Cite as Det. No. 92-015, 12 WTD 57 (1993).

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. 92-015
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULE 245 and RCW 82.08.0289: RETAIL SALES TAX -- NETWORK TELEPHONE SERVICES -- COIN-OPERATED TELEPHONES -- RESIDENTIAL CREDIT CARD. Local telephone calls which originated from coin-operated telephones but were billed to a residential credit card are exempt from retail sales tax as network telephone services to residential customers. F.I.D.

[2] RULE 155: USE AND/OR DEFERRED SALES TAX -- CANNED VS CUSTOM SOFTWARE -- CUSTOMIZED. Where standard, prewritten software is combined with other standard, prewritten software and some original programming, it does not become custom software just because it may be unique or one-of-a-kind. ACCORD: Det. No. 87-359, 4 WTD 327 (1987).

[3] RULE 245 and RCW 82.08.0289: RETAIL SALES TAX -- NETWORK TELEPHONE SERVICES -- INTERSTATE SERVICE -- ORIGINATING AND TERMINATING IN WASHINGTON -- OUT-OF-STATE BILLING. Toll (long-distance) telephone calls which both originate and terminate within the state of Washington but are billed to an out-of-state telephone apparatus are included within the definition of network telephone services. F.I.D.

[4] RULE 245: RETAIL SALES TAX -- NETWORK TELEPHONE SERVICES -- DIRECTORY ASSISTANCE -- EXCESS CHARGES. The $.25 per inquiry charges above the four free inquiries included in the basic monthly telephone rates are merely additional compensation received for network

telephone services. As such, they are taxable under the Retailing and retail sales tax classifications. F.I.D.

[5] RULE 193A and RPM 89-002: USE AND/OR DEFERRED RETAIL SALES TAX -- FOR-HIRE CARRIER -- AFFILIATED ENTITY. A separately-incorporated trucking company may be a for-hire carrier for purposes of Rule 193A and RPM 89-002 notwithstanding its affiliation to the taxpayer. F.I.D.
PORTIONS OF THIS DETERMINATION WERE NOT PRECEDENTIAL AND HAVE NOT BEEN PUBLISHED.

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: . . .

NATURE OF ACTION

A taxpayer protests the imposition of additional taxes and interest assessed in an audit report.

FACTS:

Okimoto, A.L.J. -- [. . .] (taxpayer) operated a telephone company based in Washington. Department of Revenue (Department) auditors examined the taxpayer's books and records for the period July 1, 1984 through December 31, 1987 and an assessment was issued. The taxpayer has paid the unprotested portion of the audit and protests the balance which remains due.

TAXPAYER'S EXCEPTIONS:

SCHEDULE XII: Unreported sales tax due on pay phone income billed to residential customers

In this schedule, the auditors assessed retail sales tax on amounts received from residential customers who made local calls from a coin-operated telephone but paid for the call by charging it to their residential credit card. Although the taxpayer concedes that these services constitute network telephone services and are included within the definition of a retail sale under RCW 82.04.065, it contends that they are exempt from retail sales tax under RCW 82.08.0289. It states in part:

> (1) The tax levied by RCW 82.08.020 [retail sales tax] shall not apply to sales of:
>
> (a) Network telephone service, other than toll service, to residential customers.
>
> (b) Network telephone service which is paid for by inserting coins in coin-operated telephones.
>
> (2) As used in this section:
>
> (a) "Network telephone service" has the meaning given in RCW 82.04.065.
>
> (b) "Residential customer" means an individual subscribing to a residential class of telephone service.

(Emphasis and brackets supplied.)

The taxpayer concedes that RCW 82.08.0289(1)(b) does not apply but points to the exemption in (1)(a) and states simply that this section exempts all network telephone service, other than toll service, to residential customers regardless of how or when it is paid. The taxpayer testified that it seeks a sales tax exemption for only those credit card charges to residential customers that originate and terminate wholly within the local telephone network.

Schedules XXII, XXIII & XXV: Use tax due on purchases of software

In this schedule, the auditors assessed use and/or deferred sales tax on amounts paid to [the vendors] for software acquired to run the taxpayer's machines.

