Cite as Det. No. 02-0163, 22 WTD 262 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Assessment and Refund of	)	D E T E R M I N A T I O N
	)	No. 02-0163
. . .	)	
	)	Registration No. . . .
	)	FY . . . /Audit No. . . .
	)	Docket No. . . .

[1] MISC: REFUNDS -- B&O TAX -- RETAIL SALES TAXES. When a taxpayer erroneously over-reports and remits both the retailing B&O and retail sales tax, and then discovers an exemption or deduction applied, the taxpayer may ask for a refund of its overpaid B&O taxes without repaying the collected retail sales tax to its customers and also asking for a refund of the overpaid retail sales tax.

[2] RULE 174: B&O TAX -- LESSOR -- TRUCKS/TRAILERS -- USE INSIDE AND OUTSIDE OF WASHINGTON. When a truck or trailer is leased to motor carriers, the lessor may claim an interstate sales deduction against retailing B&O tax for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax is measured by the lessor's receipts for the use of the vehicle while it is in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce.

[3] RULE 193; ETB 447: B&O TAX -- LESSOR -- TRUCKS/TRAILERS -- USE INSIDE AND OUTSIDE OF WASHINGTON. When a truck or trailer is leased to a person other than a motor carrier, the result is the same as for motor carriers. The taxable incident takes place in this state when the property is "used" in this state by the lessee.

[4] RULE 193; ETB 447: B&O TAX -- LESSOR -- TRUCKS/TRAILERS -- USE INSIDE AND OUTSIDE OF WASHINGTON. Retailing B&O tax liability may be reduced by an interstate sales deduction if adequate records are maintained to substantiate the amount of use claimed outside this state.

[5] RULE 111: B&O TAX -- ADVANCE & REIMBURSEMENT -- REGISTRATION FEE -- PAID BY LESSEE OF VEHICLE. When a lessor's motor vehicle registration fee is paid by the lessee of the vehicle pursuant to the lease agreement, such payment qualifies as "value proceeding" and "consideration" for the lease and is properly included in the retailing B&O and retail sales tax measure. Such a fee is not an advance or reimbursement because the lessor has primary liability for its payment.

[6] RULE 193; ETB 447: B&O TAX -- LESSOR -- VEHICLES/TRAILERS -- USE OUTSIDE WASHINGTON -- VEHICLE REGISTRATION FEE. Because a passed-on charge representing the vehicle registration fee is considered as part of the lessee's lease payment, it is subject to an interstate commerce deduction for vehicle usage outside Washington just as normal lease payments are.

[7] RULE 17401: RETAIL SALES -- USE TAX -- INTERSTATE FOR HIRE CARRIERS -- COMPONENT PARTS. The retail sales and use tax exemption for the purchase of component parts of motor vehicles and trailers applies to the holders of interstate carrier permits as long as the motor vehicle or trailer to which the parts are attached will be used in hauling for hire, and even if it will not be used substantially in interstate hauls.

[8] RULE 193: B&O TAX -- VEHICLE/TRAILER LEASE -- LEASE PAYMENTS GENERATED OUTSIDE WASHINGTON. Lease payments generating income for a Washington district of a vehicle/trailer lessor are not taxable in Washington to the extent the use of the vehicles or trailers are used outside of Washington.

[9] MISC: B&O TAX -- DIVISIONAL BONUS -- TRANSFER OF FUNDS FROM HEADQUARTERS -- TAXABILITY. The transfer of funds from a taxpayer's headquarters to a district office in Washington in recognition of extraordinary performance is an internal accounting entry with no economic value, doesn't reflect consideration for sales or services, and is therefore not taxable.

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.

NATURE OF ACTION:

Taxpayer protests the assessment of business and occupation (B&O) tax and retail sales and use taxes on its truck leasing business and requests a refund of taxes overpaid.[1]

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

FACTS:

Bauer, A.L.J. – The books and records of . . . (Taxpayer) were audited by the Audit Division (Audit) of the Department of Revenue (Department) for the period January 1, 1993 through December 31, 1996. An assessment was initially issued on September 10, 1999. Post Assessment Adjustment #1 (PAA#1) was issued on November 1, 1999.

