Cite as 10 WTD 79

BEFORE THE INTERPRETATION AND APPEALS DIVISION
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. 90-280
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULES 180 and 182: PUBLIC UTILITY TAX -- URBAN TRANSPORTATION -- B&O TAX -- WAREHOUSING -- SERVICES INCIDENTAL TO OR AS A PART OF THE TAXABLE ACTIVITY. Where taxpayer hauls freight for hire, additional services performed which are incidental to completion of the haul are taxable at the Urban Transportation rate. Where taxpayer additionally offers warehouse space for compensation, services performed as a part of that operation are taxable at the warehousing B&O tax rate. Only where services are not incidental to a haul or are not part of warehousing activities are they taxable at the higher service B&O tax rate.

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 AND PLACE OF CONFERENCE: June 15, 1990; Seattle

NATURE OF ACTION:

Taxpayer petitions for correction of assessment reclassifying income from urban transportation to service B&O.

FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer is engaged in the business of urban and motor transportation of freight. As a part of its activities it stores and handles its customers' goods. The United States Customs Service maintains a site at the taxpayer's warehouse. For some

haul customers, taxpayer sees goods through the customs process, including occasions where goods are detained or held for a period of time.

In 1988, taxpayer began showing on its books amounts attributable to these special occurrences. Customers continued to receive one bill, which showed how much of the flat fee charged was attributable to storage, handling, or customs clearance.

Taxpayer's books were audited for the period from . . . , through . . . . The auditor found that the items for which taxpayer showed separate amounts on its books should have been reported under the service B&O tax classification, rather than the urban transportation classification under which taxpayer had been reporting. Additionally, the auditor found that certain items booked by the taxpayer as "non-revenue fees" were subject to tax. Taxpayer appeals only the reclassification of the fees for storage, handling and customs clearance in this audit.

Taxpayer explains that there are four situations in which it charges its transportation customers for storage:

1. Warehouse storage. This is charged as "storage" for the portion representing storage and "handling" for "in and out" charges and other normal warehouse functions.

2. Beyond transportation free time: storage charges for haul customers whose freight remains on taxpayer's property for more than the customary seven days prior to delivery by taxpayer or pickup by the customer.

3. Customer not ready: customers who cannot receive their freight at the time of arrival can have it stored. In all cases, taxpayer contends all freight arrives at its warehouse in taxpayer's trucks in the course of taxpayer's transportation services.

4. Customs hold: where goods hauled by the taxpayer are held prior to delivery by customs for tariff or other reasons.

Charges for handling are made when taxpayer

1. Provides "in and out" and other handling services for its warehouse customers

2. Loads and unloads goods hauled to its freight dock by its own trucks, either for storage, delivery or consolidation for further transportation

3. Distributes goods from the warehouse into its own trucks or those of others.

Finally, taxpayer takes its customers' goods through the customs clearance process. It states this consists of opening a trailer, removing all or a part of the contents for inspection, and reloading the trailer. All trailers or containers for which this service is provided are hauled to taxpayer's premises by taxpayer's trucks.

On rare occasions, a non-related party will use taxpayer's dock and the customs office located on taxpayer's premises to clear its own goods. A nominal fee is made for this service, and taxpayer concedes that it is subject to service B&O tax.

DISCUSSION:

[1] RCW 82.16.010 defines "gross income" from the urban transportation business to include "value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental" to the performance of that business. It does not exclude from that language any type of service which is incidental to the haul. This language has been included, unchanged, in the statute since 1935. WAC 458-20-180 (Rule 180) states that

> Persons engaged in [the urban transportation business] are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads. (Brackets supplied.)

Administrative rules cannot exceed or conflict with the scope of the statutes they interpret. Duncan Crane v. Department of Rev., 44 Wn.App 684 (1986); Tacoma v. Smith, 50 Wn.App 717 (1988); review denied, 110 Wn.2d 1032 (1989). As a result, where a rule appears to be in conflict with a statute or to exceed the exclusions contained in a statute, the rule must be read so that it does not conflict with the statute.