The taxpayer makes two primary arguments. First, it argues that the software is an intangible license to use. Second, even if the software licenses are found to be tangible personal property, the taxpayer contends that the software has been so extensively modified and customized so as to no longer be standard prewritten software.

The taxpayer states that it received prior reporting instructions on this very issue and that the Department should be estopped from retroactively changing that position. The taxpayer argues that it has relied on that Department position to its detriment because it was unable to plan for this additional tax liability.

* * *

Schedule XIV: Unreported retail sales--Washington intrastate toll service billed to Oregon phone numbers

In this schedule, the auditors asserted additional Retailing B&O and retail sales tax on amounts received by the taxpayer from toll (long-distance) telephone calls which originated and terminated in Washington but were billed to an out-of-state telephone apparatus.
The taxpayer concedes that the billed amounts would be considered retail "network telephone service" except for the fact that the calls were billed to an out-of-state apparatus. The taxpayer argues, however, that the following underlined language in RCW 82.04.065(2) excludes from the definition of "network telephone service" all toll service that is charged to an out-of-state person or apparatus regardless of its origination and reception points.

> ". . . `Network telephone service' includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state."

(Emphasis supplied by taxpayer.)

In essence, the taxpayer argues that, in order for toll service to be included as "Network telephone service," it must be billed to a person or apparatus in this state.

Second, the taxpayer argues that RCW 82.04.065 does not provide a credit for retail sales taxes paid in another state. Therefore, the taxpayer contends that the auditor's interpretation would violate the commerce clause of the United States Constitution, because a taxpayer may be subjected to multiple state taxation.

Schedules VI & VII: Directory assistance and other services reclassified from Retail to Service

In this schedule, the auditors reclassified amounts received for directory assistance from the Retailing and retail sales tax classification to the Service and Other Activities tax classification. The auditors reasoned that the $.25 per inquiry charge above the four inquiries included in the monthly telephone service charge was for information services and not network telephone services. The taxpayer states that it is required by the Washington State Utilities and Transportation Commission to provide directory assistance to its customers and that it is a component part of the basic local telephone service provided to its customers. The taxpayer explains that the first four directory assistance calls in a given month are built into the

monthly rate for basic local telephone service. For each additional directory assistance call, however, the customer must pay $.25 per call.

The taxpayer argues that the additional $.25 per call charge does not change the character or the taxability of the service rendered and, if the four directory assistance calls included within the monthly bill are network telephone service, then so are the additional charges.

The taxpayer also states that the legislative history indicates that directory assistance was intended to be included as network telephone service. The taxpayer explains that, initially, the 1981 Washington State Legislature split the existing telephone business into two pieces, "competitive and network." The 1981 Legislature removed competitive telephone service from the Public Utility tax and defined it as a retail sale. It left all remaining activities (network service) under the Public Utility tax. This included directory assistance. The 1983 Legislature took what remained of the traditional telephone business and removed it from the Public Utility tax and placed it into the Retailing and retail sales tax classifications. The taxpayer argues that, because directory assistance was originally part of the traditional definition of telephone services, it has now been removed from the Public Utility tax and placed into the Retailing and retail sales tax classifications along with all other network telephone services.

Schedule VIII: Access charges for information users reclassified from Wholesale to Retail

In this schedule, the auditors reclassified amounts charged for access charges made on directory assistance calls relating to out-of-state interstate carriers from the Wholesaling to Retailing and retail sales tax classifications. The auditors reasoned that, since directory assistance charges are taxable under the Service and Other Activities tax classification, all access charges purchased by out-of-state carriers would be purchases as a consumer under RCW 82.04.290 and subject to Retailing and retail sales tax. The taxpayer explains the transaction in its memorandum as follows:

> Long-distance carriers . . . provide directory assistance between local access transport areas (LATAs). Petitioner charges carriers an access fee for each interLATA directory assistance call that its customers make. For example, if one of Petitioner's customers in Seattle called directory assistance for the Los Angeles area, the long-distance carrier transmitting the request to Los Angeles would charge the carrier an access fee for the carrier's use of Petitioner's equipment in accessing the network for

each minute of the call. This is no different than the access fee Petitioner would charge a carrier if an individual placed a toll call from Seattle to Los Angeles.