Taxpayer previously appealed to this Division. Because many of the issues were factual, the matter was remanded to Audit, and Taxpayer supplied additional documentation in February 2001. Post Assessment Adjustment #2 was issued on June 27, 2001 in the outstanding amount of $ . . . , and Taxpayer, still disagreeing with many of Audit's conclusions, submitted a revised appeal to this Division. Taxpayer requests a correction of the assessment and refund of taxes it asserts have been overpaid. Taxpayer asserts that for years it did not know that out-of-state usage of the trucks it rents could qualify it for a deduction of the retail sales tax it collected and the retailing B&O tax it paid. Taxpayer amended its 1996 excise tax returns to take the out-of-state usage deductions, but Audit disallowed them because corresponding retail sales taxes had also been collected and remitted.

Taxpayer is a limited partnership whose primary business operations are the leasing and renting of trucks, truck tractors, and trailers without an operator. Additional revenue is derived from selling vehicle maintenance contracts, packing materials, diesel and gasoline fuel, and vehicle repairs. In accordance with certain of its extended lease agreements, Taxpayer passes its truck registration fees along to its lessees in addition to the normal lease payments.

Taxpayer operates out of facilities in the State of Washington located in the cities of . . . . These facilities comprise what is internally designated as Taxpayer's "District Number [1]." District [1] is responsible for all customers located in Washington.

All trucks purchased by Taxpayer are titled in its name and assigned to a district. The trucks that are leased or rented to Washington customers are generally assigned to District [1]. The revenues generated from Taxpayer's Washington locations or through its Washington rental agents appear on the financial reports of District [1]. Some of the lease revenues appearing on the books of District [1] are attributed to out-of-state lessees.

For retail sales tax, personal property tax and registration fee purposes, Taxpayer has developed a system that can track the mileage driven, by location, by each leased vehicle. A driver will prepare a form called a Driver Trip Report ("DTR") that lists the locations traveled and mileage driven in each state. The form lists the unit number of each truck, the customer's name, the dates and mileage driven in each state. The forms are prepared by the driver and mailed to a processing center located [outside Washington]. The information contained in these DTRs is entered into Taxpayer's database. Taxpayer can then prepare a report to determine the number of miles driven by each of its trucks or customers, or driven in a particular state over a period of time.

Taxpayer performs repairs on vehicles owned by it or its lease customers. With respect to leased vehicles that are owned by Taxpayer, Taxpayer bills its lease or rental customers for repairs or damages not covered under its rental contract with them. In these instances, Taxpayer, or one of its contractors, will perform the work in any U.S. city the vehicle requires service. If Taxpayer performs the work, the parts and labor are booked to a maintenance account, and the customer is then sent a bill.[2] The receipt is booked as a recovery. If a customer owns the vehicle being repaired, the charge will be categorized as Foreign Repair Revenue, and the repair order will include the location of service, a description of the work performed, and parts and labor used in the repair. Regardless of where the repair takes place (in or outside of Washington), if the customer is a Washington district customer, the billing will originate inside Washington.

Consumer Rental Expense Sharing (Account . . .) is a revenue account related to one-way rental vehicles that are assigned to District [1], but are rented to a customer in a different state. One-way rental vehicles are generally used by customers wanting to transport property across long distances without having to return the vehicle to the branch office from which it was rented. Such customers can drop off the vehicle at locations near their ultimate destinations.

Frequently, a district experiencing heavy rental demand will be "loaned" excess rental vehicles assigned to District [1]. Additionally, because one-way rental vehicles do not have to be returned to the district to which they are assigned, a one-way vehicle that is assigned to District [1] might, at least for a time, be located in another state and under the jurisdiction of another district. This creates a revenue shortfall for District [1] because it does not have these vehicles to rent again to its own customers. Taxpayer has a practice of allowing districts that have "loaned" their vehicles to other districts in such a manner to "share" the revenue generated by the vehicles no longer under their control. Thus, Taxpayer allowed five percent of the rental revenue generated outside of Washington by other districts having control of District [1]'s vehicles to be credited to District [1]. This amount appears in the Consumer Rental Expense Sharing Account No. . . . . Audit asserted B&O and retail sales taxes on these amounts.

