Cite as Det. No. 87-116, 3 WTD 53 (1987)

THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 00-152, 20 WTD 507 (2001).

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. 87-116
. . .	)	Registration No. . . .

[1] **RCW 82.04.443:** INVENTORY TAX CREDITS -- BUSINESS INVENTORIES -- LEASED PROPERTY. Prior to 1982, business inventories meant property acquired solely for the purpose of sale. Property that was purchased for resale but was leased was not found to have been acquired solely for the purpose of sale. In 1982, the definition of business inventories was amended to include some property acquired for long term lease, but not property that was leased at any time during the year preceding the year of assessment; thus, such property was not entitled to inventory tax credits.

[2] **RULE 193A and RCW 82.08.0269:** RETAIL SALES TAX -- EXEMPTION -- DELIVERY IN WASHINGTON OF PROPERTY FOR USE IN ALASKA -- ETBs 93 and 161. Sale of equipment to Alaska purchaser for use outside the state is subject to retail sales tax if delivery is made to the out-of-state buyer or the buyer's agent in Washington. Accord: D. 1 WTD 37 (1986).

[3] **RULE 193A:** RETAIL SALES TAX -- EXEMPTION INTERSTATE SALES -- DELIVERY OUT OF STATE -- PROOF OF. Sale of equipment to Idaho purchaser held exempt from retail sales tax where sales invoice stated equipment was delivered by the taxpayer to thepurchaser out of state, taxpayer's president testified he personally accompanied the delivery of the equipment to the out-of-state purchaser, and the taxpayer's records included the purchaser's affidavit that the property was purchased for use outside this state and would not be used in Washington.

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: November 14, 1986

NATURE OF ACTION:

The taxpayer protests the assessment of tax on disallowed inventory tax credits and deductions for interstate sales.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer has been in business in this state since 1968. Approximately 90 percent of its business is the retail selling of farm equipment. It primarily sells . . . equipment as a franchisee of that company. The taxpayer makes some wholesale sales and also leases equipment.

The taxpayer's books and records were audited for the period January 1, 1981 through September 30, 1984. The examination disclosed taxes interest and owing in the amount of $ . . . . Tax Assessment No. . . . in that amount was issued on December 10, 1985.

Two post-audit adjustments were made after the taxpayer submitted additional documentation. The first adjustment reduced the amount of the assessment to $ . . . . The second adjustment allowed additional credit of retailing business tax and retail sales tax for interstate sales deductions which had been disallowed. The taxpayer provided bills of lading showing shipments outside the state to warrant the deductions.

At the time of the hearing, two assessments remained at issue: (1) the tax on disallowed inventory tax credits (. . .) and (2) the tax on disallowed interstate sales.

In its petition, the taxpayer protested the assessments at issue on general grounds. The taxpayer contends the assessments are contrary to Washington law, the Constitutions of the United States and Washington, and to the Department's rules and regulations.

The auditor disallowed inventory tax credits taken on rental property. He relied on RCW 82.04.443, concluding the credit only applied to property held exclusively for resale. The taxpayer protests this assessment, contending leased property was excluded from the definition of business inventories only if acquired for the purpose of rental or leasing. The taxpayer stated the property was acquired for the purpose of resale.

The taxpayer protests the assessment of retail sales tax on out-of-state sales, contending its evidence shows the equipment was sold to out-of-state purchasers for use outside this state. The auditor assessed the tax because the taxpayer's records did not show the equipment was delivered to the out-of-state purchasers at a point outside this state.

DISCUSSION:

[1] INVENTORY TAX CREDITS--The Inventory Tax Phase-Out Bill was enacted in 1974 (Washington Laws, 1974 1st Ex. Sess. Ch. 169 § 4). The Act was intended to increase revenues by stimulating the economy of the state. To do this, the Act allowed taxpayers to take a credit against B&O taxes based upon a percentage of personal property taxes timely paid upon business inventory during the same year. The percentage allowed for 1974 was ten percent, and it increased incrementally to 100 percent in 1983 when the personal property inventory tax was eliminated.

