Cite as Det. No. 91-243, 11 WTD 413 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. 91-243 |
| . . . | ) | Registration No. . . . |
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[1] RULE 179: EXPORT TRANSPORTATION--WHAT CONSTITUTES--INTERVENING TRANSPORTATION. When a carrier is obligated to deliver goods to an export dock on a through bill of lading for export, the charges by the obligated carrier are exempt from B&O tax as export transportation.

[2] 82.04.050(4): RENTS--RETAIL SALE. The total amount charged to an affiliate for the rental of forklifts is taxable rent. This amount includes charges for repairs, depreciation, and property taxes.

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: . . .
First Hearing . . .

Second Hearing . . .

NATURE OF ACTION:

Taxpayers, affiliated corporations, protest various aspects of the above-captioned audits, including intervening transportation ( . . . ) and forklift repair ( . . . ) All other issues were referred back to the Audit Division.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. (successor to Potegal, A.L.J.) -- Taxpayers are affiliated corporations. . . . , is the parent corporation. It owns and maintains marine operating equipment (vessels and barges), which it rents to its subsidiary, . . . (Water); and it owns and maintains motor vehicle equipment, which it rents and leases to another subsidiary. Water is a common carrier of property by water, having an Interstate Commerce Commission Certificate of Public Convenience and Necessity, and operates marine operating equipment (vessels and barges) which it rents or leases from Parent. Subsidiary . . . (Terminals) performs services in the handling, loading, unloading and moving of cargo and wharfage services in interstate commerce, as well as intrastate commerce. All three had their books and records audited by the Department of Revenue for the period January 1, 1980 through June 30, 1984. Assessments were issued for the three which remain outstanding. The only issues in dispute in this determination involve Terminals and Water.

Water argues that the income received for services furnished in the transportation of [items] from a . . . mill and delivered to the ship under a Bill of Lading or shipping documents which show a foreign destination via a ship should be exempt. The [items] are custom manufactured for specific customers. The [items] are all marked with a final destination. Water gets a through bill of lading from the manufacturer that clearly identifies the [items] and the export destination. Water explains that in some instances, the shipping is prepaid by the mill consignor; and, in others, Water bills the ship or consignee. Water brings the freight to its export loading facility on the Duwamish River and loads the freight into containers provided by the ship. The containers are then trucked to the dock and loaded directly onto the ship. Sometimes the ship itself provides the carrier; other times, Terminals acts as carrier. The Audit Division disallowed the deduction under RCW 82.16.050(8) and WAC 458-20-179(15)(e) where goods were trucked to the export dock and a separate freight bill was provided by Terminals. When they were picked up by the ship's carrier, the deduction was allowed. The Audit Division asserts that because the goods are not shipped directly to the export dock, there is "intervening transportation" and thus, the exemption provided by RCW 82.16.050(8) does not apply. Water asserts that the transportation consists of a "continuous movement pursuant to a through bill of lading to the foreign destination." Water further explains that "due to changes in technology of loading ships and the advent of containers, the actual loading of freight into containers does not take place at the shipside dock." Terminals pays B&O tax on the stevedoring

rate on the charges for containerization, movement and reloading of the goods, and that classification has not been disputed.

If the Department finds that Water's hauls are taxable, Water next argues that a portion of the amount should be deductible. As explained above, Water paid part of the amounts it received to Terminals for wharfage charges, and Terminals paid stevedoring B&O tax on those amounts. Because the deduction in WAC 458-20-179(15)(c) only allows a deduction from public utility tax for amounts paid to a subcontractor when the subcontractor will pay public utility tax, the Audit Division refused to allow Water to deduct those amounts from the amount of public utility tax due. Water argues that if the amounts are taxable, they should only be taxable under the stevedoring rate, rather than the public utility tax rate, because charges for wharfage are included within the definition of stevedoring in RCW 82.16.010.

