

Cite as Det. No. 18-0018R, 38 WTD 64 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for) FINAL
Reconsideration of) DETERMINATION
)
)
) No. 18-0018R
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) Registration No. . . .
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[1] RULE 13501; RCW 82.16.050: PUBLIC UTILITIES TAX – PUT DEDUCTION – LOG HAULING – DELIVERY TO EXPORT FACILITY. Taxpayer's delivery of logs to an interim holding yard, distant from and unconnected to a pierside export facility, and operated by a different company, is not eligible for PUT deduction, because the interim holding yard does not qualify as an export facility under the Rule, and the taxpayer did not make the last haul before the logs were put on the ship.

[2] RULE 13501; RCW 82.16.050: PUBLIC UTILITIES TAX – PUT DEDUCTION – LOG HAULING – EXPORT FACILITY CERTIFICATE. A certificate from a log holding yard, that otherwise meets the requirements of the Rule as to form, is not alone sufficient to show delivery to an export facility and qualify a taxpayer for PUT deduction when the basic legal requirements are not also met.

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.

Davis, T.R.O. – A Washington State corporation (Taxpayer) engaged in log hauling to destinations in and out of Washington seeks reconsideration of Determination No. 18-0018, which held that Taxpayer was not eligible for claimed deductions to gross income for hauling logs to export yards taxable under the Log Hauling Over Public Highways Public Utility Tax classification. During the audit, the Department's auditor reportedly told Taxpayer if it obtained an export facility exemption certificate from qualifying export yards, then hauls made to those yards might qualify for the deduction. Taxpayer obtained the certificate from one export yard covering March 2016, and on that basis sought refund of tax assessed on all hauls covered by the certificate. Taxpayer's petition for reconsideration is denied.¹

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

ISSUE

Under RCW 82.16.050 and WAC 458-20-13501 (Rule 13501), did the Department properly deny deductions to gross income for hauling logs to export yards when calculating Taxpayer's Log Hauling Over Public Highways Public Utility Tax?

FINDINGS OF FACT

... (Taxpayer) is a Washington State log hauling corporation based [in Washington]. Taxpayer's business activities in Washington State during the audit period included hauling logs for hire from extracting locations in Washington to destinations both inside and out of Washington. Taxpayer is authorized as a for-hire carrier of logs, lumber, and building materials in interstate operations by the United States Department of Transportation (USDOT). Taxpayer employs more than twenty drivers who operate approximately twenty-four log trucks and accompanying log trailers.

In 2017, Audit examined Taxpayer's business records for the period from January 1, 2013, through March 31, 2016 (assessment period), to verify that Taxpayer's Washington business activities were properly reported.

During the examination, the auditor gave Taxpayer copies of Department Form REV 27 0045 (12/15/14) "Exemption Certificate for Logs Delivered to an Export Facility" (Form 45), which is based on the requirements of Rule 13501(13)(b). The auditor reportedly informed Taxpayer it could use Form 45 to prove entitlement to the deduction if it obtained the necessary information and signatures from the export yards used. Taxpayer did not submit any completed copies of Form 45 before the audit was completed.

As a result of the audit, on June 27, 2017, the Department issued an assessment against Taxpayer for \$. . . , which included use tax of \$. . . , a motor transportation public utility tax credit of \$. . . , motor vehicle sales/lease tax of \$. . . , log hauling over public highways (Log Transportation Business) public utility tax of \$. . . , a five percent assessment (substantial underpayment) penalty of \$. . . , and interest of \$

After the assessment was issued, Taxpayer was able to obtain signatures and information on Form 45 from the delivery yard operated by [Forest Product Company], located at . . . WA [Airport Yard], covering all log hauls Taxpayer made to that location from January 2016 to January 2017. [Forest Product Company] engages in the business of exporting logs to interstate and international destinations by vessel using harbor facilities located in . . . Washington. However, the [Forest Product Company] airport yard is located separately, away from the harbor, on land immediately adjacent to . . . Logs delivered to the [Forest Product Company] airport yard are held, sorted, and prepared, before eventually being transported over public roads and highways approximately five miles from the [Forest Product Company] airport yard to the . . . export facility where they are loaded onto vessels for export.

