Cite as Det. No. 93-240, 13 WTD 369 (1994).

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. 93-240
Taxpayer "A"	)	Registration No. . . .
	)	FY . . ./Audit No. . . .
Taxpayer "B"	)	Registration No. . . .
	)	FY . . ./Audit No. . . .

[1] RULE 102, RULE 122; ETB 190: RETAIL SALES TAX -- RESALE CERTIFICATE -- FARMER -- FEEDLOT. A feedlot which fattens its own cattle for longer than sixty days before selling them at wholesale will be treated as a farmer and may give its vendors resale certificates for its purchases of feed.

[2] RULE 180, RULE 194, RULE 193D, & RULE 179: PUBLIC UTILITY TAX -- MOTOR TRANSPORTATION -- PLACE OF SERVICE -- INTERSTATE COMMERCE INTERSTATE BILL OF LADING -- ABSENCE THEREOF. When a taxpayer is paid for hauling entirely within Washington absent an interstate bill of lading, it is subject to Motor Transportation (or Urban Transportation) public utility tax. Proof that the property itself is the subject of an interstate or foreign transaction, absent a through bill of lading across state lines, does not qualify for deduction.

[3] RULE 174; RCW 82.08.0263: RETAIL SALES TAX -- EXEMPTION -- MOTOR VEHICLES -- TRAILERS -- USE IN INTERSTATE COMMERCE. For the RCW 82.08.0263 sales tax exemption to apply, 1) the purchaser must be the holder of a carrier permit issued by the Interstate Commerce Commission, 2) the vehicle or trailer must be purchased to transport persons or property for hire in interstate or foreign commerce, and 3) the vehicle or trailer must first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit.

[4] RULE 174; RCW 82.08.0262: RETAIL SALES TAX -- EXEMPTION -- PROPERTY WHICH BECOMES A COMPONENT OF A MOTOR VEHICLE OR TRAILER. For the RCW 82.08.0262 sales tax exemption to apply to the purchase of tangible personal property, 1) the property must become a component part of a motor vehicle or trailer, and 2) the motor vehicle or trailer will be used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. "Components" must become an integral part of the vehicle or trailer.

[5] RULE 178; RCW 82.12.0254: USE TAX -- EXEMPTIONS -- MOTOR VEHICLES AND TRAILERS -- ICC PERMIT -- SUBSTANTIAL USE -- INTERSTATE COMMERCE. The sales and use tax exemptions for the purchase and use of motor vehicles used in interstate commerce require: 1) the user hold an ICC permit, 2) the vehicle or trailer be used in substantial part in the ordinary course of the user's business for transporting persons or property for hire across the boundaries of the state, and 3) the first use in Washington is actual use in conducting interstate or foreign commerce.

[6] RULE 178; RCW 82.12.0254: USE TAX -- EXEMPTIONS - COMPONENTS OF TRUCKS AND TRAILERS -- ICC PERMIT. The use tax exemptions for purchase of parts that become components of motor vehicles or trailers require: 1) the user hold an ICC permit authorizing transportation across the boundaries of the state and 2) the property must become a component part (i.e., attached to and an integral part of the motor vehicle or trailer).

[7] RULE 106; RULE 174: RETAIL SALES TAX -- TRANSFER -- ADJUSTMENT OF BENEFICIAL INTEREST -- TRUCKS AND TRAILERS. A change in the "mere form of ownership" of property under Rule 106 is deemed not a "retail sale" as defined under RCW 82.04.050. When trucks and vehicles are transferred in exchange for stock under Rule 106, a "sale" has not taken place. The RCW 82.08.0262 requirements are therefore not required to further exempt the transfer from retail sales tax.

[8] RULE 106: RETAIL SALES TAX -- USE TAX -- REORGANIZATION -- TAXES NOT PREVIOUSLY PAID. When retail sales/use tax was not previously paid on property by the transferor in a Rule 106 reorganization because the property was properly exempt, and when the property will also be otherwise exempt when owned by

the transferee, retail sales tax will not be imposed under Rule 106. This will not bar the imposition of use tax in the future if the property should lose its exempt status.

[9] RULE 106: B&O TAX -- RETAIL SALES TAX -- USE TAX -- REORGANIZATION -- ASSUMPTION OF DEBT. The assumption of debt in an otherwise exempt Rule 106 transaction does not render that transaction taxable.

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.

. . .