The Act added a new section to chapter 82.04 RCW, defining "business inventories" as:

> . . . all livestock and . . . personal property acquired or produced solely for the purpose of sale, or for the purpose of consuming such property in producing for sale a new article of tangible personal property of which such property becomes an ingredient or component. It shall include inventories of finished goods and work in process.

In interpreting the Act, the Department originally allowed the credit to apply to personal property taxes paid on leased property. In 1975, however, the Legislature amended RCW 82.04.443 to specifically exclude personal property "acquired or produced for the purpose of lease or rental." Washington Laws, 1975 1st Ex. Sess. Ch. 291.)

In 1982, the definition of "business inventories" in RCW 82.04.443 was amended to restore for credit certain items held for long-term lease. (1982 Ch 174 + 1.) The amended definition stated:

> "Business inventories" means all livestock and means personal property not under lease or rental, acquired or produced solely for the purpose of sale or lease, or for the purpose of consuming such property in producing for sale or lease a new article of tangible personal property of which such property becomes an ingredient or component. Business inventories shall not mean personal property acquired or produced for the purpose of lease or rental if such property was leased or rented at any time during the calendar year immediately preceding the year of assessment and was not thereafter remanufactured, nor shall it include property held within the normal course of business for lease or rental for periods of less than thirty days. It shall include inventories of finished goods and work in process. For purposes of this section, "remanufacturing" shall mean restoration of property to essentially original condition, but shall not mean normal maintenance or repairs.

The assessments at issue include periods before and after the 1982 amendment. Clearly, the 1982 assessment is valid as the taxpayer's records show the leased equipment had been rented during 1981. The 1982 amendment excludes property leased at any time during the calendar year immediately preceding the year of assessment.

We also find that the fact that the equipment was rented in the previous assessment years defeats the taxpayer's claim that the property was exempt business inventory. As stated above, business inventories was defined as property acquired solely for the purpose of sale. Although the taxpayer may have intended and wanted to sell the property, it did lease equipment on occasion. The taxpayer said property was leased because: (1) a customer might want to try out the equipment before deciding whether to purchase it, (2) a customer might want limited financial liability or might not have the down payment required for purchase, or (3) at times property was leased simply because it was not selling. We believe that the fact that the taxpayer leased the property is evidence that the property was not acquired solely for the purpose of sale. Accordingly, the assessment in Schedule XI on disallowed inventory tax credits on rental property is affirmed.

[2] INTERSTATE DEDUCTIONS -- WAC 458-20-193A (Rule 193A) is the administrative rule dealing with sales of goods originating in Washington to persons in other states. Rule 193A states the retail sales tax applies, with limited exceptions, to all sales when delivery is made in Washington, "irrespective of the fact that the purchaser may use the property elsewhere."

Most of the sales at issue were to Alaska purchasers. RCW 82.08.0269 provides an exemption from the retail sales tax for sales for use in noncontiguous states, as Alaska, provided the seller, as a necessary incident to the contract of sale, delivers the subject matter of the sale to the purchaser or the purchaser's agent at the usual receiving terminal of the carrier selected to transport the goods. The delivery must be made under circumstances showing with reasonable certainty that the goods will be transported directly to such noncontiguous state, territory or possession of the United States.

As proof of exemption, Rule 193A provides that the vendor must retain the following evidence:

> a. A certification of the buyer that the goods being purchased will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.
>
> b. Written instructions signed by the buyer directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal of the transportation agency designated by him for transportation of the goods to their place of ultimate use. Where the buyer is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the buyer when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.
>
> c. A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse or receiving terminal.

In several of the sales at issue, the Alaska buyer picked up the equipment at the taxpayer's place of business in Washington and transported the equipment to Alaska. Even though the taxpayer's records include affidavits from the buyer that the equipment was purchased for use out of state

and would not be used in Washington, the sales are not exempt where delivery occurs in Washington State.