Schedule XX: Use tax due on purchases picked up by a separately-organized, affiliated company in Washington for delivery to taxpayer in Oregon for use in Oregon

In this schedule, the auditors asserted deferred retail sales tax on purchases of tangible personal property picked up by . . . in Washington and delivered to the taxpayer in Oregon for use in Oregon. Because . . . is a wholly-owned subsidiary of [taxpayer's parent], the auditors considered [it] to be an agent of the taxpayer and not of the seller. The auditors reasoned that the taxpayer had received the goods within the state of Washington, thereby subjecting the sale to retail sales tax.

The taxpayer primarily advanced two arguments at the hearing and in its petitions.

First, the taxpayer refers to RCW 82.08.0273, which exempts from retail sales tax sales to nonresidents from certain states, including Oregon. The taxpayer explains that it has business operations located in several states, including Washington and Oregon. Although the taxpayer concedes that it had previously applied to the Department for a corporate nonresident permit for its out-of-state Oregon office and been refused, it nevertheless contends that the nonissuance of the permit was in error. The taxpayer argues that it should be considered a nonresident as to its Oregon operations and be entitled to the exemption. To do otherwise, the taxpayer argues would be a denial of equal protection under the United States Constitution and the laws of Washington State.

Second, the taxpayer contends that the goods were picked up by a for-hire carrier in Washington and delivered to the taxpayer in Oregon. Therefore, the taxpayer maintains that under WAC 458-20-193A, the sale was consummated in Oregon and is exempt from retail sales tax.

ISSUES:

1. Does retail sales tax apply to local calls originating from a coin operated telephone and charged to a residential customer's credit card?

2. Does standard, prewritten software become custom software if it is combined with other prewritten, software and some original programming?

* * *

3. Are amounts received for toll (long-distance) services that both originate and terminate within the state of Washington but are billed to an out-of-state telephone apparatus or person, excluded from the definition of network telephone services?

4. Under what tax classification should amounts received for directory assistance charges in excess of those included in the monthly telephone charge be reported?

5. Is a separately-incorporated trucking company a for-hire carrier within the meaning of Rule 193A and RPM 89-002 even though affiliated with the taxpayer?

DISCUSSION:

SCHEDULE XII: Unreported sales tax due on pay phone income billed to residential customers

[1] We agree with the taxpayer that the previously-quoted portion of RCW 82.08.0289 exempts all network telephone service to residential customers from the retail sales tax, except toll service.

WAC 458-20-245 (Rule 245), which is the lawfully-promulgated rule implementing the above statute defines "toll service" as:

> . . . the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

Since the credit card charges are for local calls wholly within the local telephone network calling area, they do not constitute "toll service." Therefore, because the charges are being billed to a residential customer[1] and they do not constitute "toll service," these charges are exempt from retail sales tax under RCW 82.08.0289 (1)(a). The taxpayer's petition is granted on this issue.

Schedules XXII, XXIII & XXV: Use tax due on purchases of software

[2] First, we will discuss the taxpayer's argument that its software purchases were nontaxable licenses to use. Excise Tax Bulletin 515.04.155 issued in 1979 distinguished between

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[1]The taxpayer concedes that credit card charges of local calls to commercial customers are subject to retail sales tax.

standard, prewritten, software programs and custom-produced, one-of-a-kind software programs that were developed for the express and exclusive needs of a particular user. WAC 458-20-155 (Rule 155) contains this same distinction. The Department's position has been and still remains that "standard, prewritten," software programs constitute tangible personal property subject to retail sales tax, whereas custom-produced, one-of-a-kind software programs are merely the tangible evidence of a professional service.

In 1985, the Department revised Rule 155. Prior to the adoption of revised Rule 155, transfers of computer software under license to use agreements were treated as professional services and not subject to sales or use tax. The Department distinguished a license to use from a lease or sale, because a license to use did not convey unconditional possession or use to the customer. Accordingly, we agree with the taxpayer that, for periods prior to the August 7, 1985 effective date of revised Rule 155, the taxpayer's purchases of licenses to use software were not subject to use and/or deferred sales tax. The taxpayer's petition is granted on this portion of the issue.
However, revised Rule 155[2] now states that all licenses to use of standard, prewritten software are sales of tangible personal property. Accordingly, for periods after the effective date of revised Rule 155, we reject the taxpayer's license to use argument. We must still consider, however, whether this standard software has been so significantly customized that it can no longer be considered standard, prewritten software.

