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

In the Matter of the Petition) D E T E R M I N A T I O N
For Refund of)
) No. 89-478
)
. . .) Registration No. . . .
) . . . /Audit No. . . .
)

[1] RULE 193A: RETAIL SALES TAX -- INTERSTATE SALES. To be relieved of the duty to collect sales tax on alleged interstate sales, taxpayer must prove that it was obligated to, and did, deliver the goods to the purchaser outside this state. Delivery to moving company where the invoice lists a Washington telephone number for the purchaser at the time of sale and where the seller was not shown on the transportation documents as "shipper" is not sufficient to comply with Rule 193A.

[2] RULE 193C: EXPORTS -- COMMENCEMENT OF MOVEMENT -- STREAM OF EXPORT COMMERCE. The export movement of goods sold to foreign buyers may commence before the goods are placed upon foreign-bound transportation, but such sales must always satisfy the criteria of Rule 193C in order to be tax exempt. Where taxpayer fails to show that it has actually placed the goods into the stream of export commerce, the criteria are not met. Carrington Co. v. Dept. of Rev., 84 Wn.2d 444 (1974); Determination No. 88-155, 5 WTD 179 (1988).

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: . . .

NATURE OF ACTION:

Taxpayer petitions for refund of retailing B&O and retail sales tax on sale of furniture, contending that such sales were exempt as export or interstate sales.

FACTS AND ISSUES:

Johnson, A.L.J. -- Taxpayer is engaged in the business of furniture sales. During a routine audit, six sales to three different parties were found to be taxable on the grounds that the documentation did not meet the Department's published requirements. The audit report cites only WAC 458-20-193A, although three sales to two of the customers involved eventual shipment of goods to Japan. Taxpayer's petition cites only WAC 458-20-193C (Rule 193C), although three of the sales, to the remaining customer, involve shipment of the goods to Michigan. Taxpayer protests the assessment of tax in these cases, arguing that the rule only requires a showing that the goods actually entered the stream of export commerce to be exempt from taxation and that the facts clearly demonstrate that such entry occurred in that case.

Taxpayer contends that

> [i]n all of the above cases, we obtained copies of bills of lading that show the merchandise leaving the country to arrive at the foreign destination. As discussed with the auditor. . .the issue is not whether the merchandise was a foreign sale, but that [taxpayer] was specifically not designated as the shipper.
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> We realize now the technicality that we violated, i.e., the seller must be the shipper of the merchandise, and we have corrected our procedures to make sure that if we are not the shipper, sales tax must be charged to the customer and paid by us to the Department.

DISCUSSION:

[1] Rule 193A contains strict requirements as to the documentation necessary to support a claim that a sale was exempt from B&O and retail sales taxes:

> Where the seller agrees to and does deliver the goods to the purchaser at a point outside the state, neither retailing nor wholesaling business tax is applicable. Such delivery may be by the seller's own transportation equipment or by a carrier for hire. In either case for proof of entitlement to exemption the seller is required to retain in his records documentary proof (1) that there was such an agreement and (2) that delivery was in fact made outside the state. Acceptable proof will be:
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> (a) The contract or agreement AND
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> (b) If shipped by a for hire carrier, a waybill, bill of lading or other contract of carriage by which the carrier agrees to transport the goods sold, at the risk and expense of the seller, to the buyer at a point outside the state; or
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> (c) If sent by the seller's own transportation equipment, a tripsheet signed by the person making delivery for the seller and showing the (1) buyer's name and address, (2) time of delivery to the buyer, together with (3) signature of the buyer or his representative acknowledging receipt of the goods at the place designated outside the state of Washington.
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> The retail sales tax is imposed upon all retail sales made within this state. . .[the tax] does not apply when, as a necessary incident to the contract of sales, the seller agrees to, and does, deliver the property to the buyer at a point outside the state, or delivers the same to a for hire carrier consigned to the purchaser outside the state. The facts must disclose that the carrier is the agent of the seller and the seller must retain proof of exemption as outlined above under retailing and wholesaling. (Emphasis supplied.)