NATURE OF ACTION:

Petition concerning the motor transportation tax; taxability of sales, purchases, and transfers of trucks, trailers, and components thereof to holders of ICC permits; and sales of hay to a feedlot.

FACTS:

Bauer, A.L.J.- Taxpayer "A," a marital community and sole proprietorship, owned all the stock of taxpayer "B," a corporation. These taxpayers' business records were jointly audited for the period from January 1, 1988 to December 31, 1991. As a result, the above-referenced assessments were issued [in September 1992] . . . which . . . included interest through the date of assessment. These amounts have not been paid, and the taxpayers have timely petitioned for correction of the assessments. The taxpayers have not contested and have paid amounts assessed in Schedule VI of Taxpayer A's assessment and Schedules II and IV of Taxpayer B's, assessment. The taxpayers further concede the issues set forth in Schedule VII of Taxpayer A's assessment, but payment has not yet been made on this amount.

Taxpayer A's business activities originally consisted of two divisions: hay sales and transportation for hire. The hay sales division made wholesale and retail sales of hay and straw. The transportation division provided both intrastate and interstate transportation services.

At the beginning of the audit period, Taxpayer B's business activities were limited. [In June 1990], Taxpayer B acquired Taxpayer A's transportation division. Taxpayer B's business activities thereafter consisted of providing transportation for

hire, truck maintenance and repairs, the rental of trucks and trailers, and bookkeeping services.

Both taxpayers held ICC permits allowing transportation for hire across state lines when they provided these services.

When Taxpayer B acquired Taxpayer A's transportation division, Taxpayer A transferred its vehicles and trailers to Taxpayer B in exchange for stock. Some of the vehicles were subject to underlying obligations, which obligations were assumed by Taxpayer B (Taxpayer A still remained liable on these debts). The taxpayers explain that they approached the Department of Revenue with Taxpayer B's corporate minutes authorizing the transfer of the vehicles in an attempt to confirm that no tax was due on the transfer. In making application for title transfer, a Department of Revenue employee filled in the document in her own writing and presented it to the taxpayers for signature. The taxpayers signed the application "in reliance" upon the Department of Revenue's written instruction that no further action was required to exempt the vehicles from the sales/use tax.[1]

TAXPAYER'S EXCEPTIONS/ISSUES:

1. Whether sales in Schedule III of Taxpayer A's assessment were exempt sales to a farmer. This audit schedule consists of two sales of hay to a feedlot. The taxpayer contends these should be exempt as sales to a farmer under WAC 458-20-102. There is no detailed information available to date regarding the feedlot's business.

2. Whether public utility tax was correctly imposed on motor transportation income in Schedule VIII of Taxpayer A's assessment because it involved a transaction in interstate and foreign commerce. Taxpayer A further contends that the auditor's application of the test period statistics to the income reported in Taxpayer A's return resulted in a distortion of income.

Taxpayer A has indicated that documentation is available to demonstrate the interstate and foreign nature of this transportation. Other than to generally object to the application of the test period based on a distortion of income,

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[1] We are constrained to question the degree of reliance in this case, noting that the corporate minutes are dated June 29, 1990, the transfer occurred on June 30, 1990, and the Declaration of Use Tax notated by the Department employee was dated November 30, 1990, presumably long after any action could have been taken to render a taxable sale exempt.

the taxpayer has not advanced any other specific arguments in this latter regard.

3. Whether the taxpayers qualified for the retail sales tax exemptions provided for by RCW 82.08.0263, and -.0262 in the absence of the certificates required by WAC 458-20-174 on the following:

(a) Sales of shop oil, the rental of trucks and trailers, and other "miscellaneous" unidentified items (Taxpayer B's Schedule IV).

(b) Sale of converter gear (Taxpayer A's Schedule IV).

(c) Sales of tractors and trailers (Taxpayer B's Schedule V).

As to these sales, the taxpayers argue that they are entitled to prove, through any cogent evidence, that their sales were to holders of ICC permits, and that the exemption certificates provided for in WAC 458-20-174 are not the exclusive means by which this may be proved. The taxpayers rely on Scarsella Bros., Inc. v. Department of Licensing, 53 Wn. App. 882, 771 P.2d 760 (1989). The taxpayers claim that it is in the process of obtaining evidence confirming that the sales were properly exempt.

