of the same oversight in the preparation of those forms that had occurred in previous years, and that the true purchasers were in fact not the brokers.

Thus, a review of the evidence submitted has once again satisfied us that the brokers indicated as buyers on the taxpayers invoices were in fact not the purchasers, and that the sales at issue were indeed exempt export sales. We are constrained to note, however, that the auditor was certainly justified in questioning the validity of the taxpayer's claim, particularly in light of the

taxpayer's blatant disregard of the previous instructions it had received over the years regarding the brokers appearing as the purchaser on the taxpayer's invoices.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of Document No. . . . is granted.

DATED this 28th day of July 1988.