

Cite as Det. No. 13-0164, 33 WTD 105 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 13-0164
...)	
)	Registration No. . . .
)	

[1] RULE 193D; RCW 82.16.050; ETA 3149: PUBLIC UTILITY TAX – DEDUCTIONS FOR INTERSTATE SHIPMENTS – MOTOR TRANSPORTATION BUSINESS – THROUGH BILLS OF LADING. To qualify for treatment as exempt interstate transportation, freight must have an out-of-state origin or destination and the taxpayer must document that it provided the transportation as part of an uninterrupted interstate haul. The Department looks to shipping documents to determine if a motor carrier is participating in and being paid for the uninterrupted interstate movement of goods. A motor carrier must provide a “through bill of lading” or similar documentation sufficient to prove that the motor carrier was indeed participating in the uninterrupted interstate movement of goods before the income received for shipping goods between Washington locations may be deducted from the amount subject to public utility tax.

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.

Weaver, A.L.J. – A motor carrier protests the disallowance of interstate deductions taken on revenue related to the transportation of shipments the motor carrier picked up at various Washington ports and delivered to Washington locations. We sustain the assessment.¹

ISSUE

Whether a trucking company is entitled to deduct amounts it claims it received from services related to interstate commerce from the measure of tax under RCW 82.16.050 and WAC 458-20-193D (“Rule 193D”) in the absence of through bills of lading or similar documentation.

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

FINDINGS OF FACT

[Taxpayer] is a company engaged in the business of providing freight trucking services. Taxpayer contracts with a company [(“Contractor”)] . . . that has contracts with various Washington ports. The typical delivery originates when Contractor sends Taxpayer a dispatch to haul goods from a port to a specific location in Washington. Taxpayer retrieves the shipment from the designated port and hauls it to the destination designated by Contractor. With respect to the deliveries at issue in this appeal, Taxpayer indicates that it picked up freight at Washington ports and delivered that freight to Washington locations. However, Taxpayer maintains that its deliveries were services related to interstate commerce because the freight was originally shipped from foreign locations.

The Audit Division of the Department of Revenue (“Department”) audited Taxpayer’s books and records for the period of January 1, 2008 through June 30, 2011. Taxpayer provided the Audit Division with short form straight bills of lading, load information, drivers pay settlements, and mileage reports. Taxpayer did not provide the Audit Division with its federal income tax returns, log books, or through freight bills of lading.

The Audit Division disallowed Taxpayer’s interstate tax deduction and assessed Taxpayer \$. . . , including \$. . . in motor transportation public utility tax (“PUT”), a \$. . . delinquency penalty, \$. . . in interest, and a 5% assessment penalty of \$. . . Taxpayer filed a timely appeal arguing, mainly, that Washington ports do not issue “through bills of lading” to carriers like Taxpayer, and that it is unfair for the Department to require them to present a document that they are simply unable to acquire.

ANALYSIS

The PUT is imposed upon motor transportation businesses. RCW 82.16.020 and WAC 458- 20-180 (Rule 180). “Motor transportation business” means the business of operating any motor propelled vehicle by which persons or property of others are conveyed for hire. RCW 82.16.010(8). Activity that is subject to the PUT is not subject to the B&O tax. RCW 82.04.310(1).

Under RCW 82.16.050(8), the Department may not tax amounts derived from business, which the state is prohibited from taxing under the Constitution of Washington or the Constitution or laws of the United States. WAC 458-20-193D (Rule 193D) implements RCW 82.16.050 and states, in part:

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.

Rule 193D. Rule 193D differentiates between goods shipped via a through bill of lading, and goods shipped across state lines under one bill of lading, then shipped intrastate under a separate bill of lading:

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. Thus, freight is billed from San Francisco, or a foreign point, to Seattle. After arrival in Seattle it is transported to Spokane. No deduction is permitted of the gross income received for the transportation from Seattle to Spokane. Again, freight is billed from San Francisco, or a foreign point, to a line carrier's terminal, or a public warehouse in Seattle. After arrival in Seattle it is transported from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle. No deduction is permitted of the gross income received as transportation charges from the line carrier's terminal or public warehouse to the buyer's place of business in Seattle.

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.

Rule 193D; *see also* Excise Tax Advisory 3149.2009 ("ETA 3149").

While income from the actual transportation of property across the state's boundaries is exempt, no deduction is permitted for transportation billed between Washington locations. A similar exemption applies to transportation from Washington to a foreign country. *See* WAC 458-20-193C (Rule 193C). The Department has also issued a number of published determinations that provide guidance regarding application of the PUT to the income received from the transportation of property across state lines where multiple carriers are involved. *See, e.g.*, Det. No. 99-215, 19 WTD 817 (2000); Det. No. 99-330, 19 WTD 519 (2000); Det. No. 93-240, 13 WTD 369 (1994); Det. No. 89-503, 8 WTD 341 (1989).

13 WTD 369 held that income from transporting property is subject to the PUT when a taxpayer is paid for hauling entirely within Washington absent an interstate bill of lading. "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." 13 WTD 369. Thus, to qualify for treatment as an exempt interstate transportation, the freight must have an out-of-state origin or destination and the taxpayer must document that it provided the transportation as part of an uninterrupted interstate haul. *See id.* This important documentation is acquired from a review of the bills of lading or other shipping documents that direct the disposition of the goods.

19 WTD 519 explains the importance of shipping documents in determining the responsibility of the carrier and the taxability of the income earned:

[A] motor carrier who moves goods entirely within the state of Washington must move them under authority of a through bill of lading in order to qualify for the deduction (i.e. interstate commerce). A through bill of lading is one in which the interstate carrier remains obligated for the proper delivery of the goods to the final destination, even though other carriers may be involved in providing transportation services. A typical through bill of lading contains: (1) the name and place of the consignor; (2) the name and place of business of the consignee; (3) the identity of the initial carrier, the intermediate carrier, and the delivery carrier; (4) the car/trailer number; (5) a description of the goods being shipped; (6) the delivery route; (7) the gross weight of the goods; (8) a single freight rate for the shipment; and (9) a "bill of lading" number issued by a freight forwarder or other party.

19 WTD 519. Thus, the Department looks to shipping documents to determine if the carrier is participating in and being paid for the uninterrupted interstate movement of goods. If that is the case, then the income earned is derived from the interstate movement of goods and exempt from Washington's PUT. *See* 19 WTD 817.

Exemptions to a tax are narrowly construed. Taxation is the rule and exemption is the exception. *Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P2d 764 (1972). Thus, the burden is on the taxpayer to document entitlement to a tax exemption. In this case, the Audit Division has identified deliveries by Taxpayer that originated at Washington ports that were delivered to Washington locations. The documents provided by Taxpayer to the Audit Division did not include a through bill of lading or similar documentation sufficient to prove that Taxpayer had the responsibility of a carrier participating in the uninterrupted interstate movement of goods. *See* ETA 3149. Taxpayer has failed to provide the documentation necessary to support the relief it requests.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 4th day of June 2013.