The second issue presented by Terminals has to do with whether or not the payments made by Water, representing Terminals' cost for labor, parts and an allocation for overhead, constitutes part of the taxable rent on forklifts rented by Terminals to Water. Water pays Terminals a continuous, periodic charge representing depreciation and property taxes for the forklifts. Terminals and the Audit Division agree that the intrastate portion of this is taxable as rent. When Terminals repairs the forklifts, Water is also charged an amount equal to the actual labor incurred, the cost of parts, and a proportionate overhead allocation. Terminals pays sales tax on all the forklift parts purchased (Audit and Terminals have agreed that a credit is due for some of the parts under RCW 82.08.0262). Terminals argues that when it is repairing the forklifts, it is simply repairing its own equipment and that there is no retail sale. Terminals states that the charge made to Water is subject to the service category of the B&O tax. If the transaction is a retail sale, Terminals argues that the charges are exempt under RCW 82.04.0262.

DISCUSSION:

1. Transportation

RCW 82.16.050(8) provides that:

> In computing tax there may be deducted from the gross income the following items:
>
> > (8) . . . amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto from which such

> commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations: PROVIDED, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the
> corporate limits of the same city or town. . . .

WAC 458-20-179 (Rule 179)(15)(e) repeats the above deduction.

Water argues that it fits within the above language because all the transportation is done pursuant to a through bill of lading and the material is all clearly marked for the export customer. Washington court cases dealing with tax exemptions and exports focus on the tax status of the goods themselves, not the tax status of the method of transportation. Carrington Co. v. Department of Rev., 84 Wn.2d 444 (1974), Coast Pacific Trading, Inc. v. Department of Rev., 105 Wn.2d 912 (1986). Both cases focused on whether or not the goods had entered the export stream and were, therefore, not taxable.

In this case, we are concerned with whether the transportation is from a point of origin to the export wharf without intervening transportation, which is statutorily exempt. The [items are] picked up . . . and transported to Terminal 7, . . . , where it is off-loaded and containerized. From Terminal 7, Lines transports the [items] via truck to Pier 5, which is adjacent to Terminal 7. This is all done under a through bill of lading . . . to the export ship. Neither the Audit Division nor Terminals dispute that the income from the handling and hauling is taxable under the stevedoring classification.

In Excise Tax Bulletin 250.16.179.193 (ETB 250), the Department stated as follows:

> . . . the interstate movement of goods terminated at the point where the obligation of the interstate haul carrier ended, i.e., the point of destination shown on the bill of lading issued by such carrier. Any transportation services performed from that point to another point within this state are wholly intrastate and are within the taxing jurisdiction of the State of Washington. . .

This case is somewhat different from ETB 250, because we are dealing with export commerce rather than interstate. However, the obligation of the carrier was to deliver the goods to the actual export vessel. The goods had entered the export stream

with a "certainty of a foreign destination." Terminals' services are taxed under the stevedoring classification, NOT under one of the public utility classifications. Terminals does not provide intervening transportation services. We find that Water's obligation to deliver the goods to the export vessel/dock meets the requirements for the exemption provided in RCW 82.16.050(8).

2. Forklift Repairs

Terminal argues that the charges made to Water for repair of the forklifts rented to Water are subject to the service tax because, since it is repairing its own forklifts, no retail sale has taken place. We agree that the repair of the forklift by Terminal is not a retail sale to itself. However, the amount charged to Water is a retail sale, because it is rent.
RCW 82.04.050(4) provides that "renting or leasing of tangible personal property to consumers" is a retail sale. Water, as the user of the property, is a consumer. The measure of the retail sale, or the amount subject to tax, is the total amount charged for the transaction. In this case, Terminal concedes that the amount charged for depreciation and property taxes is taxable rent, but denies that the labor and overhead charges are. However, the labor and overhead charges are part of the total amount charged by Terminals for the forklifts and are properly included as part of the rental income.

DECISION AND DISPOSITION:

Taxpayers' petitions are granted in part and denied in part.

DATED this 29th day of August 1991.