BEFORE THE 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. 97-074
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .

RULE 193D AND RULE 180: PUBLIC UTILITY TAX -- B&O TAX -- HOUSEHOLD GOODS -- INTERSTATE TRANSPORTATION OF -- STORAGE AND ACCESSORIAL SERVICES. A common carrier that transports household goods for at least part of distance between an in-state and an out-of-state military base, pursuant to a through bill of lading, and who also temporarily stores such goods and/or provides other "accessorial" services related to such transportation, is exempt of public utility and B&O tax . The accessorial services are considered part of the exempt interstate transportation services.

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:

Trucking company protests the Department's disallowance of the interstate transportation public utility tax exemption, for accessorial services and an intrastate leg of alleged interstate hauls.[1]

FACTS:

Dressel, A.L.J. -- The taxpayer is a trucking company. Its books and records were examined by the Department of Revenue (Department) for the period January 1, 1990 through June 30, 1994. As a result, a tax assessment was issued. The taxpayer appeals a portion of the assessment.

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer's trucking business is, essentially, a moving van type of business. Primarily, it moves household goods for soldiers transferring to or from military bases in Washington. In a typical move a soldier will be assigned from a base in California to a base in Washington. The California base will issue a government bill of lading (GBL) under which the household goods of the soldier will be transported from the California bast to the Washington base. A mover will be hired to pick up the goods at the California base and haul them to Washington. Upon arrival in Washington, the mover will contact the transportation office at the Washington base. If the soldier's new residence has been selected and is available for occupancy, the mover will deliver and unload the goods at the residence. Frequently, however, a soldier's household goods will arrive in the area before his or her residence has been selected and/or is available. In such cases the GBL authorizes "storage in transit" (SIT). This is the point at which the taxpayer will often come into the picture.[2]

In Washington, the taxpayer maintains its headquarters, as well as a large warehouse for storage. The mover and other carriers will bring the undeliverable household goods to the taxpayer's warehouse. There, the taxpayer will unload them and place them in temporary storage. When the soldier's quarters have been selected and are ready for occupancy, the taxpayer is contacted. The taxpayer will then load the goods into one of its trucks, deliver them to the soldier's residence, and unload them there.

For its services, the taxpayer will usually bill the primary carrier, the mover from California in the example that we are using. On occasion the taxpayer will get authorization from the primary carrier to bill the air force or other government entity directly. The taxpayer's billing statements are itemized to reflect charges for packing, unpacking, and storage, as well as for hauling the goods from its warehouse to the soldier's residence at or near McChord. There may also be additional charges for certain moving maneuvers such as moving pianos, extra pickups or deliveries, attempted pickups and deliveries, use of elevators, negotiating stairs, moving bulky articles, long carries (over 75 feet), waiting, overtime, etc. Specific charges for each of these activities are authorized by the GBL, by government tariffs, and by Interstate Commerce Commission tariffs.

According to the taxpayer, the Department, in its audit, did not recognize the taxpayer's above-described activity as interstate commerce. The taxpayer states that the Department subjected the storage activity to Service and Other Activities business and occupation (B&O) tax and the hauling activities to either Urban Transportation or Motor Transportation public utility tax. The taxpayer contends that all of its described activity should be exempt of both B&O and public utility tax as part of the interstate commerce activity of transporting cargo from one state to another. In addition, the taxpayer claims that the mirror image of the described activity ought to be exempt as well, as interstate commerce. In other words, on those moves in which a soldier is being transferred out-of-state, when the taxpayer picks up the goods locally and stores them

[2] The taxpayer is also, sometimes, the carrier who has picked up the goods at the out-of-state location and hauled them into Washington or is the carrier who has picked them up in Washington and transported them to an out-of-state location. The taxpayer's hauling activities are not limited to Washington.

temporarily in its Tacoma warehouse until they are collected for transportation to the out-of-state destination, the in-state haul ought to be exempt of tax as well, as a portion of the interstate transportation of such goods.

ISSUES:

1. Is the temporary storage of household goods for military personnel being transferred between states, and related services, part of the interstate movement of such goods?

2. When such household goods are stored temporarily in-state, is their in-state transfer from the place of storage part of the exempt interstate movement?

