

Cite as 8 WTD 389 (1989)

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. 89-518
)
) Registration No. . . .
) . . . /Audit No. . . .
)

[1] RULE 174: RETAIL SALES TAX -- USE TAX -- EXEMPTIONS
-- INTERSTATE MOTOR CARRIERS -- COMPONENT PARTS --
FORKLIFT VEHICLES -- TRANSPORTING GOODS ACROSS STATE
BOUNDARIES. Where taxpayer's forklift vehicles do
not transport goods across this state's boundaries,
there is no use/deferred sales tax exemption on
charges for component parts and retail taxable
services with respect to the forklift vehicles. ETB
197. UPS v. Dept. of Revenue, 102 Wn.2d 355 (1984).

[2] RULE 224: RETAIL SALES TAX -- USE TAX -- ANALYSIS OF
OIL -- RETAIL SALE VERSUS NONTAXABLE SERVICE. The
charge for the analysis of engine and transmission
oil is not subject to retail sales tax or use tax.
It is an activity similar to assaying which is held
to be a professional service in Rule 224.

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: July 24, 1986

NATURE OF ACTION:

Petition protesting the assessment of use tax/deferred sales
tax on replacement parts for forklift vehicles and on oil
analysis of trucks used by an I.C.C. carrier.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is engaged in business as a common carrier by motor vehicle operating under I.C.C. certificate . . . to transport goods interstate.

The Department of Revenue (Department) examined the taxpayer's business records for the period from July 1, 1981 through March 31, 1985. As a result of this audit, the Department issued the above captioned tax assessment on November 21, 1985 asserting excise tax liability in the amount of \$. . . and interest due in the amount of \$. . . for a total sum of \$. . . which has been paid in full.

The taxpayer's protest involves Schedule VII where use tax and/or deferred sales tax were assessed on consumable items purchased without payment of retail sales tax to the vendors. The taxpayer protests taxation of those items on . . . Schedule VII which were replacement parts for about seven of its forklifts:

. . .

The taxpayer believes that RCW 82.08.0262 provides a sales tax exemption on "sales of tangible personal property which becomes a component part of...motor vehicles or trailers whether owned by or leased with or without driver 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;...". The taxpayer asserts that a forklift is a motor vehicle and thus believes that replacement parts for its forklifts should be exempt from sales tax.

The taxpayer's forklifts are vehicles with four wheels (one forklift had three wheels) and with forks/prongs sticking out to pick up pallets, long pipes, heavy machinery, etc. The taxpayer asserts that the forklifts handle goods that are being moved interstate and that per UPS v. Dept. of Revenue, 102 Wn.2d 355 (1984) there is no requirement for the vehicle to cross state lines to qualify for the tax exemption on component parts.

The taxpayer also protests the assessment on . . . Schedule VII of four items taxed which were oil sampling supplies and services.

. . .

The taxpayer described the "oil sampling" purchases as involving the following. The taxpayer receives plastic bottles from a company which does analysis of engine oil. Into the plastic bottles, the taxpayer pumps samples of crankcase, transmission and differential oil taken from its truck vehicles by use of a tube/ pumping device. The plastic bottles containing the samples of oil are sent to the laboratory of the vendor who provided the plastic bottles and tubes, [and] who analyzes the oil via several tests for metal flakes, sand, silica, carbon, water, copper, and iron to determine whether engine repairs are needed. The taxpayer is charged \$350 for 50 bottles and sampling tests as a combined sale. [The vendor] keeps the plastic bottles after doing the oil analysis. There is a separate charge for the tubing which the taxpayer retains of \$10 to \$15.

The taxpayer contends that RCW 82.08.0262 provides a sales tax exemption on such supplies and services for its trucks.

The issues are whether charges for replacement parts for forklifts and charges for oil analysis are exempt from use/deferred sales tax where the taxpayer/buyer is an I.C.C. carrier.

DISCUSSION:

Replacement parts for forklifts.

WAC 458-20-174 (Rule 174) is the administrative regulation which explains and implements the statute, RCW 82.08.0262, cited by the taxpayer. Rule 174 in pertinent part provides;

RCW 82.08.0262 exempts from the application of the retail sales tax sales of tangible personal property which becomes a component part...of motor vehicles and trailers...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.

[1] Excise Tax Bulletin 197.08.174 (ETB 197) states the Department's position with respect to component parts by declaring:

...The exemption with respect to components of trucks and trailers noted in Rule 174 is only allowable with respect to such vehicles as are used in transporting of vehicles or property for hire across the state's boundaries in interstate or foreign commerce pursuant to authority of an ICC permit. (Emphasis supplied.)

In this case, the component parts were attached to the taxpayer's forklifts. Without conceding that the forklift vehicle is a "motor vehicle", we find that the forklift does not transport goods "across the state's boundaries in interstate commerce." ETB 174.

Accordingly, we conclude that the tax exemption provided in RCW 82.08.0262 is not available with respect to the forklift vehicles.

Contrary to the taxpayer's assertion, in the UPS case, supra, at page 362, the court construed the use tax exemption statute "to require that a vehicle actually cross the state boundaries in order to be eligible for exemption from the use tax." The court held that UPS's "package delivery vehicles operate totally within Washington and do not qualify for the exemption." Here, the taxpayer's forklift vehicles operate totally within Washington. It is of no consequence that the forklifts handle goods that are being moved interstate. In the UPS case, the package delivery vehicles also handled goods which were being moved interstate. The synopsis # 4 of the UPS case at page 355 succinctly states: "The fact that the property being transported has [sic] or will cross state boundaries is irrelevant to determining the applicability of the tax."

Oil analysis.

In this situation, the taxpayer furnishes oil samples from its trucks to a company which analyzes the oil for impurities and residue. The taxpayer pays for the analysis when it receives the plastic bottles to hold the sample oil and tube/pumping device to extract the oil from the truck's engine and transmission. The company doing the analysis retains the bottles. The taxpayer retains the tube/pumping devices.

The retail sales tax is imposed upon a "retail sale" (RCW 82.08.020) which by definition is a sale of tangible personal property or sale of services that are statutorily defined as retail sales. None of such services include analyzing materials. RCW 82.04.050.

The use tax is imposed upon the use of an article of tangible personal property purchased at retail where sales tax has not been paid. The use of an oil analysis report is not the use of tangible personal property.

[2] Accordingly, we conclude that the charge for the analysis of oil is not subject to sales tax or use tax. The tax classification of the business activity for the company doing the oil analysis is Service business and occupation tax and the charge for its services is not subject to sales tax. See WAC 458-20-224 (Rule 224) where a similar business activity such as assaying, the analysis of materials, is specifically stated to be a professional service.

The use of the plastic bottles by the taxpayer supplied by the service provider, and then returned to the service provider, was included in the charge for the oil analysis and is not sales/use taxable. The charge for the tube/pump supplied by the service provider and retained by the taxpayer is subject to use/deferred sales tax because it was an extra charge not included in the charge for the oil analysis and there was a sale (transfer of ownership) of the tube/pump which was used and retained by the taxpayer. Moreover, the tube/pumps did not become component parts of motor vehicles used in interstate commerce. We conclude that the purchase and use of the tube/pumps are not exempt from use tax/deferred sales tax.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is granted in part and denied in part as indicated in the Determination. This matter is being referred to the Department's Audit Section for computation of the refund by adjustment of the tax assessment in line with the holdings in this Determination and authorization of a refund which will include statutory interest.

DATED this 29th day of November 1989.