Taxpayer's account of Other Charges (Account . . .) is used to reward districts for meeting its goals by providing dollars they can spend on employees, customers, or in other ways they see fit. Each district has a set of objectives to meet related to customer service. Examples of such goals are rental vehicle utilization rate or the amount of time to prepare a vehicle to be delivered to a lease customer. When goals are exceeded by the district, Taxpayer's headquarters provides the district with a reward in the form of bonus dollars. The bonus dollars appear in the account of Other Charges. Audit asserted B&O and retail sales taxes on these amounts.

ISSUES:

[2] Repairs and services performed on vehicles might also be the result of faulty parts that are covered under the manufacturer's warranty. When this happens, Taxpayer will perform the work and bill the manufacturer for reimbursement of the parts.

1. Did Audit erroneously disallow B&O tax deductions on lease income attributable to the actual out-of-state use of Taxpayer's leased vehicles?

2. Did Audit erroneously assess B&O and retail sales tax on motor vehicle registration fees charged to leasing customers contrary to WAC 458-20-111 (Rule 111), or, in the alternative, should a portion of those fees have been deductible under WAC 458-20-174 (c) (Rule 174(c))?

3. Did Audit erroneously assess retail sales taxes on the sales of component parts and charges for repairs to interstate for-hire carriers contrary to RCW 82.08.0262?

4. Did Audit erroneously assess retailing B&O and retail sales tax on Taxpayer's Account . . . ("Consumer Rental Expense Sharing"), relating to one-way rental vehicles assigned to Washington, but rented outside the state?

5. Did Audit erroneously assess retailing B&O and retail sales tax on Taxpayer's Account . . . ("Other Charges") representing bonus dollars given to the district by Taxpayer's headquarters as a reward for meeting goals?

DISCUSSION:

1. Retailing B&O tax on lease income attributable to out-of-state use of vehicles. Audit's Detail of Differences addressing Schedule 9 of the original audit report (9/10/99) states:

> SCHEDULE 9 – DEDUCTIONS DISALLOWED UNDER RETAILING-OTHER B&O TAX.
> This schedule disallows deductions taken in 1996 under the retailing-other B&O tax classification. Retail sales tax was billed to customers and reported on the excise tax returns on the same amounts, therefore the business and occupation tax is due.

Taxpayer explains that, during the audit period, it erroneously charged retail sales taxes to its customers and paid retailing B&O tax on the full amount of all lease payments received regardless of where the leased trucks were being used. Taxpayer amended its 1996 returns to recalculate its retailing B&O tax based on the out-of-state use of its leased trucks. Unless asked to do so, Taxpayer has not attempted to return those retail sales taxes that were erroneously paid. Taxpayer is now requiring its customers to report in-state and out-of-state mileage so that the correct amount of taxes can be collected and remitted. Taxpayer would like a credit for the retailing B&O taxes it contends were overpaid.

During the course of the audit, one of Taxpayer's large commercial customers, [A],[3] applied directly to the Department for retail sales tax refunds for the use of their leased vehicles outside Washington. Audit, in Schedules 3[4] and 4[5] of Taxpayer's Post Assessment Adjustment #1

[3] Taxpayer asserts that a similarly-situated customer, [B], applied directly to the Department and was also granted a refund of retail sales taxes paid for the out-of-state use of its leased trucks. Taxpayer does not believe it was granted a corresponding B&O tax credit under the retailing classification.

[4] Schedule 3 asserted additional retail sales tax for [A]'s fleet based [outside Washington] for its time spent in Washington. Taxpayer's [out-of-state] branch had not imposed any tax.

(11/30/99), recalculated the amounts of retail sales taxes properly due from [A], and refunded the difference to [A] based on its mileage reports. Taxpayer was granted a corresponding retailing B&O tax credit in Schedule 2.