Revised Rule 155 states in part:

> The term "custom program" means software which is developed and produced by a provider exclusively for a specific user, and which is of an original, one-of-a-kind nature.
>
> The term "standard, prewritten program," sometimes referred to as "canned" or "off-the-shelf" software, means software which is not originally developed and produced for the user.

It further clarifies:

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[2]Although WAC 458-20-155 is currently in the process of being revised once again, it is not anticipated that any changes to Rule 155 will affect periods prior to the effective date of the revised rule.

> If, on the other hand, the sale, lease, or licensing of the computer program is a sale or lease of a product, even though produced through a computer system or process, it is taxable as a retail sale. Standard, prewritten software programs do not constitute professional services rendered to meet the particular needs of specific customers, but rather, are essentially sales of articles of tangible personal property. Articles of this type are no different from a usual inventory of tangible personal property held for sale or lease and, irrespective of any incidental modifications to the program medium or its environment (e.g., adaptation to computer room configuration) to meet a particular customer's needs, the sale or lease of such standard software is a sale at retail subject to retail sales tax or use tax.

Finally it provides:

> . . . The retail sales tax applies to all amounts taxable under the retailing classification of business and occupation tax explained earlier. Providers must collect the sales tax from users of computer systems, hardware, equipment, and/or standard, prewritten software and materials delivered in this state. This includes outright sales, leases, rentals, licenses to use, and any other transfer of possession and the right to use such things, however physically packaged, represented, or conveyed.

(Emphasis supplied.)

The taxpayer argues that the fees it paid to its vendors were for the right to use intangible intelligence in the form of software which was created by [the vendors] for application with taxpayer's machines. These machines switch local and toll telephone calls in the telephone exchange area in which they are situated and do so using the mathematical intelligence (software) which it argues was custom developed by [the vendors]. The taxpayer further argues that each software program is peculiarly unique since it must be custom tailored to each machine's calling volumes, exchange size and physical location.

The taxpayer explains the facts as follows. When ordering software for the machines, the taxpayer may choose from several software packages. A representative software package . . .costs [more than $30,000] and contains [several prewritten software programs and features.]

To this basic software package, the taxpayer may choose to add additional optional features for a specified price. These features include: . . .and [vary] in price. The basic software program and the selected optional feature programs make up what the taxpayer refers to as the "generic program." The taxpayer concedes that neither the basic software program nor the optional feature programs were written specifically from scratch for the taxpayer. Nor are the basic program or the optional feature programs original or one-of-a-kind in nature. They are canned. Nevertheless, the taxpayer emphasizes that each office [having the machines] has different needs and requirements, and this necessitates that different combinations of features be added to the basic program.

In addition, separate technical translations[3] and parameters[4] must be written for each office, so that the total software package that is eventually installed into each machine is a one-of-a-kind original and unique program. In essence, the taxpayer argues that what was originally standard and prewritten software has now become a "customized" original one-of-a-kind software program. It therefore argues that they are not subject to the retail sales tax.

We must disagree. Revised Rule 155 requires that in order for a program to be considered a "custom program" it must be both "developed and produced by a provider exclusively for a specific user, . . ." and also "be an original, one-of-a-kind nature." In this case, the bulk of the generic program has not been developed and produced by the provider exclusively for the taxpayer. On the contrary, it appears that the basic program has been in existence since at least prior to the [time when taxpayer received the reporting instructions]. Nor has the taxpayer presented any evidence that the additional feature programs were developed and produced exclusively for the taxpayer. These also appear to be merely standard, prewritten software programs which are copied, reused, and relicensed to different customers based on their marketability. In this case, we believe that the vendor has simply combined one standard, prewritten, basic program with other standard, prewritten, feature programs to arrive at a more sophisticated standard, prewritten, hybrid program. This does not constitute a custom software program. Indeed, revised Rule 155 clearly states that sales of standard, prewritten software are fully subject to the retail sales/use tax, notwithstanding

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[3]"Translations" represent the detailed information regarding the number of line, trunks, and service circuits that the particular office will have.