4. Whether the taxpayers qualified for the retail sales tax exemptions provided for by RCW 82.08.0263 and -.0262, and the use tax exemptions provided for by RCW 82.12.0254 on its purchase and use of:

(a) Tarps, oil, quarter irons, binders, chains, clamps, and the rental of trucks and trailers (Taxpayer A's Schedule VI).

(d) The rental of trucks and trailers, and the purchase of tangible personal property asserted to have become components of trucks and trailers (Taxpayer B's Schedule VII).

As to 4(a), Taxpayer A argues that items such as tarps, chains and binders were placed on individual trailers and remained with those trailers indefinitely. Even though the items could, technically, be detached from the trailer, the actual practice was to permanently assign each tarp, chain, binder, etc. to a particular trailer as a necessary component part thereof, much like a battery would be placed into a vehicle with the intent of never subsequently detaching it. It is Taxpayer A's

understanding that some or all of the items listed on Schedule VI of this assessment already been deleted.

As to 4(b), Taxpayer B argues that "virtually all of the items listed on Schedule VII are exempt" as components of its trucks and trailers which were used in interstate commerce. In the alternative, Taxpayer B argues that retail sales tax had been paid at the time of purchase of at least some of these items. At the time of the hearing, Taxpayer B recognized that the tarp repairs (the bulk of this schedule) had already been deleted from the assessment. Taxpayer B is checking on its documentation regarding the truck and trailer rentals.

5. Whether the transfers taxed in Schedule V of Taxpayer A's assessment, and in Schedule VIII of Taxpayer B's assessment, of tractors and trailers from Taxpayer A to Taxpayer B , were exempt from sales/use tax under both WAC 458-20-106 and -174. The taxpayers further assert that the written "instructions" given by the unnamed Department employee were binding since the taxpayers relied on them.

The taxpayers argue that Rule 106 does not require that the exchange of capital assets in exchange for stock be "solely" in exchange for stock and that debt assumption does not alter the adjustment of the beneficial interest in the business which has been accomplished by the transfer of stock in exchange for capital assets. Further, that Rule 106's requirement that retail sales/use tax have been previously paid by the transferor should be applicable only when no exemption of these taxes properly applied.
It is the further position of the taxpayers that the Rule 174 trip permit requirement is not applicable in the case of a business reorganization, having been specifically overcome by the Rule 106 provisions.

Finally, the taxpayers assert that the Department should be estopped from assessing tax on these transfers because they relied on the written instructions of a Departmental employee on their Use Tax Declaration form.

DISCUSSION:

1. Sales to Feedlot.

WAC 458-20-122 ("Rule 122") provides:

> . . . (a) The word "feed" means a substance used as food for animals, birds, fish, or insects, and includes whole and processed grains or mixtures thereof, hay and forages or meals made therefrom . . . and other similar substances used to sustain or improve livestock or poultry. . . .

> . . . (e) The word "farmers" as used in this rule means any persons engaged in the business of growing or producing for sale at wholesale upon their own lands, or upon lands in which they have a present right of possession, any agricultural product whatsoever, including . . . meat . . . "Farmers" does not mean persons selling such products at retail . . . It does not mean any person dealing in livestock as an operator of a stockyard, slaughter house, or packing house . . .
>
> . . . (4) Retail sales tax. The retail sales tax applies to sales of feed, seed, fertilizer, and spray materials to consumers other than "farmers" as defined herein, except as explained below.
>
> . . . (6) The sales tax also applies to sales of feed to riding clubs, race track operators, or for feeding pets, work animals . . . . . .
>
> . . . (7) Exemptions. The sales tax does not apply to sales of feed, seed, fertilizer, and spray materials to farmers, as defined herein (RCW 82.04.050).

[Emphasis added.]

WAC 458-20-102 ("Rule 102") provides that farmers may, in lieu of paying retail sales tax on their purchases of feed, give resale certificates to their vendors:

> Sales of feed . . . to farmers are sales at wholesale not subject to the retail sales tax. Farmers who purchase livestock for the purpose of fattening and later reselling the same are making purchases at wholesale not subject to the retail sales tax. Upon sales of any such articles to farmers (including farmers operating in other states), the seller should take from the farmer a resale certificate showing the farmer's name and address and a statement to the effect that his purchase of feed . . . is made for the purpose of producing for sale at wholesale an agricultural product, or that his purchase of livestock is made for the purpose of resale. . . .