Audit disallowed the B&O tax deductions taken for 1996, apparently believing the measure of the retailing B&O and retail sales tax amounts on the excise tax returns must be equal to one another. We are aware, however, of no such requirement. While the gross receipts from retailing activities should equal the gross amounts for retail sales tax purposes, we note that in many instances the actual measures – after the application of various deductions or exclusions affecting one or the other of the taxes – will not necessarily be equal.[6]

[1] Often a taxpayer erroneously over-reports and remits both the retailing B&O and retail sales tax, but then discovers an exemption or deduction should have applied to all or a portion of both taxes. In many of such instances, a taxpayer will not or cannot return the overpaid retail sales taxes to its customers for valid business reasons. Such situations include, but are not limited to, [those] in which customers cannot be identified or located, customers have gone out of business or no longer exist, or the cost of notification is too great. Even if a taxpayer does not return overpaid retail sales taxes to its customers and seeks a credit from the Department, we know of no authority under which the Department might deny that same taxpayer a refund of its corresponding overpaid retailing B&O taxes.

[2] When a truck or trailer is leased to motor carriers, the lessor may claim an interstate sales deduction against retailing B&O tax for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax is measured by the [lessor's] receipts for the use of the vehicle while the vehicle is in Washington, . . . [notwithstanding that] the usage is in connection with interstate hauls and[/or] the vehicle is used substantially in hauling for hire in interstate commerce.[7] See Rule 174(c).[8]

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[5] Schedule 4 credited sales tax erroneously collected from [A] for the use of its Washington fleet vehicles outside of Washington.

[6] One example would be the sale of prescription drugs for the treatment of human disease. A retail sales tax exemption is provided by RCW 82.08.0281, but no corresponding exemption exists for the retailing B&O tax.

[7] We note, however, that the retail sales tax consequences are different. The lease of motor vehicles and trailers are exempt from the sales/use tax in its entirety if the user is, or operates under contract with, a holder of a permit issued by the Interstate Commerce Commission (ICC) or its successor agency and the vehicle is 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 the state. See Rule 17401(6). If the leased vehicle or trailer does not meet the substantial use requirement, the tax will apply only to the portion of the lease payment that is for use in Washington. See WAC Rule17401(6)(a).

[8] Rule 174(c) provides:

> (c) **Interstate sales deduction for lease income.** Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being

[3, 4] When a truck or trailer is leased to a person other than a motor carrier, the result is the same. The controlling factor which determines whether Washington State possesses taxing jurisdiction over such lease or rental income is the physical location of the property in this state during the term of the lease. The taxable incident takes place in this state when the property is "used" in this state by the lessee. Conversely, when the lessee uses leased tangible personal property outside Washington State, this state does not have jurisdiction to tax with respect to that use. Thus, retailing B&O tax liability may be reduced by an interstate sales deduction if adequate records are maintained to substantiate the amount of "use" claimed outside this state. WAC 458-20-193(5)(d) (Rule 193(5)(d),[9] Excise Tax Advisory 447.04.211 (ETA 447).[10] See also Longview Tugboat Company v. State, 64 Wn. 2d 323, 338, 391 P.2d 718 (1964).

In this case, if Taxpayer has adequate records to support its lessees' out-of-state use of its trucks and trailers, the retailing B&O tax should not be imposed on such use. . . .

Taxpayer's petition as to this issue is granted.

2. Retailing B&O and retail sales taxes assessed on motor vehicle registration fees charged to lessees. Under Washington's Revenue Act, a taxpayer is making retail sales when it leases trucks and trailers. RCW 82.04.050(4).

The measure of B&O tax under the retailing classification is a taxpayer's "gross proceeds of sales." RCW 82.04.250. RCW 82.04.070 defines "gross proceeds of sales" as:

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used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193.

[9] Rule 193(5)(d) provides:

> RENTING OR LEASING OF TANGIBLE PERSONAL PROPERTY. Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of tax liability based on the degree of use in Washington of leased property is required.

[10] ETA 447 provides:

> How does business and occupation and retail sales tax apply to income from leases or rentals of tangible personal property put to use by the lessee both inside and outside of Washington State?
>
> Leases and rentals of tangible personal property are defined by statute as being "sales at retail" (see RCW 82.04.050). The controlling factor which determines whether Washington State possesses taxing jurisdiction over such lease or rental income is the physical location of the property in this state during the term of the lease. The taxable incident takes place in this state when the property is "used" in this state by the lessee. Conversely, when leased tangible personal property is used by the lessee outside Washington State, this state does not impose its jurisdiction with respect to that use. (See Longview Tugboat Company v. State (1964) 64 Wn. 2d 323, and Stone v. Stapling Machines Co., Miss. 1954, 71 S. 2d 205.)
>
> Thus, persons who lease or rent tangible personal property for use both within and without Washington are taxable upon that portion of gross income derived from its use by the lessee in Washington, providing accurate records are maintained to substantiate the amount of "use" claimed outside this state.

