Cite as 2 WTD 269 (1986)

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

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| 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. 87-53 |
| . . . ) | Registration No. . . . |

[1] **Rule 180:** PUBLIC UTILITY TAX -- TRANSPORTATION -- 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. (Canton Railroad Co. v. Rogan, cited)

[2] **Rule 180 and RCW 82.16.010(8):** PUBLIC UTILITY TAX -- MOTOR TRANSPORTATION and URBAN TRANSPORTATION DISTINGUISHED. Income from transporting logs within the area defined as "urban transportation business" in RCW 82.16.010(8) is subject to the urban transportation tax rather than the motor transportation tax.

[3] **Rule 179 and RCW 82.12.050(8):** PUBLIC UTILITY TAX -- EXEMPTION -- MOTOR TRANSPORTATION -- EXPORTS -- INTERVENING TRANSPORTATION DEFINED. No exemption allowed from urban transportation tax for export logs hauled between points in the same city. Exemption allowed from motor transportation tax for hauling export logs where no intervening transportation occurs between point of origin and export yard. Transporting logs between sorting area and pier in export yard is not "intervening transportation" as that term is used in RCW 82.12.050(8) and Rule 179.

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 HEARING: September 25, 1986

NATURE OF ACTION:

The taxpayer protests the denial of export deductions on a portion of its transportation income.

FACTS AND ISSUES:

Frankel, A.L.J.--The taxpayer's records were examined for the period Januaryá1, 1982 through September 30, 1985. The audit disclosed taxes and interest owing in the amount of $ . . . . Assessment No. . . . in that amount was issued on Marchá20, 1986.

The taxpayer is a log hauler. At issue in this appeal are the taxes assessed in Schedules V and VI of the audit. Schedule V reclassified the taxpayer's income reported under the Motor Transportation Business classification of the public utility tax to Urban Transportation income. The auditor relied on the definitions of the two types of transportation income as the terms are defined in WAC 458-20-180.

Schedule VI disallowed export deductions for the transportation of logs for export from the woods to a private yard ( . . . ) and for transporting the logs from the sorting area in the yard to the "sling" at the dock. The taxpayer contends the delivery of the logs bound for export to the private yard is deductible. It relies on the statutory deduction provided by RCW 82.12.050(8). It contends the short hauls by its trucks within the yard do not constitute "intervening transportation" as that term is used in RCW 82.12.050(8) and WAC 458-20-179.

The taxpayer stated that log trucks are used as yard equipment for transporting the logs from the sorting area in the yard to the pier. The yard is adjacent to the private pier where the logs are shipped. A public road separates the yard from the dock area. There is a blinking light and a sign which states, "truck crossing" where the taxpayer's trucks cross the road. The taxpayer stated the trucks do not drive on the public highway and the hauls are considered "off road hauls" by the

Utilities and Transportation Commission; thus they are not regulated.

The taxpayer deducted 70 percent of the income from transporting the logs to the yard from the woods, contending that percent was for transporting logs marked for export. The taxpayer stated the Department has accepted its use of a 70 percent estimate in previous years. The taxpayer added that the export deduction is allowed by the Department at similar locations in the same county. It relied on the availability of the deduction when contracting for the shipments at a reduced rate. The taxpayer contends it is inequitable for the Department to change its position retroactively.

Furthermore, the taxpayer believes the assessment in Schedule VI is unjust because the Washington Utilities and Transportation Commission does not regulate logs bound for export. Because the commission does not set a standard hauling rate, the income from hauling export logs is about 20 percent less than for domestic log hauls of the same value. The taxpayer contends the Department of Revenue and the Utilities and Transportation Commission should have consistent positions.

The primary issue raised by this appeal is whether the taxpayer's use of trucks to haul the logs from the sorting area of the yard to the dock constitutes "intervening transportation" making the statutory export exemption unavailable.

DISCUSSION:

[1] Both the Commerce Clause[1] and Import and Export clause[2] of the Federal Constitution contain limitations on the taxing powers of the states. We do not find that taxation of the

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[1]U.S. Constitution, Article I, Section 8, Clause 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. Constitution, Article I, Section 10, Clause 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. . . ."

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 of 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 grant tax immunity to the transportation services involved in getting exports to a port or imports to their destination. Western Maryland Railway Co. v. Rogan, 340 U.S. 520, 71 S.Ct. 450 (1951).

In the Washington Stevedoring case, the Supreme Court upheld the business and occupation tax on stevedoring that included the handling of goods destined for foreign countries. Department of Revenue of Washington v. Association of Washington Stevedoring Cos; 435 U.S. 734, 98 S.Ct. 1388 (1978). The court noted that neither the taxation of the transportation services upheld in Canton Railroad or of the stevedoring activities related to the value of the goods. As the taxation could not be considered 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.

[2]. The Public Utility tax at issue is imposed by chapter 82.16 RCW. For purposes of that chapter, the terms "motor transportation business" and "urban transportation business" are defined and distinguished in RCW 82.16.010 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.
>
> (9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limit of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

We uphold the auditor's reclassification of the taxpayer's income in Schedule V in accordance with the above definitions. The taxpayer has presented no evidence that any of the income reclassified to urban transportation income was improperly classified.

[3]. A statutory exemption is provided from the motor transportation tax in RCW 82.16.050(8) for

> .á.á. 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</u>, by vessel, in their original form, to interstate or foreign destinations: Provided, That no deduction will be allowed when the point of origin and 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;á.á.á. (Emphasis added.)

As no deduction is provided for hauls made within the corporate limits of the same city, we uphold the denial of export deductions on such hauls. The denial would include the income from any hauls from the woods to the yard made within the same city and the income from hauling the logs from the sorting area to the pier, as those hauls were within the corporate limit of the same city.

The taxpayer's petition is granted, however, with respect to the denial of export deductions for hauls of logs marked for export to the export yard where the point of origin was outside the corporate limits of the city. We do not agree with the auditor's position that the taxpayer's use of a truck as yard equipment precludes the applicability of the statutory exemption.

We believe intervening transportation refers to transportation intervening between the point of origin and the export yard--not transportation from one point in the export yard to another. In the other cases relied on by the taxpayer as examples where the Department allows the export deduction, logs are transported to a point in the yard where they are subsequently picked up by a log stacker and moved to the bunk at the pier. In the present case, the log stacker is used to grab the logs and place them in racks on the trucks. The trucks move the log on the private road through the yard, cross the public road to the private pier across the road. Another log stacker removes the logs from the trucks and deposits them in the bunks on the dock. Cranes on the ships are used to pick the logs up and place them in the vessels.

We do not find the taxpayer's use of a truck rather than driving the log stacker from the sorting area to the bunk on the pier requires denial of the export deduction. The trucks are not loaded as they would be required to be loaded for highway transportation. They are not regulated or used as highway vehicles. We find the taxpayer's use of a truck and a log stacker to move the logs from one area of the yard to another does not distinguish this case from the cases where a log stacker is used alone to do the same job.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of Assessment No. . . . is granted as to the denial of export deductions from the motor vehicle tax for export logs hauled from the woods to the export yard. The denial of export exemption for income

subject to the urban transportation tax is upheld. An amended assessment shall be issued and due on the date shown thereon.

DATED this 20th day of February 1987.