[4]"Parameters" refers to the specific hardware configuration (the equipment make-up) of the particular office for which the software is designed.

some incidental modifications. Therefore, we conclude that even though a particular program may be unique to a particular machine, these modifications do not convert what was otherwise several standard, prewritten software programs into one unique custom program. To the extent that some original programming, instructions, translations, or parameters needed to be written for an individual machine, these acts constitute "incidental modifications to the program medium or its environment . . . to meet a particular customer's needs" within the meaning of Rule 155.

We further note that, under revised Rule 155, even custom original software is subject to retail sales tax when sold as part of a computer system[5].

Next, we will address the taxpayer's estoppel argument. Because we have already acknowledged that licenses to use software were not considered taxable retail sales prior to the revision of Rule 155, we need only concern ourselves with periods after the revised rule's effective date.
Notwithstanding the taxpayer's [receipt of prior reporting instructions] on a similar factual pattern, we do not believe that estoppel applies to any periods after August 7, 1985. Revised Rule 155 is the lawfully-promulgated rule governing the taxability of computer systems, hardware and software. It was adopted after full and open public hearings. As such, it has the full force and effect of law unless declared invalid by the judgment of a court of record not appealed from. RCW 82.32.300. In this case, the taxpayer and the public were fully apprised of the change in position by the Department and are now bound by those changes.

As the Washington State Supreme Court stated in Kitsap-Mason Dairymen's Association v. Tax Commission, 77 Wn.2d 812 (1970), at page 818, "The doctrine of estoppel will not be lightly invoked against the state to deprive it of the power to collect taxes." It has further held that estoppel will only prevent the state from collecting public revenues when all of the elements are present and applying the doctrine is necessary to prevent a manifest injustice. Harbor Air v. Board of Tax Appeals, 88 Wn.2d

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[5]Revised Rule 155 defines "computer system" as: "a functional unit, consisting of one or more computers and associated software, that uses common storage for all or part of the data necessary for execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation; including arithmetic operations and logic operations; and that can execute programs that modify themselves during their execution."

359 (1977). In the taxpayer's case, even assuming that all of the elements are present[6], we do not believe that the application of the estoppel doctrine is required to prevent a manifest injustice. This is not a case where a taxpayer has relied on [prior written instructions] and failed to collect retail sales tax from its customers. Nor is this a case where a taxpayer has relocated a repair facility in reliance on a prior ruling. On the contrary, the tax involved here is use tax, upon which the primary liability falls squarely upon the taxpayer as a consumer. Application of estoppel in this case would merely provide this taxpayer, after having been fully notified of the Department's change in position through the revision of Rule 155, a further windfall not afforded to other taxpayers. We do not believe that requiring this taxpayer to pay its fair share of taxes constitutes a manifest injustice. Accordingly, the taxpayer's petition on the estoppel issue is denied.

* * *

Schedule XIV: Unreported retail sales--Washington intrastate toll service billed to Oregon phone numbers

[3] RCW 82.04.050 includes within the definition of a retail sale "providing of telephone service." RCW 82.04.065(3) defines telephone service as meaning, "competitive telephone service or network telephone service, ..." RCW 82.04.065(2) defines network telephone service as:

> the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state.

[6]We do not concede that the taxpayer has established the three elements of estoppel.

We believe that the taxpayer misconstrues the language in RCW 82.04.065(2). The language clearly includes "toll service" within the definition of network telephone service. The above-referenced language merely clarifies that "network telephone service" specifically includes interstate service, including toll service, that either originates or is received on telecommunications equipment located in this state if the charge for service is billed to an apparatus in Washington. It certainly does not state, nor does it imply, that an otherwise wholly intrastate toll call (one that begins and ends in Washington) is suddenly excluded from the definition of "network telephone service" and exempted from retail sales tax merely because it is billed to an apparatus or person located outside the state of Washington[7]. Accordingly, we must deny the taxpayer's petition on this issue.

Nor do we agree that this interpretation would present a constitutional question. We do not agree that any other state besides Washington would have jurisdiction to tax what is a wholly intrastate transaction merely because it was billed to an apparatus in that state.