> . . . the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The measure of retail sales tax is the "selling price." RCW 82.08.020(1). "Selling price" is generally defined by RCW 82.08.010(1) as:

> . . . the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter . . . .

[5] The motor vehicle registration fees paid by Taxpayer's lessees qualify as "value proceeding" and "consideration" for the leasing of the vehicles and trailers, and therefore come under the broad definitions of both "gross proceeds of sales" and "selling price." These fees are thus properly included in the measure of Taxpayer's retailing B&O and the retail sales tax.

Taxpayer argues that these payments were merely "advances" or "reimbursements," and therefore exempt from the B&O tax and the retail sales tax measures under Rule 111. By its very terms, however, Rule 111 could apply only if the lessee alone is liable for the payment of the registration fee, and if Taxpayer has no personal liability therefore, either primarily or secondarily, other than as agent for the lessee. Christiansen, O'Connor, Garrison & Havelka v. Department of Rev., 97 Wn.2d 764, 769, 649 P.2d 839 (1982); see Walthew, Warner, Keefe, Arron, Costello & Thompson v. Department of Rev., 103 Wn.2d 183, 186, 691 P.2d 559 (1984); Det. No. 94-004, 14 WTD 167 (1995).

Under Washington law, motor vehicle registration fees are owed by "registered owners." RCW 46.16.210(2). Taxpayer is the registered owner of the vehicles being leased. Therefore, Taxpayer has primary liability for payment of the registration fees, and Rule 111 can not apply.

Taxpayer argues, in the alternative, that any registration fee it passes along to a lessee becomes a portion of the lessee's lease payment and, therefore, part of it might be deductible from the retailing and retail sales tax measure if out-of-state use of the leased vehicle can be substantiated.

[6] We agree that a passed-on charge representing the vehicle registration fee should be considered as part of the lessee's lease payment. As such, this charge should be added to any lease payment otherwise due and treated accordingly. Taxpayer's petition as to this issue is granted in that the registration fees, as a portion of lease payments, might be subject to an interstate commerce deduction under the provisions of Rule 193((5)(d), Rule 174(c) or ETA 447, just as the normal lease payments are.

3. Retail sales tax on the sales of component parts and charges for repairs to vehicles of interstate for-hire carriers. Taxpayer specifically objects to the retail sales tax added to two invoices included in the test period. These two invoices were billed to an interstate motor carrier by the name of [C]. The charges were for component parts and labor used in repairing cooling and lighting systems for vehicles claimed to be operated in interstate commerce. Taxpayer has submitted as evidence a copy of an exemption certificate from [C]. Taxpayer argues that, under RCW 82.08.0262, retail sales tax should not have been charged on its sale of component parts and charges for repair to vehicles of interstate for-hire carriers.

RCW 82.08.0262 provides in pertinent part:

> The [retail sales] tax levied by RCW 82.08.020 shall not apply to . . sales of tangible personal property which becomes a component part . . . of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

[7] WAC 458-20-174 (Rule 174) implements the retail sales tax exemption provided by RCW 82.08.0262 for interstate motor carriers that purchase component parts. WAC 458-20-17401 (Rule 17401) implements a corresponding use tax exemption provided by RCW 82.12.0254. As to component parts, Rule 174(3)(b), as amended in 1997,[11] provides that the exemption is not limited to vehicles that meet crossing requirements, as follows:

> RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency which authorizes transportation by motor vehicle across the boundaries of Washington. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.
>
> (i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.
>
> (ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:
>
> (A) Issued for each purchase;
>
> (B) Incorporated in or stamped upon the purchase order; or

[11] This section of the rule, prior to its 1997 amendment, was substantially the same.

> (C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket forms must be renewed every four years.

(Emphasis added.) See also Rule 17401.