Taxpayer paid its assessed tax liability in full and, on August 3, 2017, Taxpayer timely filed for review of the assessment, seeking refund of a portion of additional tax assessed due to disallowed March 2016 PUT deductions claimed for hauling logs to export yards under Rule 13501(13).

On December 5, 2017, the Department held a telephone hearing with Taxpayer's representatives. On January 19, 2018, the Department issued Determination No. 18-0018, which explained that, even though Taxpayer provided a qualifying Form 45 documenting its hauls to the [Forest Product Company] airport yard, this yard does not qualify as an export facility under the Rule because it is not located on navigable waters where interstate or foreign commerce begins. In addition, Taxpayer is not making the last haul to the location where the logs are loaded onto the ship. Instead, [Forest Product Company] makes the last haul from its airport yard to the export facility. Thus, hauls identified on the form are not eligible for the PUT deduction for delivery to export facilities under RCW 82.16.050(9) and Rule 13501(13).

Thus, Determination No. 18-0018 sustained the assessment, concluding:

According to the facts presented, Taxpayer's log hauls to the [Forest Product Company] airport yard were not interstate or foreign commerce, and were not made to an eligible export facility under the Rule. Therefore, the Department lacks authority to grant Taxpayer's requested deductions, and we must deny Taxpayer's petition.

Taxpayer disagreed with the decision. On February 19, 2018, Taxpayer filed a petition asking the Department to reconsider its previous decision, stating:

We haul logs marked for export out of the woods in which they are harvested. Export log loads hold the carrier and individual CDL drivers to Federal rules and regulations. This export log load changes rules to stricter hours of service limits, additional insurance cost, and specific medical waivers. The Washington state patrol upholds these regulations by determining a driver with an interstate vs. intrastate license carrying an export load may not proceed. They are parked, and deemed out of service. Large and small land owners refuse to pay reasonable rates for export wood citing the relief a truck receives for hauling it, which has fueled the belief in our area an export load to an export yard next to or in a harbor or port qualifies. The [Forest Product Company] export yard is still connected to the harbor facility by railway, the property is overflow.

In its reconsideration request, Taxpayer does not raise any specific issues of law or disagree with the Department's prior statements of fact, but asks the Department to consider another review of the case documents.

In its acknowledgement letter, the Department asked Taxpayer to provide "documents or other evidence to support the statement that the [Forest Product Company] airport yard is connected to the . . . harbor facility, and both should be treated as if they are a single export yard." The deadline for Taxpayer to provide this information or any other supporting information was April 11, 2018. However, Taxpayer did not provide the information requested, or submit any other information for review.

During its telephone hearing on reconsideration, Taxpayer conceded that the [Forest Product Company] airport yard was physically separate from the log yard in the harbor's port facility (port yard) and was not located on the harbor. Taxpayer further stated that in the past, [Forest Product Company] had used a dedicated rail line to haul logs from the airport yard to the port yard in the

harbor for loading, but currently the rail line is shut down so [Forest Product Company] uses trucks instead. According to Taxpayer, [Forest Product Company] holds logs in the airport yard and only moves them to the harbor when the ship is at the pier and ready to load. Taxpayer further explained that the port yard was not operated by [Forest Product Company], and that Taxpayer had not obtained a Form 45 certificate from the port yard.

ANALYSIS

The public utility tax (PUT) is imposed upon the . . . transportation of goods. RCW 82.16.020(1)(h) imposes the PUT “for the act or privilege of engaging within this state” in the “[l]og transportation business.” RCW 82.16.010(5), in turn, defines the log transportation business as “the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.” *See also* WAC 458-20-13501 (Rule 13501).

Taxpayer does not dispute that it is engaged in a log transportation business; however, Taxpayer contends it is entitled to a deduction from the PUT because the logs it hauled were purchased for export, delivered to a storage yard owned by a log export company, and were ultimately in fact exported by vessel to interstate and international destinations.