In this case, the rule's language must be read so that it does not conflict with the broad language of RCW 82.16.010. Consequently, the services contemplated in Rule 180 and taxable at the higher service B&O tax rate cannot be ones which are performed as a part of the urban transportation or hauling activities, nor can they be ones which are "incidental to" the haul itself. The language must be read to mean that when persons engaging in the urban transportation business engage in the additional, separately-taxable business of offering services to customers who are not also

cartage customers or of offering services to cartage customers which are not incidental to completion of a customer's haul, the income from these services is taxable at the higher rate.

Here, taxpayer states that it began "breaking out" the charges on its internal records strictly for its recordkeeping purposes and that the nature of its activity had not changed from previous years. Customers receive a single bill for a flat fee. The bill contains a section showing amounts, if any, attributable to handling or storage of goods. Taxpayer states that all of its customers are having goods hauled and that some of those customers also avail themselves of additional services as a part of the haul. The statute does not require that all activities concerning a haul occur while the goods are in transit, or it would have so specified. As a result, the fact that some shipments spend time on taxpayer's premises, either for brief storage or due to customs inspections or delays, is not determinative of whether the services are part of the haul.

We are convinced by taxpayer's testimony that the bulk of its income is derived from services incidental to its transportation business. As a result, we find that such services, where they are a part of the agreement with the shipper/customer, are subject to tax under 82.16 RCW. These services can, among others, include those performed by this taxpayer, such as interim storage of goods where the customer cannot take delivery immediately upon the goods' arrival; charges for delayed return of containers in such cases; charges for seeing the goods through the customs office located on taxpayer's premises; and other charges for handling the goods of customers who have hired taxpayer to haul them. A good example of when such income is taxable at the service rate would be those occasions on which taxpayer charges third parties for use of its loading dock to clear their own goods through the customs office branch located at taxpayer's warehouse.

A similar interpretation problem exists in the case of taxpayer's limited warehousing activity. Where taxpayer offers services to customers who purchase warehousing services only, the income is properly reported under the warehousing B&O tax classification. Rule 182(1)(a) defines "warehouse" as

> every structure wherein facilities are offered for the storage of tangible personal property.

Rule 182(1)(b) implements RCW 82.04.280 and uses the exact language of the statue to define "storage warehouse":

> a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities

> warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves....

Rule 182(2) states

> Warehouse businesses are taxable according to the nature of their operations and the specific kinds of goods stored, as follows:
>
> (a) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined herein, are subject to tax under the warehousing classification, measured by the gross income of the business. (See RCW 82.04.280.)

The rule then separately lists certain types of storage operations which are taxed differently. Specific sections address the operations excepted under Rule 182(1)(b). However, Rule 182(2)(c) provides

> Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses. (Emphasis supplied.)

Statutes are to be construed, wherever possible, so that no clause, sentence or word shall be superfluous, void, or insignificant. UPS v. Department of Rev., 102 Wn.2d 355. All of the provisions of the act must be considered in their relation to each other and, if possible, harmonized to insure proper construction of each provision. Burlington Northern v. Johnston, 89 Wn.2d 321 (1977).

In this case, Rule 182(1)(b) clearly defines storage warehouses. It also excepts from the definition "railroad freight sheds, docks and wharves." Rule 182(2)(c) excepts from the warehousing classification freight storage warehouses. Because this language differs from both that of Rule 182(1)(b) and RCW 82.04.280, it must be read to harmonize with those two provisions. As a result, it must be construed to mean that a "freight storage warehouse" is a railroad freight shed, or a dock or wharf. Otherwise, "every structure wherein facilities are offered for the storage of tangible personal property" is a "storage warehouse," if it is "a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation."

Rule 182(3) provides that the

> gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

Consequently, where taxpayer utilizes its building as a warehouse for non-transportation customers, and where its books clearly reflect that income was from its warehousing business and not from its transportation business, the income is subject to B&O tax under the warehousing classification.

As with services not incidental to a haul in taxpayer's urban transportation business, where services are rendered to non-warehouse customers, the income is to be reported under the services classification for B&O tax purposes.

DECISION AND DISPOSITION:

Taxpayer's petition is granted.

DATED this 12th day of July, 1990.