

Cite as Det. No. 13 WTD 14 (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. 90-92
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RULE 174: USE TAX -- VEHICLES USED SUBSTANTIALLY IN INTERSTATE COMMERCE -- 25% TEST APPLIED ON A VEHICLE BY VEHICLE BASIS. For determining whether a vehicle has been used "in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state" the Department requires that the vehicle be used in actually transporting property or persons for hire across state boundaries at least 25% of the time. This test is to be applied on a vehicle by vehicle basis. Accord: UPS v. Department of Rev., 102 Wn.2d 355, (1984).

[2] RULE 178: USE TAX -- LEASED VEHICLES -- OUT-OF-STATE USAGE -- APPORTIONMENT. Taxpayer was found subject to use tax on leased vehicles only upon that portion of the lease payments attributable to mileage traveled within the state of Washington.

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 TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

An ICC carrier protests additional use tax imposed on carrier equipment in an audit report.

FACTS AND ISSUES:

Okimoto, A.L.J. (Successor to Potegal, A.L.J.) -- [Taxpayer] is an ICC carrier whose offices are located in . . . , Washington. The books and records of the taxpayer were examined for the period January 1, 1983 through June 30, 1987. As a result of the audit, an assessment was issued [in February 1988] for additional taxes and interest owing in the amount of \$ The taxpayer has appealed and it remains due.

Taxpayer's business consists of both transporting property for hire via leased trucks and the selling of certain other goods at wholesale.

The auditor determined that a use tax exemption applied to vehicles under RCW 82.12.0254 if but only if the following conditions had been met:

1. The user holds an ICC permit;
2. The vehicle is used
 - a. in substantial part
 - b. in the normal and ordinary course of the user's business
 - c. for transporting therein persons or property for hire across the boundaries of the state; and
3. The first use of the vehicle in Washington is actual use in conducting interstate or foreign commerce.

The auditor concedes that the first and third conditions of the statute have been met by the vehicles in question, but contends that the second condition of having been "substantially used in interstate commerce" has not. To determine whether the vehicles met the "substantially used in interstate commerce" test, the auditor applied on a vehicle by vehicle basis, a "line-crossing" test to determine interstate usage, and used 25% in any given 12-month period as meeting the "substantially used" requirement. In a three month test period, ten of taxpayer's fifty-six trucks failed to meet this "25% line-crossing" test. Accordingly, the auditor disallowed the exemption and asserted use tax on the percentage of lease payments attributable to those trucks.

The taxpayer does not contest the "25% line-crossing" test, but argues that the test should be applied on a fleet basis, as opposed to a vehicle by vehicle basis. The taxpayer argues that the "25% line-crossing" test has been applied to other similarly situated taxpayers on a fleet basis, and to apply it on a vehicle by vehicle basis to him is unfair.

The taxpayer also contends that he was told by his accountant that the Department had applied the "25% line crossing" test on a fleet basis to other taxpayers, and that he had detrimentally relied on those instructions.

In the alternative, the taxpayer argues that any use tax found to be due should be apportioned to exclude from tax, any portion of the lease payments attributable to out-of-state usage.

ISSUES:

1. Should the Department's "25% line-crossing" test be applied on a vehicle by vehicle basis, or on a fleet basis?
2. If use tax is due, may it be apportioned to exclude lease payments attributable to out-of-state usage?

DISCUSSION:

[1] RCW 82.12.0254 provides a use tax exemption:

... in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce;

(Emphasis ours).

We note that the statute refers to "the use ... of any motor vehicle" and not to the use of any fleet of vehicles. Therefore, the statute clearly provides that the "substantial use" test is to be applied on a vehicle by vehicle basis, and we so rule. See also United Parcel Service v. Department of Rev., 102 Wn.2d 355, (1984).

Nor are we persuaded that the taxpayer detrimentally relied on instructions from the Department to other taxpayers. We have contacted Department auditors regarding the application of the "25% line-crossing" test on a fleet basis to other taxpayers, and have found no corroboration whatsoever. Even assuming arguendo, that such applications were made, we do not believe that the Department would be obligated to further extend that error by improperly applying the tax law to the taxpayer. Should the taxpayer desire to supply the names and registration numbers of

the taxpayers involved in the alleged incorrect audit applications, we will refer the matter to our audit section for the appropriate correction. Accordingly, the taxpayer's petition is denied on this issue.

[2] We agree, however, that in regard to computing the amount of use tax due on leased vehicles, the taxpayer is subject to use tax only upon that portion of lease payments attributable to mileage traveled within the state of Washington. The taxpayer's petition is granted on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied in part. The taxpayer's petition shall be remanded to the audit section and adjusted in accordance with this determination.

DATED this 23rd day of February of 1990.