DISCUSSION:

Persons engaged in the business of operating any motor propelled vehicle by which persons or property of others are conveyed for hire are taxable on such conveyance under the public utility tax. WAC 458-20-180 (Rule 180). There are limitations on taxation, though, when goods are transported across state lines. In this regard WAC 458-20-193D reads, in part:

Business and Occupation Tax, Public Utility Tax

> In computing tax there may be deducted from gross income the amount thereof derived as compensation for performance of services which in themselves constitute interstate or foreign commerce to the extent that a tax measured thereby constitutes an impermissible burden upon such commerce. A tax does not constitute an impermissible burden upon interstate or foreign commerce unless the tax discriminates against that commerce by placing a burden thereon that is not borne by intrastate commerce, or unless the tax subjects the activity to the risk of repeated exaction of the same nature from other states. Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging accommodations, providing funds and the like, by which they engage in such commerce is taxable.
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> **Examples of Exempt Income:**
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> (1) Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.
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> . . .
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> **Examples of Taxable Income:**
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> (1) Compensation received by persons engaged in business within this state for performance of business activities which are only ancillary to transportation across the state's boundaries is taxable.

(2) Compensation received by merchandise brokers or commission merchants for services rendered within this state to principals engaged in interstate or foreign commerce is taxable.

(3) Compensation received by contracting, stevedoring or loading companies for services performed within this state is taxable.

. . .

In computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting persons or property or transmitting communications or electrical energy, from this state to another state or territory or to a foreign country and vice versa.

Persons, including dock companies or wharfage companies, are permitted no deduction from gross income of amounts received for services performed in this state consisting of the handling of cargo or freight even though such cargo or freight has moved or will move across the state's boundaries.

No deduction is permitted with respect to gross income derived from activities which are ancillary to transportation across the state's boundaries, such as income received by a wharf company or warehouse company for the storage of goods. The mere ownership or operation of facilities by means of which others engage in foreign or interstate commerce is an activity ancillary to such commerce and any income received therefrom is taxable.

Insofar as the transportation of goods is concerned, the interstate movement of cargo or freight ceases when the goods have arrived at the destination to which it was billed by the out-of-state shipper, and no deduction is permitted of the gross income derived from transporting the same from such point of destination in this state to another point within this state.

. . .

The interstate movement of cargo or freight begins when the goods are committed to a carrier for transportation out of the state, which carrier will start the transportation to a point outside the state.

In our judgment, the determination of whether the taxpayer's in-state activities of transportation and storage are part of interstate commerce is a close question. The taxpayer has cited a case that is relevant. In *Det. No. 90-280*, 10 WTD 79 (1990), a taxpayer was engaged in the urban and motor transportation of freight and taxable under those two categories of the public utility tax. In the cited case, the taxpayer, in addition to hauling, provided storage, packing, unpacking, handling, and customs clearance services for its customers. We found that those activities, when done in

conjunction with its transportation services, were part of the transportation and were taxable, like the hauling itself, under the motor or urban transportation category of the public utility tax. In arriving at this conclusion, we said, in part:

> RCW 82.16.010 defines "gross income" from the urban transportation business to include "value proceeding or accruing from the performance of the particular public service or transportation business involved, *including operations incidental*" to the performance of that business.
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> . . .
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> In this case, the rule's language must be read so that it does not conflict with the broad language of RCW 82.16.010. Consequently, the services contemplated in Rule 180 and taxable at the higher service B&O tax rate cannot be ones which are performed as a part of the urban transportation or hauling activities, nor can they be ones which are "incidental to" the haul itself. The language must be read to mean that when persons engaging in the urban transportation business engage in the additional, separately-taxable business of offering services to customers who are not also cartage customers or of offering services to cartage customers which are not incidental to completion of a customer's haul, the income from these services is taxable at the higher rate.
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> . . .
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> The statute does not require that all activities concerning a haul occur while the goods are in transit, or it would have so specified. As a result, the fact that some shipments spend time on taxpayer's premises, either for brief storage or due to customs inspections or delays, is not determinative of whether the services are part of the haul.[3]
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> We are convinced by taxpayer's testimony that the bulk of its income is derived from services incidental to its transportation business. As a result, we find that such services, where they are a part of the agreement with the shipper/customer, are subject to tax under 82.16 RCW. These services can, among others, include those performed by this taxpayer, such as interim storage of goods where the customer cannot take delivery immediately upon the goods' arrival; charges for delayed return of containers in such cases; charges for seeing

[3] In *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568, 87 L.Ed. 460 (1943), the Supreme Court addressed the effects on the nature of commerce of shipments which arrived from out-of-state and were temporarily stored in a warehouse awaiting movements to pre-determined customers within the same state. The court said:

> The entry of the goods into the warehouse interrupts but does not necessarily terminate their interstate journey. A temporary pause in their transit does not mean that they are no longer 'in commerce' within the meaning of the Act. . . . if the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations, they remain 'in commerce' until they reach those points. Then there is a practical continuity of movement of goods until they reach the customers for whom they are intended. That is sufficient. Any other test would allow formalities to conceal the continuous nature of the interstate transit which constitutes commerce.