Excise Tax Bulletin 190.04.210 ("ETB 190"), issued August 26, 1966, addressed the B&O taxability of a feedlot:

> Does the agricultural products exemption from Business Tax apply to persons who buy, feed, and sell cattle?
>
> The taxpayer purchased cattle for his feedlot operation. The cattle were fed until they attained good market

> condition and were then sold. The taxpayer claimed exemption from the Business Tax because the cattle were raised for sale upon the taxpayer's land.
>
> RCW 82.04.330 provides an exemption from the Business Tax for wholesale sales of agricultural and horticultural products by persons who produce or raise the products on their own land. The Commission has ruled that persons who buy livestock, and feed or fatten them prior to sale, are entitled to exemption as "growers, producers, or raisers." However, those persons who hold cattle for less than sixty days are presumed to be in the business of making purchases and wholesale sales of cattle without engaging in the normal activities of raising such livestock for sale. Thus the agricultural products exemption is not available to livestock dealers. The taxpayer had held his cattle for more than sixty days while preparing the cattle for market, and the sale of these cattle was not subject to the Business Tax.

Stockyards, slaughter houses, and packing houses hold cattle for short periods of time and are therefore not considered to be "farmers" under Rule 122. ETB 190, however, holds that feedlots which purchase cattle and fatten them for longer than sixty days before selling them at wholesale are to be treated as farmers for B&O tax purposes. It would follow that such feedlots would be similarly treated as farmers for retail sales tax purposes.

[1] Based on Rules 102, 122, and ETB 190, then, a feedlot which fattens its own cattle for longer than sixty days before selling them at wholesale should be treated as a farmer and may give its vendors resale certificates for its purchases of feed.

In this case, information on the feedlot to which Taxpayer A sold hay is not currently available. This matter is therefore remanded to the Audit Division for a determination of whether the feedlot qualified as a farmer under the criteria set forth above, and whether a resale certificate was tendered.

2. Whether public utility tax was correctly imposed on motor transportation income (Taxpayer A's Schedule VIII) because:

(a) It involved a transaction in interstate and foreign commerce, and

(b) The auditor's application of the test period statistics to the income reported in the taxpayer's return resulted in a distortion of income.

Because the taxpayers' principal has been temporarily disabled due to an injury, there will be additional time granted to

provide documentation to the auditor supporting interstate or foreign transportation.

[2] It must be cautioned, however, that when a taxpayer is paid for hauling entirely within Washington absent an interstate bill of lading, it is subject to Motor Transportation (or Urban Transportation) public utility tax. The interstate or foreign transportation exemption will not apply. Proof that the property itself is the subject of an interstate or foreign transaction, absent a through bill of lading across state lines, will not qualify the transportation for deduction. See, Det. No. 89-503, 8 WTD 341 (1989).

If Taxpayer A now objects to the test period which it previously agreed to, the Department will perform a complete audit of the entire period, assuming sufficient records are available. Once the Department does so, however, the use of a test period will not be reinstated.

3. Whether taxpayers qualified for retail sales tax exemptions provided for by RCW 82.08.0263, and -.0262 in the absence of the certificates required by WAC 458-20-174 on the following:

(a) Sales of shop oil, the rental of trucks and trailers, and other "miscellaneous" unidentified items (Taxpayer B's Schedule IV).

(b) Sale of converter gear (Taxpayer A's Schedule IV).

(c) Sales of tractors and trailers (Taxpayer B's Schedule V).

We must begin our discussion of this and the following issues by observing that we are considering application for retail sales and use tax exemptions. The state of Washington Supreme Court has laid down the rule that tax exemption statutes must be strictly construed in favor of the application of the tax, Yakima Fruit Growers Association v. Henneford, 187 Wn. 252, 60 P. (2d) 62 (1936); no person should be declared exempt unless it clearly appears that such exemption is required by law, North Pacific Coast Freight Bureau v. State, 12 Wn.2d 563, 122 P. (2d) 467 (1942); any claim of exemption is to be studied with care before depriving the state of revenue, Alaska Steamship Company v. State, 31 Wn.2d 328, 196 P. (2d) 1001 (1948), and in general tax exemption statutes must be strictly construed in favor of the tax, Miethke v. Pierce County, 173 Wn. 381, 23 P. (2d) 405 (1933); Norwegian Lutheran Church v. Wooster, 176 Wn. 581, 30 P. (2d) 381 (1934); Standard Oil Company v. King County, 180 Wn. 631, 41 P. (2d) 156 (1935), Boeing Aircraft Company v. Reconstruction Finance Corporation, 25 Wn.2nd 652, 171 P. (2d) 838 (1946).

