

Cite as Det. No. 92-056, 12 WTD 105 (1993).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment)	
of)	No. 92-056
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RCW 82.08.0261 and RULE 175: SALES TAX -- EXEMPTION CERTIFICATES. Vendor required to obtain exemption certificates for chemicals and cleaning supplies sold to common carriers. Chemicals consumed in cleaning do not qualify as component parts.

[2] RCW 82.32.050 and RULE 230: STATUTE OF LIMITATIONS. Assessment made timely when mailed to taxpayer's registered address within statute of limitations regardless of taxpayer's claim that it was not received.

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:

The taxpayer appeals an assessment of sales tax on chemicals sold to shipping companies that operate as common carriers. The taxpayer also claims that it did not receive its assessment until the statute of limitations had expired for one of the years in the audit period.

FACTS AND ISSUES:

Free, A.L.J. -- The taxpayer sells chemicals. It is a foreign corporation headquartered out-of-state. Its customers used many

of the chemicals it sold to clean the holds of ships. The taxpayer did not collect retail sales tax on these chemicals.

The taxpayer was audited for the period from January 1, 1986 through December 31, 1989 and an assessment was issued. The auditor assessed retail sales tax on chemicals delivered to customers in Washington. According to the auditor, the chemicals were used to clean the ship holds prior to reloading. Common carrier exemption certificates as component parts were not allowed. Since the chemicals were cleaning agents, they did not become part of the ships.

The taxpayer indicates that it sent the auditor resale certificates and has additional sales tax exemption certificates primarily from shipping companies engaged in interstate or foreign commerce. According to the taxpayer, these certificates were received in good faith. Additional exemption certificates were included with the petition.

In addition to bilge cleaners, the taxpayer states the chemicals were used as lubricants and to clean boilers, equipment, and fuel tanks. The taxpayer asserts that the statement that the materials sold would be used as repair or replacement parts on vessels engaged in foreign commerce is correct.

The taxpayer also contends that the chemical products were sold to common carriers engaged in interstate and foreign commerce. RCW 82.08.0261 exempts from the retail sales tax, sales of tangible personal property for use by the purchaser in connection with the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce. Since the ships were used in foreign commerce by the taxpayer's customers, common carriers, the taxpayer contends that the sales should be exempt.

The taxpayer states that it initially received the assessment via certified mail February 4, 1991. It contends the assessment for the year ending December 31, 1986 is barred by the statute of limitations. The audit file contains a copy the assessment dated November 1, 1990 indicating the assessment was mailed on that date. The audit staff indicates that the assessment was mailed on November 1, 1990.

DISCUSSION:

RCW 82.08.020 imposes sales tax on tangible personal property such as the chemicals sold by the taxpayer in Washington. RCW 82.08.0262 exempts the sale of transportation equipment and component parts used by common carriers in interstate or foreign

commerce. This exemption does not apply to consumable supplies such as cleaning agents and chemicals.

RCW 82.08.0261 allows an exemption from sales tax for property like the chemicals and consumable supplies purchased by private or common carriers for use in interstate or foreign commerce. However, the purchaser must pay use tax for use of the property in Washington.

Normally, vendors are required to collect the tax from their customers. WAC 458-20-175 (Rule 175) provides a system whereby the vendors of tangible personal property exempt under RCW 82.08.0261 and 82.08.0262 are relieved of this obligation provided that they obtain the proper documentation.

Rule 175 contains several sample exemption certificates. The first two certificates are inapplicable to the taxpayer's products since the taxpayer is not selling fuel or component parts. The third certificate is the type that the taxpayer needs to obtain exemption from collecting sales tax on its products.

Because of the statutory requirement that the purchaser must pay the use tax to be entitled to the exemption under RCW 82.08.0262, Rule 175 provides in part:

Due to the difficulty in many cases of determining at the time of purchase whether or not the property purchased or a part thereof will be put to use in this state and due to the resulting accounting problems involved, persons engaged in the business of operating as private or common carriers by air, rail or water in interstate or foreign commerce will be permitted to pay the use tax directly to the department of revenue rather than to the seller, and such sellers are relieved of the liability for the collection of such tax. This permission is limited, however, to persons duly registered with the department. The registration number given on the certificate which will be furnished to the seller ordinarily will be sufficient evidence that the purchaser is properly registered.

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Similarly, where consumable goods, such as ice, bunker fuel, or lubricants are purchased by or for carriers not registered with the department, and delivered on board a carrier regularly engaged in interstate or foreign commerce for consumption while both within and without the territorial boundaries of the state of Washington, the seller is required to collect from the

buyer the amount of use tax applicable to that portion of the products sold which will be consumed within this state.

It will be presumed that the entire amount of the goods purchased will be consumed within this state unless the seller obtains from the buyer a certificate certifying as to the amount thereof which will be consumed while within the territorial boundaries hereof.

A sample certificate appears at the end of the Rule. To be granted relief, the taxpayer needs to provide these certificates to the auditor for the transactions where the auditor assessed sales tax which the taxpayer disputes. If the purchasers are registered with the State of Washington and they furnish their registration number, they are not required to pay the use tax to the taxpayer, but may submit it directly to the department. However, for unregistered purchasers, the certificates obtained by the taxpayer must indicate the quantity of the product consumed in Washington. Otherwise, the entire amount will be considered to be consumed here and the taxpayer will be liable for tax on the entire amount.

[2] Regarding the taxpayer's statement that it did not receive the assessment until after the statute of limitations expired for 1986, RCW 82.32.050 provides in part:

The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

* * *

No assessment or correction of an assessment for additional taxes due may be made by the department more than four years after the close of the tax year, except

The auditor had numerous discussions with the taxpayer prior to issuing the assessment. The Audit Division has indicated that the assessment was mailed in November, 1990. The assessment was addressed to the correct taxpayer's address.

We find that the assessment was timely made. The statute only requires the assessment be mailed. It does not require the assessment to be sent by certified mail. No penalties were assessed against the taxpayer for its delay in appealing the assessment.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part.

DATED this 4th day of March 1992.