> the goods through the customs office located on taxpayer's premises; and other charges for handling the goods of customers who have hired taxpayer to haul them. A good example of when such income is taxable at the service rate would be those occasions on which taxpayer charges third parties for use of its loading dock to clear their own goods through the customs office branch located at taxpayer's warehouse.
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> . . .
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> Consequently, where taxpayer utilizes its building as a warehouse for non-transportation customers, and where its books clearly reflect that income was from its warehousing business and not from its transportation business, the income is subject to B&O tax under the warehousing classification.
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> As with services not incidental to a haul in taxpayer's urban transportation business, where services are rendered to non-warehouse customers, the income is to be reported under the services classification for B&O tax purposes.

(Footnote and italics ours.)

[1] We will resolve the instant case with an analogy to the cited one. The GBLs provided as evidence show an out-of-state military base as the point of origination and an in-state military base as the point of destination. We assume that the bills of lading for out-going shipments are similar. Transportation between the points mentioned, then, is pursuant to a through bill of lading and is considered interstate in nature. See ETB 250.16.179.193 (ETB 250); *Det. No. 89-503*, 8 WTD 341 (1989); *Det. No. 93-240*, 13 WTD 369 (1994); and *Det. No. 87-138*, 3 WTD 73 (1987). The services performed by the taxpayer, whether hauling, storage, packing, or whatever, take place between the points indicated on the through bill of lading.[4]

In *Det. No. 90-280, supra,* we determined that such services were "incidental to" the primary activity which was transportation. We find that that is the primary activity in the instant case as well, viz., the movement of household goods from one military base to another. The difference between the two cases is that in the cited case the transportation of freight was *intrastate*, whereas

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[4] Relevant to these "accessorial" services, RCW 82.16.050 reads, in part:

> **Deductions in computing tax.** In computing tax there may be deducted from the gross income the following items:
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> . . .
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> (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 point of origin to final destination;

in the instant case the transportation of goods was *interstate*. In the latter instance, the movement of those goods is, generally, exempt of the public utility tax because it is in interstate commerce. Had that movement not been across state lines, it would have been subject to urban or motor transportation public utility tax, as was the transportation activity in *Det. No. 90-280*.

As stated in RCW 82.16.010, operations "incidental" to the transportation of goods for hire, are taxed just as is the transportation per se. The effect of that, as was found in *Det. No. 90-280*, is that the incidental operations are part of the transportation activity. We perceive no reason why a different conclusion should be reached in the case presently under consideration. The activities undertaken in the two cases are nearly identical. The incidental services in each were performed only to facilitate the total movement described by the bills of lading. ". . . the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers which was carried out." *B&O S.W. R.R.. v. Settle*, 260 U.S. 166, 67 L.Ed. 189 (1922). In the instant case, the packing, unpacking, storage, delivery, etc. were necessary to get the household goods to the soldier at his or her new location. So, too, was the intrastate delivery from the taxpayer's warehouse to the soldier's residence and vice-versa. To call services similar to these *incidental* to transportation in *Det. No. 90-280* but not in the instant case, because in the latter one the moving vans crossed state lines, is illogical. We decline to be illogical and conclude that the taxpayer's activities, as described, are part of interstate commerce and, thus, exempt of public utility tax.

In reaching this conclusion, though, we are mindful of the language of and examples posed in Rule 193D to the effect that services performed in-state that only facilitate interstate transportation are local activities that may be subjected to tax.[5] To be eligible for the exemption, then, the applicant must be a *participant* in the actual interstate transportation described on the through bill of lading. In other words, if a person is hired only to store goods being hauled in interstate commerce or only to pack or unpack such goods, with no hauling responsibility, such activity will be deemed as facilitating the interstate commerce of others, local in nature, and not exempt of tax.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 21st day of April, 1997.

[5] See also ETBs 331.04.193, 250.16.179.193, 286.04.193, 162.04.193, 126.16.193, 92.12.193, and 22.04.193.