RCW 82.08.0263 provides a retail sales tax exemption for the sale of trucks and trailers to holders of ICC permits:

> The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: Provided, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission and that the vehicles will first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit issued by the director of licensing pursuant to the provisions of RCW 46.16.160.

[Emphasis added.]

RCW 82.08.0262 similarly provides a retail sales tax exemption for the purchase/sale of component parts of trucks and trailers to holders of ICC permits:

> The tax levied by RCW 82.08.020 shall not apply to . . . sales of tangible personal property which becomes a component part of . . . motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

WAC 458-20-174 ("Rule 174") sets forth the basic criteria of RCW 82.08.0263 and -.0262, requiring that exemption certificates be prepared at the time of sale and retained in the seller's records in order to properly document the above statutory proofs of exemption. The rule further provides:

> As to any sales transactions claimed to be exempt from the retail sales tax under the provisions of RCW 82.08.0262 and 82.08.0263, where no exemption certificate has been secured and retained as required herein, or where the exemption certificate does not substantially comply with the essentials set out in the foregoing forms, the seller will bear the burden of proving its tax exempt status.

[Emphasis added.]

Thus, the purpose of the certificates set forth in Rule 174 is to document compliance with the above statutory requirements. Sellers who cannot provide certificates are required to assume the burden of proving the sales tax exempt status of such sales. In other words, a taxpayer must prove that the three criteria required by RCW 82.08.0263 (sales of trucks or trailers), or the two requirements of RCW 82.08.0262 (sales of components), were met. As a regulatory agency, the Department has no authority or discretion to waive or change the requirements for exemption set forth in the Revenue Act itself. Because neither RCW 82.08.0263 nor RCW 82.08.0262 have been amended since the audit period to relax these statutory requirements, the taxpayers' reliance on Scarsella Bros., Inc. v. Department of Licensing, supra., is misplaced. That case is distinguishable on its facts and therefore does not control.

Finally, Rule 174 provides a definition of "component part":

> The term "component part" is construed to mean all tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries and tires. The term also includes spare parts which are designed and intended for ultimate attachment to the carrier vehicle. It does not include equipment or tools which may be used in connection with the operation of the truck or trailer as a carrier of persons or goods but which will not become permanently attached to and an integral part of the same, nor does it include consumable supplies, such as lubricants and ice. . . .
>
> The retail sales tax does apply to the sale of all other accessories, supplies and equipment to motor carriers operating under permits authorizing transportation across the boundaries of the state. . . .

[Emphasis added.]

[3] Thus, to summarize, for the RCW 82.08.0263 sales tax exemption to apply on the sale of a vehicle or trailer, 1) the purchaser must be the holder of a carrier permit issued by the Interstate Commerce Commission, 2) the vehicle or trailer must be purchased to transport persons or property for hire in interstate or foreign commerce, and 3) the vehicle or trailer must first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit.

[4] For the RCW 82.08.0262 sales tax exemption to apply to the purchase of tangible personal property, 1) the property must become a component part of a motor vehicle or trailer, and 2) the motor vehicle or trailer will be used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. "Components" must become an integral part of the vehicle or trailer.

As to Taxpayer B's Schedule IV, Rule 174 specifically provides that consumables such as oil are not "components" and are thus not exempt as such. Thus, retail sales tax was properly assessed on sales of "shop oil."

In the absence of the Rule 174 exemption certificates, Taxpayer B has the burden of proof to demonstrate that its rental (i.e., "sale") of trucks and trailers to others strictly met the RCW 82.08.0263 requirements for exemption. For this purpose, a one-way trip permit will be required only at the beginning of each continuous rental period, regardless of the rental payment schedule.

Taxpayer B will be granted a period of time to produce evidence to the Audit Division which would support the exemptions; otherwise, the assessments as to these items will be upheld. Similarly, as to the "miscellaneous income," Taxpayer B will need to identify the nature of these sales and assume the burden of proving their exemption.

As to Taxpayer A's sale of converter gear in Schedule IV, the taxpayer will be given additional time to demonstrate that the requirements set forth in RCW 82.08.0262 have been met.