In general, “[t]axation is the rule and exemption is the exception.” *Budget Rent-A-Car*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972). However, there are a number of deductions available to taxpayers. Exemptions and deductions are “tax preferences” under RCW 43.136.021, and must be “strictly construed, though fairly, and in keeping with the ordinary meaning of their language, against the taxpayer.” *Lacey Nursing v. Dep’t of Revenue*, 128 Wn.2d 40, 905 P.2d 338 (1995). Further, “[w]hen interpreting . . . deduction provisions, ‘the burden of showing qualification for the tax benefit . . . rests with the taxpayer’” *Simpson Investment Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149-50, 3 P.3d 741 (2000), (quoting *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm’n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967)). *See Stroh Brewing Co. v. Dep’t of Revenue*, 104 Wash. App. 235, 240, 15 P.3d 692 (2001) (“[t]he taxpayer has the burden of establishing eligibility for an exemption”); *see also Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000) (“exemption statutes are construed strictly against the taxpayer, and the taxpayer has the burden of establishing any exemption”). Every taxpayer is therefore responsible for being able to demonstrate that it qualifies for each claimed deduction under a strictly construed interpretation of the rules.

There are two deductions that may possibly apply when a taxpayer is transporting commodities for export: (1) Interstate or Foreign Commerce under RCW 82.16.050(6) and WAC 458-20-179 (Rule 179); and (2) Delivery to Export Facilities under RCW 82.16.050(9) and Rule 13501. We consider each of these in turn below.

1. Interstate or Foreign Commerce

RCW 82.16.050(6) allows a deduction from gross income, when calculating PUT, of amounts earned in activities “which the state is prohibited from taxing” under federal law, or the U.S. or state constitutions. Because interstate and foreign commerce are governed by federal law and

regulation under the U.S. Constitution, a taxpayer's interstate or foreign business activity would therefore be eligible for this general deduction to the extent such activity is legally prohibited from state taxation. *See* U.S. Const. art. I, § 10, cl. 2. Rule 179(202)(d) explains that this deduction applies to income subject to PUT.

...

Here, although it is undisputed that logs hauled by Taxpayer's trucks are ultimately intended for foreign commerce, Taxpayer does not transport the logs out of state itself, but instead delivers them to a location inside the state. . . . [T]he hauling of logs over public highways within the state to an in-state destination (such as the [Forest Product Company] airport yard, or even to a harbor loading facility itself) is a purely local transportation service occurring prior to commencement of interstate or foreign commerce. Therefore, the deduction, . . . under RCW 82.16.050(6), does not apply.

Although a deduction based on interstate and foreign commerce does not apply here, the Legislature has provided [a deduction] in state law for the delivery of export commodities to export facilities, discussed below.

2. *Delivery to Export Facilities*

RCW 82.16.050(9) provides a separate, specific PUT deduction for income derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewaters or navigable tributaries of tidewaters. To qualify for the deduction, after delivery, the commodities must be forwarded from the facility, "*without intervening transportation, by vessel*" and in their original form, to an interstate or foreign destination. *See* RCW 82.16.050(9) (emphasis added); Rule 13501(13).²

We note that RCW 82.16.050(9) is *not* a deduction for interstate or foreign commerce, covered separately under RCW 82.16.050(6) as discussed . . . above, but instead is a deduction for local transportation services provided solely on the state's own public roads, before interstate or foreign commerce legally begins. This purely intrastate activity would be fully taxable if the Legislature had not provided the statutory deduction.

Rule 13501(13)(a) provides specific conditions under which the deduction is available. According to the Rule, the deduction is "available only to the person making the last haul, not including hauls within the export facility, before the logs are put on the ship." *Id.* (emphasis added).

Rule 13501(13)(b) requires additional documentation by the log hauler to prove entitlement to the deduction. Under the Rule, delivery tickets that show delivery to an export facility are not, alone, sufficient proof. *Id.* A certificate from the export facility operator is acceptable additional proof if

² We note, for reference, that in the case of farm products, the Legislature has created a similar but separate deduction, which applies to agricultural commodities delivered to an *interim* storage facility in the state, for *later transshipment* to an export facility, when both the interim facility and the export facility are operated by the same entity. However, because timber (except short-rotation hardwoods and Christmas trees) is not included in the statutory definition of "agricultural commodity," the deduction does not apply here. *See* RCW 82.16.050(10); RCW 82.04.213(1).

it is substantially in the form addressed in Rule 13501(b). A “blanket certificate” may be used for a one-year period if no significant changes in operation will occur within this time. *Id.*³

Taxpayer has provided a completed Form 45 certificate for log hauls to the [Forest Product Company] airport yard. The certificate provided . . . meets all the requirements of Rule 13501(13)(b), and functions as a “blanket certificate” for 2016 as contemplated by the Rule. Thus, assuming all other requirements of the law were met, this certificate provides sufficient additional documentation to prove entitlement to the deduction for logs hauled to this yard in 2016.