With respect to component parts subject to the exemption, Rule 17401(7)(a), also amended in 1997,[12] in relevant part provides:

> For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(Emphasis added.) Schedule 11 of the original Auditor's Detail of Differences and Instructions to Taxpayers (September 10, 1999) indicates that retail sales tax was imposed with respect to sales to certain carriers the Auditor did not believe to be interstate carriers. Post assessment adjustments #1 (November 30, 1999) and #2 (June 27, 2001) did not further address this particular issue.

Invoices from 1995[13] to [C] for work on several of its vehicles reflected the sale of labor and parts for vehicle lighting systems, cooling systems, sheet metal work on a cab, and tires. As set forth in Rules 174 and 17401, work on tires and other permanent systems are exempt when purchased for vehicles that are used in hauling for hire in interstate commerce. Taxpayer has submitted a copy of a retail sales tax blanket exemption certificate signed by " . . . , President, . . . " and approved "4/26/00" by " . . . ." The exemption certificate[14] essentially reads:

> I, the undersigned buyer, certify I am making an exempt purchase for the following reason: . . . 3. Interstate or Foreign Commerce . . . . a. Motor vehicles, trailers and

[12] This section of the rule, prior to its 1997 amendment, was substantially the same.

[13] The two invoices at issue are dated and 02/15/95 (for the period ending 02/11/95) and 03/05/95 (for the period ending 02/28/95).

[14] Prepared on the Department's form REV 27 0032 (10-22-99).

component parts thereof used to transport persons or property *for hire* in interstate or foreign commerce.

. . .

The affidavit submitted by [C] appears to be complete. However, Taxpayer has not submitted corroborating evidence of [C]'s qualification for exemption. Specifically, Department records[15] note that [C][16] was doing business as " . . . ." This "dba" would indicate that [C] was engaged in school bus transportation, an activity that, considering [C]'s . . . , WA location, was not likely to have been interstate for-hire transportation.

Taxpayer's petition as to this issue is denied. However, Taxpayer, upon remand, may submit additional evidence that the parts and labor at issue were for vehicles used by [C] in for-hire interstate transportation.

4. "Consumer Rental Expense Sharing" relating to one-way rental vehicles assigned to Washington, but rented outside the state. Taxpayer argues that the five percent rental revenue credit to District [1]'s Account No. . . . from rentals generated by other districts was for the use by lessees of District [1]'s vehicles outside of Washington. Taxpayer argues that the rental and use of the vehicles would have to occur inside Washington to generate Washington tax liability.

[8] We agree with Taxpayer that if the lease payments generating District [1]'s five percent portion were generated by leasing activities outside the State of Washington, they are not taxable by Washington. See Rule 193(5)(d), Rule 174(c), ETA 447.

. . .

5. Retailing B&O and retail sales tax on Taxpayer's Account . . . ("Other Charges") representing bonus dollars given to the district by Taxpayer as a reward for meeting goals. Taxpayer argues that the amounts showing in the "Other Charges" account were not generated from the rental or lease of trucks, the performance of maintenance services, or any other product or service that Taxpayer bills its customers. Taxpayer's headquarters, in recognition of the extraordinary performance by District [1]'s employees, transferred these funds into District [1]'s account. Taxpayer argues that the "income" in this account was, therefore, merely the result of internal adjustments by Taxpayer to one of its divisions.

[9] We agree that the transfer of these funds was merely an internal accounting entry merely transferring funds already earned by Taxpayer into another divisional account. Although inter-company transfers are often held to be taxable because they constitute consideration for sales or services, intra-company accounting transfers between divisions of the same company have no tax consequences because they are not the result of engaging in business (for B&O tax purposes) or making sales (for retail sales tax purposes). . . . . In this case, the dollars funding the account were

[15] Specifically, the Public Information Screen on TANDEM.
[16] Whose account was closed in December 1997.

mere intra-company accounting transfers, and not the result of the activity of "engaging in business" or making sales.

Taxpayer's petition as to this issue is granted.

DECISION AND DISPOSITION:

Taxpayer's petition as to the repairs for [C] is denied, although Taxpayer, on remand, will be given the opportunity to further substantiate its claim in accordance with this decision.

The remainder of Taxpayer's petition is either granted or partially granted, and the file is remanded to Audit for adjustment based on records Taxpayer has already provided.

Dated this 9th day of October 2002.