4. Whether the taxpayers qualified for the retail sales tax exemptions provided for by RCW 82.08.0263 and -.0262, and/or the use tax exemption provided for by RCW 82.12.0254 on its purchase and use of:

(a) Oil, quarter irons, binders, chains, clamps, and the rental of trucks and trailers (Taxpayer A's Schedule VI).
(d) Tarp repairs, the rental of trucks and trailers, and other various miscellaneous items (Taxpayer B's Schedule VII).

The criteria for retail sales tax exemption on the purchase or rental of trucks and trailers, and the purchase of components, are set forth above and also control as to this issue. If the taxpayers in this case took delivery of the trucks, trailers, or components in this state from in-state sellers, then retail sales

tax was immediately due at the time of sale unless the retail sales tax exemptions of RCW 82.08.0263 and -.0262 properly applied.

However, even if a Washington purchaser qualifies for a retail sales tax exemption, he is not relieved of potential use tax liability.

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; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state. . .

[Emphasis added.]

[5] Thus, as to motor vehicles and trailers, the statute provides the following criteria for exemption from the use tax: 1) the user must hold an ICC permit, 2) the motor vehicle or trailer must be "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; and 3) the first use of the vehicle in Washington must have been actual use in conducting interstate or foreign commerce.

Thus, use tax is due immediately on first use in Washington state if either element one or three is not satisfied. However, even if the exemption's first and third requirements are initially met, the exemption requires a continuous fulfillment of the second requirement, that it be "used in substantial part" in interstate commerce.

The Washington State Supreme Court in United Parcel Serv. v. Department of Rev., 102 Wn.2d 355, 687 P.2d 186 (1984) interpreted the requirements of the "use in substantial part" element, requiring a carrier to be involved in actually transporting goods for hire across state lines on 25% or more of the total trips made by any particular vehicle in any single calendar year.

The Department has chosen among several methods to determine whether a vehicle is used in substantial part in interstate commerce. The various methods have included the number of trips across state lines, amount of interstate hauling revenue and ton miles traveled in interstate commerce. The method used in each case has depended on the nature of the records of the business involved. Because the statute refers to "the use... of any motor vehicle" and not to the use of any fleet of vehicles, the statute clearly provides that the "substantial use" test is to be applied on a vehicle by vehicle basis.

In sustaining the Department's "line crossing test" the United Parcel court stated:

> The language of RCW 82.12.0254 favors the Department's position. The exemption refers to the "use...of any motor vehicle." The vehicle must be "used...for transporting therein persons or property...across the boundaries of this state. . ." UPS's argument that only the persons or property, and not the vehicle need cross state lines ignores the word "therein." Statutes are to be construed, wherever possible, so that "no clause, sentence or word shall be superfluous, void, or insignificant".

RCW 82.12.0254 also provides a use tax exemption for tangible personal property which becomes a component part of a vehicle or trailer. The statute exempts

> . . . the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder.

[6] Thus, the use tax exemptions for purchase of parts that become components of motor vehicles or trailers require: 1) the user hold an ICC permit authorizing transportation across the boundaries of the state and 2) the property must become a component part (i.e., attached to and an integral part of the motor vehicle or trailer).

As in the sales tax exemption area, the requirements of RCW 82.12.0254 cannot be waived or relaxed by the Department.

Because the taxpayers' principal is temporarily unavailable due to injury to supply documentation to support its case, the taxpayers will be given additional time to present documentation

to the Audit Division. We note, however, that oil, being a consumable, is not a component. Quarter irons, binders, chains, and clamps are generally interchangeable between trucks; the mere practice of leaving them with one trailer does not render them "components" of that trailer. Notes in the audit jacket indicate that the auditor had removed custom tarps from all schedules; therefore, their inclusion in Taxpayer B's Schedule VII may have been an oversight.

5. Whether the transfers taxed in Schedule V of Taxpayer A's assessment, and in Schedule VIII of Taxpayer B's assessment, of tractors and trailers from Taxpayer A to Taxpayer B were exempt from sales/use tax under both WAC 458-20-106 ("Rule 106") and Rule 174. The taxpayer further asserts that written "instructions" given by the unnamed Department employee were binding since the taxpayer relied on them.

WAC 458-20-106 provides in pertinent part:

> A transfer of capital assets to or by a business is deemed not taxable [under the retail sales tax] to the extent the transfer is accomplished through an adjustment of the beneficial interest in the business. The following examples are instances when the tax will not apply. . . .
>
> (2) Transfers of capital assets by an individual or by a partnership to a corporation, or by a corporation to another corporation in exchange for capital stock therein. . . .
>
> The burden is upon the taxpayer to establish the facts concerning the adjustment of the beneficial interest in the business when exemption is claimed. . . .