As noted above, for a sale to a purchaser in a noncontiguous state to be exempt, the seller must deliver the property to the purchaser or his designated agent "at the usual receiving terminal of the carrier selected to transport the goods." (Emphasis added.) Rule 193A repeats this statutory requirement and also requires that the buyer must direct delivery of the goods to a "receiving terminal of the transportation agency designated by him for transportation of the goods." These requirements necessarily imply that the carrier be one regularly engaged in the business of transporting for hire, as only such carriers would have a "usual receiving terminal."

The Washington Supreme Court has held that a "carrier" is one actually engaged in the transportation business. Wasen's, Inc. v. State, 63 Wn.2d 67 (1963). In that case, the court upheld the Department's position that sales to an out-of-state purchaser were not exempt when the purchaser acted as the carrier. See also ETBs 93.04.193 and 161.08.193.

Similarly, the United States Supreme Court has strictly limited the export and interstate tax exemptions. See, e.g., Kosydar v. National Cash Register Company, 417 U.S. 62 (1974); Coe v. Errol, 116 U.S. 517 (1886). An article is not an export until it has been "irrevocably committed" to overseas shipment. Carrington Company v. Department of Revenue, 84 Wn.2d 444, 466 (1974).
Accordingly, the assessments of the sales to the Alaska purchasers are upheld where the buyer or buyer's agent took delivery of the equipment in Washington. The fact that the taxpayer's evidence shows the equipment was transported to Alaska for use in that state is not controlling.

[3] The taxpayer also protests the assessment of retail sales tax on the sale of equipment to an Idaho purchaser (. . .). The taxpayer's president testified that he made the sale and agreed to deliver the equipment to the purchaser in Idaho. He stated he personally accompanied the taxpayer's truck driver who delivered the equipment to the purchaser in Idaho. Because he normally was not involved in making sales, he stated he was unaware of the need to complete a tripsheet to show the out-of-state delivery.

Rule 193A provides:

> The retail sales tax does not apply when, as a necessary incident to the contract of sales, the seller agrees to, and does, deliver the property to the buyer at a point outside the state, or delivers the same to a for hire carrier consigned to the purchaser outside the state. The facts must disclose that the carrier is the agent of the seller and the seller must retain proof of exemption as outlined above under retailing and wholesaling.

Acceptable proof outlined under retailing and wholesaling is:

a. The contract or agreement AND

b. If shipped by a for hire carrier, a waybill, bill of lading or other contract of carriage by which the carrier agrees to transport the goods sold, at the risk and expense of the seller, to the buyer at a point outside the state; or

c. If sent by the seller's own transportation equipment, a tripsheet signed by the person making delivery for the seller and showing the (1) buyer's name and address, (2) time of delivery to the buyer, together with (3) signature of the buyer or his representative acknowledging receipt of the goods at the place designated outside the state of Washington.

In this case, the original invoice says the president personally accompanied the vehicle and the file contains an affidavit from the purchaser stating the property was purchased by a nonresident for use outside the state. As the auditor found no evidence that delivery occurred in Washington, we will accept the invoice and the president's testimony as acceptable proof of the out-of-state delivery.

In the future, the taxpayer is advised to document the delivery with a tripsheet. Although the Department has not taken the position that the "acceptable proof" stated in Rule 193A is exclusive, by maintaining such documents a taxpayer can best meet its burden of proof to show an exempt out-of-state delivery.

The taxpayer's petition is granted as to the assessment of tax on the sale to [the Idaho purchaser]. The tax assessed on the sale shall be deleted.

DECISION AND DISPOSITION

The taxpayer's petition is denied except for the denial of the exemption for the sale to [the Idaho purchaser]. The tax assessed on that sale (. . .) shall be deleted and an amended assessment issued. The amended assessment shall be due on the date provided thereon.

In addition, as the delay in issuing this Determination was for the convenience of the Department, extension interest shall be waived from January 1, 1987 (six months after taxpayer's petition received by the Department) until the new assessment date.

DATED this 22nd day of April 1987.