Schedules VI & VII: Directory assistance and other services reclassified from Retail to Service

[4] We agree with the taxpayer that the 1983 Legislature intended to remove all remaining traditional telephone services (including directory assistance) from the Public Utility tax and to place them into the Retailing and retail sales tax classifications. We also agree that the $.25 per inquiry charges in excess of the four free inquiries that are included in the basic monthly rates are merely additional compensation received for network telephone services. As such, these amounts are also taxable under the Retailing and retail sales tax classifications[8]. The taxpayer's petition is granted on this issue.

Schedule VIII: Access charges for information users reclassified from Wholesale to Retail

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[7]Using the taxpayer's analysis, any Washington toll call would be excluded from "network telephone service" if the charge for the service was billed to a person outside of Washington. We do not believe that the Legislature intended to create such a large loophole in the statute.

[8]We find directory assistance charges clearly distinguishable from "976" information services. These services were not in existence at the time of the 1983 statutory changes.

Since we have already ruled that directory assistance charges are included within the definition of network telephone service, related access charges purchased by out-of-state carriers which will be resold to that carrier's customers are purchases for resale. The taxpayer's petition is granted on this issue.

Schedule XX: Use tax due on purchases picked up by a separately-organized, affiliated company in Washington for delivery to taxpayer in Oregon for use in Oregon

[5] RCW 82.08.0273 states in part:

> The tax [retail sales tax] levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser has applied for and received from the department of revenue a permit certifying (1) that he is a bona fide resident of a state or possession or Province of Canada other than the state of Washington, (2) that such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (3) that he does agree, when requested, to grant the department of revenue access to such records and other forms of verification at his place of residence to assure that such purchases are not first used substantially in the state of Washington.

(Emphasis supplied.)

The statute clearly limits the exemptions to only those nonresidents who have "applied for and received from the department of revenue a permit . . . ." In the taxpayer's case, it applied for a corporate nonresident permit, but was found to be ineligible[9]. The taxpayer has submitted no documentation substantiating its eligibility and we, therefore, must deny the taxpayer's petition on this issue.

Concerning the taxpayer's argument that the goods were delivered by a for-hire carrier to the taxpayer outside the state, we must first examine WAC 458-20-193A (Rule 193A). It lists the

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[9]Although the taxpayer did not explain why it did not receive a corporate nonresident permit, we presume that it was because it was not incorporated in one of the designated eligible states, possessions or territories. See ETB 316.08.193 (Sixth Revision).

requirements necessary to substantiate an interstate deduction and states in part:

> Where the seller agrees to and does deliver the goods to the purchaser at a point outside the state, neither retailing nor wholesaling business tax is applicable. Such delivery may be by the seller's own transportation equipment or by a carrier for hire. In either case for proof of entitlement to exemption the seller is required to retain in his records documentary proof (1) that there was such an agreement and (2) that delivery was in fact made outside the state.

(Emphasis supplied.)

RPM 89-002 further clarifies the type of documentation required to substantiate that goods were actually delivered by the seller to the buyer at a point outside the state of Washington. It states in part:

> Sales by sellers located in this state of goods delivered to buyers outside this state by carriers-for-hire are not subject to the wholesaling or retailing business and occupation tax or the retail sales tax in any cases where the seller is shown as consignor and the buyer is shown as consignee on the delivery bill of lading or other contract of carriage under which the goods are shipped to the out-of-state destination. This interstate sales exemption applies even in cases where the shipment is arranged through a freight consolidator or freight forwarder acting on behalf of either the seller or the buyer. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis.
>
> PROCEDURES
>
> Proof of entitlement to this interstate exemption, which must be retained by the seller in all cases will be a copy of the bill of lading or other contract of carriage showing the seller as consignor and the buyer as consignee as well as the out-of-state destination point of the goods sold.

Because RPM 89-002 was issued after the completion of this taxpayer's audit report, we are remanding this issue back to the Audit Division for a reexamination of the shipping documentation in light of RPM 89-002. We do agree with the taxpayer, however, that for purposes of Rule 193A and RPM 89-002, . . . may be

considered a for-hire carrier, notwithstanding its affiliation to the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part, denied in part and remanded in part.

DATED this 23rd day of January, 1992.