Where there has been a transfer of the capital assets to or by a business, the use of such property is not deemed taxable [under the use tax] to the extent the transfer was accomplished through an adjustment of the beneficial interest in the business, provided, the transferor previously paid sales or use tax on the property transferred. . . .

The auditor determined that the Rule 174 retail sales tax exemption was not applicable to these transfers because the vehicles did not first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit, and that the transfer had thus failed the RCW 82.08.0262 criteria for exemption.

The auditor determined that the Rule 106 exemption did not apply because 1) neither retail sales tax nor use tax had been

previously paid by the transferor, and 2) several of the motor vehicles/trailers were transferred subject to liabilities, so that the transferor received relief from debt in addition to stock certificates (i.e., change in beneficial interest).

[7] There is no specific statutory authority for the exemption of a transfer of assets as allowed in Rule 106. The exemption occurs rather because a change in the "mere form of ownership" of property is deemed not a "sale" as sale is defined in RCW 82.04.040 or as a "retail sale" is defined under RCW 82.04.050. Rule 106 is grounded on the recognition that sales tax should not, through technical interpretation of the law, be imposed to impede business reorganizations when the ownership of a business remains essentially the same and the change was merely one of form. See, Det. No. 87-212, 3 WTD 259 (1987).

Because the transfer of trucks and vehicles in this case was in exchange for stock under Rule 106, and was therefore not a "sale", the RCW 82.08.0262 requirements are not required to exempt the transfer from retail sales tax.

[8] Although we appreciate the auditor's concern that neither retail sales tax nor use tax had been previously paid by the sole proprietorship (the transferor), we must conclude that the only purpose of that limitation in Rule 106 is to ensure that property which is otherwise retail sales or use taxable in this state does not escape such taxation by virtue of an otherwise exempt reorganization under Rule 106. Such is not the case when retail sales/use tax was not previously paid on property by the transferor in a Rule 106 reorganization because the property was properly exempt, and when the property will also be otherwise exempt in the hands of the transferee. In such a case the restriction should not apply, and retail sales tax will not be imposed under Rule 106. This, of course, will not bar the later imposition of use tax in the future if the property should lose its exempt status.

Thus, we hold that the fact that retail sales/use tax had not been paid on trucks and trailers by the sole proprietorship, if in fact the trucks and trailers had been properly exempt, will not bar their exemption under Rule 106.

As to the outstanding debts on the motor vehicles and trailers, this case is factually similar to M.V. Coho, Inc. v. Department of Revenue, BTA Docket No. 18825 (1979). In that case, two partners determined that they should operate their chartered fishing operation out of a corporation rather than a partnership in order to avail themselves of the personal protection against liability in case of disaster or loss that was available through a corporation. To that end, in exchange for the stock of the

corporation, all of the assets of the Coho Partnership consisting of cash, the boat (the "M.V. Coho"), and the equipment were transferred to the corporation M.V. Coho, Inc.. As part of this transfer, the corporation assumed the two loans that had been made in connection with the construction of the boat and the purchase of the vessel's equipment. The two partners were personally liable for the loans, and they remained personally liable after the liabilities had been transferred from the partnership to the corporation. Although the assumption of debt by the corporation was not specifically addressed in the board's holding, the Board nevertheless held the transfer of assets to be exempt under Rule 106.

[9] Thus, we similarly hold that the assumption of debt in an otherwise exempt Rule 106 transaction does not render that transaction taxable.

The taxpayer's petition as to Schedule V of Taxpayer A's assessment and Schedule VIII of Taxpayer B's assessment is granted unless the auditor finds that the vehicles and trailers in question were not properly exempt when owned by Taxpayer A.

Because we are resolving this issue in favor of the taxpayers, their estoppel argument will not be addressed.

DECISION AND DISPOSITION:

Because the taxpayers' principal has been temporarily disabled due to an accident, the taxpayers will be given an additional ninety days from the date of this determination to document their claims to the Audit Division. The Audit Division will then issue an amended assessment commensurate with the holdings set forth herein, payment of which will be due on the date provided therein. To the extent the taxpayers fail to provide documentation necessary to sustain the exemptions they claim, the assessments will stand.

DATED this 31st day of August 1993.