In order for the deduction to apply, however, the basic legal requirements must also be met. The law requires that, in addition to having a signed document, all of the following *must* also be true: (1) the logs must be delivered to either a wharf, dock, or ship side; (2) the delivery point must be on tidewater or a navigable tributary; and (3) the logs must be (a) forwarded to the interstate or foreign destination from the delivery point, (b) without intervening transportation, (c) by vessel. See RCW 82.16.050(9); Rule 13501(13). Only the “last haul” before the logs are loaded onto the ship is eligible. Rule 13501(13)(a).

Here, even though Taxpayer has provided a qualifying Form 45 documenting its hauls to the [Forest Product Company] airport yard, the yard identified on the form does not qualify as an export facility under the Rule because it is not located on navigable waters where interstate or foreign commerce begins. In addition, Taxpayer is not making the last haul to the location where the logs are loaded onto the ship. Instead, [Forest Product Company] makes the last haul from its airport yard to the export facility. Thus, hauls identified on the form are not eligible for the PUT deduction for delivery to export facilities under RCW 82.16.050(9) and Rule 13501(13).⁴

³ Rule 13501(13)(b) provides that a document proving entitlement to the deduction is sufficient if it is substantially in the following form (Form 45, as provided by the Department, meets this requirement):

Exemption certificate for logs delivered to an export facility

The undersigned export facility operator hereby certifies:

That _____ % or more of all logs hauled to the storage facilities at _____, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.
2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm _____

Trucking Firm Address _____

Trucking Firm UBI# _____

Export Facility Operator _____

Operator UBI# _____

Person Giving Statement _____

Title of Person Giving Statement _____

⁴ Taxpayer has previously expressed confusion about this aspect of the law, and suggested it should not matter whether it delivers logs directly to the Port or to an inland storage facility, such as the [Forest Product Company] airport yard, provided all of the logs taken to the yard are for export only. At its reconsideration hearing, Taxpayer noted that it is required to meet a number of federal legal requirements for recordkeeping, maintenance, driver registration, and operations because it is hauling logs designated for “export.” However, these requirements are not imposed under the

According to the facts presented, Taxpayer's log hauls from areas within Washington to the [Forest Product Company] airport yard were not separately deductible as "interstate or foreign commerce," and also do not qualify for statutory deduction because they were not made to an eligible export facility under the Rule. Therefore, the Department lacks authority to grant Taxpayer's requested deductions, and we must deny Taxpayer's petition.

DECISION AND DISPOSITION

Taxpayer's petition for reconsideration is denied.

Dated this 16th day of May, 2018.

tax laws. There are many separately applicable transportation and safety laws relating to Taxpayer's business activities and operations. The record shows that Taxpayer does, in situations not relevant here, haul logs to destinations outside Washington, which *would* be eligible for deduction as interstate commerce. Thus, as a company engaged in interstate commercial activity, it is required to comply with state and federal laws separately regulating these activities. Here, we are concerned with a narrow set of facts, as described and analyzed above. The tax laws provide specific requirements that must be met to qualify for deductions, and the Department has no authority to grant the taxpayer a deduction where none has been allowed by the Legislature. It is well established that, as an administrative agency, the Department may not provide a tax benefit where none exists in the law. Only the Legislature, through enactment of appropriate legislation, may do so. *See, e.g.*, Det. No. 04-0287E, 24 WTD 275 (2005); Det. No. 04-0006, 23 WTD 195 (2004); Det. No. 87-169, 3 WTD 145 (1987); Det. No. 87-42, 2 WTD 201 (1986).