

Cite as Det. No. 93-142, 13 WTD 287 (1994).

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. 93-142
	)	
	)	Registration No. . . .
) FY . . . /Audit No. . . .		

[1] RULE 179: MOTOR TRANSPORTATION PUBLIC UTILITY TAX -- DEDUCTIONS -- EXPORT LOGS -- IN THEIR ORIGINAL FORM -- DEBARKING OF LOGS. There is a deduction from the gross income subject to the Public Utility Tax for amounts received for hauling commodities/logs to the export facility when the commodities/logs are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. The removal of bark from the hauled logs after delivery to the export facility is a change in the form of the logs and negates the deduction.

This headnote is provided as a convenience for the reader and is not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

. . .

NATURE OF ACTION:

Petition protesting the assessment of Motor Transportation Public Utility Tax (P.U.T.) on the hauling of logs.

FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] is engaged in the business of hauling logs.

The Department of Revenue (Department) examined the taxpayer's business records for the period from January 1, 1988 through December 31, 1991. As a result of this audit, the Department issued the above captioned tax assessment [in August 1992]

asserting tax liability and interest due. The taxpayer made a payment [in September 1992] and the balance remains due.

The taxpayer's protest involves Schedule V of the audit report where the auditor found additional Motor Transportation P.U.T. due because of the disallowance of deductions reported by the taxpayer for the exporting of hauled logs.

The taxpayer picks up the logs for hauling at the landing after the logs have been felled. The logger issues a ticket at the landing, at the time the logs are loaded on the taxpayer's truck. The tickets tell the type and destination of the logs, and by codes (L1 and L3) indicate that the logs are export logs. The taxpayer delivers the logs to the mill yards and has no further control over the logs.

The taxpayer points to the regulation of the Washington Utilities and Transportation Commission (WUTC) that provides for intrastate rates to apply to "shipments of logs moving within the state of Washington where the origin is in this state and the destination within this state is a sorting yard for storage, classification or sorting of the logs." WAC 480-12-322 (1). However, subsection (2) provides:

(2) The requirements of subsection (1) of this rule do not apply where the timber has been specifically selected and tagged as export at the place where the timber was cut or initially tendered for shipment.

The taxpayer believes the P.U.T. assessment is unfair because the WUTC does not regulate the hauling rates that apply to logs bound for export. Consequently, the income from hauling export logs is 10 to 20 percent less.

[The mill] has reported to the Department that certain percentages, ranging from 53 to 78 percent, of the logs initially ticketed for export were "debarked" before being exported. These percentages were applied by the Department's auditor to the taxpayer's export hauling income to compute the income subject to the Motor Transportation P.U.T. The taxpayer feels that the tax should be paid by the mill because the export status of the logs was changed after the taxpayer completed delivery of the logs to the mill.

Asserting that it had followed the WAC rules and regulations that apply to it and for the reasons stated, the taxpayer asks for a finding that the P.U.T. is not due.

DISCUSSION:

The Public Utility Tax (P.U.T.) is found in Chapter 82.16 RCW which has the following statutes pertinent to the taxpayer's business of transporting logs for hire.

RCW 82.16.010 in pertinent part provides:

(8) "Motor transportation business" means the business . . . of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, . . . .

(Emphasis added.)

The P.U.T. is imposed upon the gross income of motor transportation businesses by RCW 82.16.020 (1)(f). See also WAC 458-120-180 (Rule 180). RCW 82.16.050 in pertinent part provides for a deduction as follows:

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 this state to final destination outside this state, . . . and amounts derived from the transportation of commodities from points of origin in this state to an export elevator, wharf, dock or ship side . . . from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations . . . .

(Emphasis added.)

Section (8) of WAC 458-20-179 (Rule 179) repeats that the deduction from the P.U.T. is allowed only when the commodities/logs are in their original form when forwarded to an interstate or foreign destination. Excise Tax Bulletin 550.16.179 (ETB 550), copy attached, clarifies the conditions to be met to qualify for the deduction. ETB 550 in pertinent part states:

(3) The form of the logs cannot be changed between the time the logs are delivered to the export facility and the time the logs are put on the ship. The removal of bark from the logs while the logs are at the export facility is a change in the form of the logs. It permits substantially more logs to be placed on board the vessel.

. . . .

The log hauler must prove entitlement to the deduction. Delivery tickets which show delivery to an export facility are not, alone, sufficient proof. A statement from the export facility operator is acceptable additional proof when the operator certifies:

- (1) There will be no intervening hauls.
- (2) The logs will remain in their original form, and
- (3) All the logs will ultimately go by ship to another state or country.

(Emphasis added.)

In this case, the mill has reported in writing that certain percentages of the logs were debarked, that is, not in their original form, prior to exportation. Consequently, the taxpayer's income from hauling of those logs which were debarked do not qualify for the deduction. We conclude that the auditor's disallowance of the deduction was proper.

We sympathize with the taxpayer's feeling that it received a lesser amount of hauling income because the WUTC does not regulate hauling rates for export and yet its hauling turned out to be intrastate. But, this matter is something that is between the taxpayer and the WUTC and/or the mill.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 25th day of May, 1993.