Cite as Det. No. 13 WTD 133 (1993).

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

In the Matter of the Petition For Reconsideration of the Tax Assessment on	)	D E T E R M I N A T I O N
	)	No. 92-246R
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] RULE 180: TRANSPORTATION -- PUBLIC UTILITY TAX -- COMMERCE EXPORTS -- LOGS. The taxation of local transportation services does not violate the Commerce Clause or the Import and Export Clause even if the transportation services are used in getting exports to a port.

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:

The taxpayer has petitioned for a reconsideration of Determination No. 92-246 ruling that deliveries of logs to accumulation yards or to booming grounds for subsequent transport to shipside do not qualify for the motor or urban transportation tax deduction.

FACTS:

Lewis, A.L.J. -- . . . . The Department of Revenue (Department) issued [an assessment] asserting tax liability and interest due . . . . On September 2, 1992 Determination No. 92-246 was issued. It upheld the tax on all issues and ordered payment of the audit assessment and extension interest . . . . The taxpayer filed a timely appeal for a reconsideration of whether income derived from transporting logs to accumulation yards or to booming grounds for subsequent transport to shipside is deductible from the measure of public utility tax.

The taxpayer operates a trucking firm that has a division that hauls logs.

ISSUE:

Whether the income derived from hauling logs, destined for export, to a rafting facility is exempt from the motor transportation public utility tax?

DISCUSSION:

The motor transportation public utility tax at issue is imposed by Chapter 82.16 RCW. For purposes of that chapter, the term "motor transportation business" is defined as follows:

> (8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80...010: Provided, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

A statutory exemption is provided from the motor transportation tax in RCW 82.16.050(8):

> (8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from a point of origin to final destination; and 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, <u>without intervening transportation, by vessel,</u> in their original form, to interstate or foreign destinations: *Provided,* That no deduction will be allowed when 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;...

(Emphasis added.)

The public utility tax is imposed upon the purely local transportation of goods. RCW 82.16.050(8) is not an exemption for interstate or foreign commerce. It is an exemption for local transportation services occurring prior to commencement of interstate or foreign commerce, which local transportation, but for the special statutory exemption, is fully taxable by the state.

The original determination upheld the audit adjustment that disallowed the interstate deduction taken on income received from hauling logs for export to an accumulation yard. It was found that the taxpayer does not haul the logs directly to a wharf, dock or shipside as the exemption requires. Rather, the taxpayer hauls the logs to a rafting facility where they are held and then later hauled to a different facility before being loaded onto a ship. The determination found that the deduction is restricted to the transportation of commodities which otherwise qualify and which are delivered to a point where equipment of the port facility can load the commodities directly, into the hold of a vessel, without intervening transportation. Since the required elements of the deduction were not met the deduction was disallowed.

The taxpayer's petition for reconsideration contends that the original determination, where we held that the deliveries of logs to accumulation yards or to booming grounds for subsequent transport to shipside does not qualify for the motor transportation interstate deduction, was inconsistent with the court's ruling in Carrington Company v. Department of Rev., 84 Wn.2d 444 (1975).

In Carrington, supra, the plaintiff sought a refund of B&O taxes paid, contending that it should have been allowed an interstate deduction under WAC 458-20-193C (Rule 193C) for all sales made to the U.S. Government, all of which were shipped out of the state of Washington and therefore in the "export channel" insuring a "certainty of export." Plaintiff alleged that any taxation of sales made to the GSA, which were identified for export and actually exported with no possibility of diversion for uses within Washington, was an unconstitutional restriction on interstate commerce in violation of article I, §10, of the United States Constitution.

The superior court held for the plaintiff stating that all goods sold by plaintiff to GSA entered the export channel upon delivery to the Alexander Avenue facility. Export packing at the

Alexander Avenue facility was not a break in the stream of exportation but rather furthered that stream of exportation. Packing and crating by the facility was an incidental part of the total export journey and was not the primary station of commencement of an export journey. The requisite certainty of export was established at the time the goods were delivered to a vehicle of transportation, under the circumstances where it was clear that the goods in question would be taken to a foreign destination. Thus, the plaintiff met in Carrington the requirements of Rule 193C.

The Washington Supreme Court affirmed the superior court's ruling that the plaintiff met the requirements of Rule 193C. Additionally, the court held that Rule 193C acknowledged that something short of delivery at dockside would constitute entry into the export stream.

The Carrington case concerned the retailing B&O tax assessed on the income derived from the sale of goods. In contrast, the taxpayer's case concerns a motor transportation public utility tax assessed on the income derived from the transportation of goods.

Both the Commerce Clause[1] and the Import and Export Clause[2] of the United States Constitution contain limitations on the taxing powers of the states. However, we do not find that taxation of the taxpayer's transportation income would be invalid under either clause.

In Canton Railroad Co. v. Rogan, 340 U.S. 511 (1951), the Court considered the validity of Maryland's franchise tax, measured by gross receipts, as applied to common carriers of freight. In that case about half the receipts arose out of moving imports and exports within the port. The Court rejected the taxpayer's contention that handling goods destined for export is part of the process of exportation. The Court held that any activity more remote than loading or unloading did not commence the movement of the commodities abroad nor end their arrival and therefore was not part of the export or import process. 340 U.S. at 515. In a companion case, the Court also found a state is not required to

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[1]U.S. Const., article I, § 8, Cl. 3. This clause grants Congress the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...."

[2]U.S. Const., article I, § 10, Cl. 2. "No State shall, without the Consent of the Congress, lay any Imports or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws...."

grant tax immunity to the transportation services involved in getting exports to a port or imports to their destination. Western Maryland Railroad Co. v. Rogan, 340 U.S. 520 (1951).

In the Washington Stevedoring case, The U.S. Supreme Court upheld the B&O tax on stevedoring that included the handling of goods destined for foreign countries. Department of Revenue of Washington v. Association of Washington Stevedoring Companies, 435 U.S. 734 (1978). The Court noted that neither the taxation of the transportation services upheld in Canton Railroad or the stevedoring activities related to the value of goods was in violation of the U.S. Constitution. As the taxation could not be considered a taxation upon the goods themselves, the Court did not find the tax an invalid "impost" or "duty." 435 U.S. at 758. In Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), the Court held that a tax does not violate the Commerce Clause merely because it is applied to an activity that is part of interstate or foreign commerce.

In this case, as in the Stevedoring case, the tax imposed is not a taxation on the goods themselves and is not an invalid impost or duty prohibited by the U.S. Constitution. Since there is no Constitutional prohibition of the tax and the elements of the deduction have not been met the tax assessed in the audit is upheld.

DECISION:

The taxpayer's petition for correction of assessment is denied.

DATED this 29th day of April 1993.