In this case, the facts show that the first three sales were to a party listing a Washington telephone number valid until a date nine days after the sale and four days after delivery to the moving company. Additionally, the moving company document fails to show the taxpayer as the shipper of the goods, as required by the rule. Because the information supplied tends to support a finding that the sales were to a person still residing in this state at the time of the transaction and that

the moving company was acting as the purchaser's agent, we are without authority to grant a refund of sales tax assessed on these sales.

[2] States are prohibited from taxing foreign sales by the United States Constitution. However, it is well settled that, to be exempt from taxation, the product must have been placed into the stream of export commerce. Carrington Co. v. Dept. of Rev., 84 Wn.2d 444 (1974).

Rule 193C states that

> [a] deduction is allowed with respect to export sales when as a necessary incident to the contract of sale the seller agrees to, and does deliver the goods . . . (3) to the buyer at shipside or aboard the buyer's vessel or other transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment. . . .there must be an actual entrance of the goods into the export stream. (Emphasis supplied.)

The rule contains stringent documentation requirements, which must be met to prove that there was no break in the stream:

> [i]n all circumstances there must be (a) a certainty of export and (b) the process of export must have started.
> It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel. To be tax exempt upon export sales, the seller must document the fact that he placed the goods into the export process. That may be shown by the seller obtaining and keeping in his files any one of the following documentary evidence:
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> (1) A bona fide bill of lading in which the seller is shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or
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> (2) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

(3) Documents consisting of:

(a) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel;" and

(b) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

(c) When available, United States export or customs clearance documents showing that the goods were actually exported; and

(d) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way which is exclusively attributable to goods for export.

Thus, where the seller actually delivers the goods into the export stream and retains such records as above set forth, the tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; but rather, the seller must show that he was required to, and did put the goods into the export process.

With respect to the remaining three sales, which allegedly were shipped directly to Japan, we find that the seller has not met the requirements of Rule 193C.

In the case of two of the sales to a single customer, a Bellevue address was given for the customer. The invoice contains the following comment:

> Please ship to Japan. Customer will provide bill of lading for tax and name of shipping company.

However, the bill of lading shows the purchaser's name and Bellevue address as shipper and the purchaser's name and an address in Japan as consignee. No information on the submitted bill of lading describes the items on the two invoices, and nothing supports a finding that these goods were shipped by anyone other than the purchaser.

Similarly, the other sale was to a purchaser listing a Bellevue address with the following comment:

> No tax -- to be shipped to Japan with Nippon _____ [illegible]. Please hold at [taxpayer's warehouse] -- customer will provide notice about shipping. (Brackets supplied.)

The invoice contains no requirement that the seller ship the merchandise to Japan. The air waybill submitted by taxpayer in support of its right to deduct this sale lists Japan Air Lines in the spaces reserved for the consignor and consignee, shows that Japan Air Lines carried the items, and contains no information whatever which would link this waybill with the invoice.

We note that an audit of another branch of this taxpayer's business operation resulted in taxpayer's ability to produce documentation which was found to support its entitlement to a deduction from taxable sales. In the cases of the three alleged overseas sales, we find that the documentation purporting to support the deductions fails on two grounds: (1) the invoices do not show that the seller was obligated to, and did, ship the goods to Japan; and (2) the bills of lading submitted as proof of overseas delivery do not clearly show a direct trail from the seller's place of business to Japan of the goods shown on the invoices.

While we sympathize with the taxpayer's statement that its generally careful recordkeeping and amendment of its documentation procedures should merit relief in this case, the Department's position with regard to Rules 193A and 193C was stated in Determination No. 88-155, 5 WTD 179, 196 (1988):

> Clearly, the taxpayers have retained and provided no documentary proof that there was an agreement to deliver out of state, or that there was actual out-of-state (or foreign) delivery by them at their own risk and expense. Although the taxpayers would have us waive the documentary proof requirements and instead rely on the circumstances surrounding their transactions, we must decline to do so. The technical proof requirements outlined by Rules 193A and C are mandatory and important to the proper administration of taxes in this state.

Because the rules' strict requirements are clear and both rules have been duly promulgated, published, and made available to all taxpayers, we are without authority to grant the relief sought by this taxpayer for the six protested sales.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 5th day of October 1989.