

Cite as 8 WTD 341 (1989)

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

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
for Refund of)	
)	No. 89-503
. . .)	
)	Registration No. . . .
)	
)	

[1] RULE 193D: PUBLIC UTILITY TAX - INTRASTATE MOTOR TRANSPORTATION -INTERSTATE COMMERCE - INTERSTATE BILL OF LADING. When a motor carrier moves goods within Washington under the authority of a through bill of lading, the interstate commerce deduction will apply. If such movement is not under the authority of an interstate bill of lading, the interstate commerce deduction will not apply.

[2] RULE 180, RULE 194, RULE 193D, & RULE 179: PUBLIC UTILITY TAX - MOTOR TRANSPORTATION - PLACE OF SERVICE -INTERSTATE COMMERCE INTERSTATE BILL OF LADING - ABSENCE THEREOF. When a motor carrier is paid for hauling which takes place entirely outside of Washington or for hauling across Washington's boundaries, it is not taxable. When it is paid for hauling entirely within Washington absent an interstate bill of lading, it is subject to Motor Transportation (or Urban Transportation) public utility tax. It may, however, deduct amounts paid to other motor carriers subject to 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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition for refund of taxes paid by a trucking firm as agent for an out-of-state freight forwarder engaged in interstate commerce.

FACTS:

Bauer, A.L.J.-- The taxpayers run a trucking company (hereafter, "taxpayer"), and as such serve as an agent of Airborne Freight Corporation. In this capacity the taxpayer receives shipments from Airborne planes at the Spokane airport, and then delivers them to recipients in the local area. It likewise picks up packages from customers and delivers them to Airborne at the Spokane Airport. Even though most of the freight involved is being shipped in interstate commerce, the taxpayer does not itself deliver across state lines.

The taxpayer is certified as an interstate carrier, and has provided the Department with documents from the Civil Aeronautics Board certifying this status. It has paid business and occupation taxes under the service classification for its hauls.

ISSUE AND TAXPAYER'S EXCEPTIONS:

The taxpayer has received information through Airborne Freight Corporation that, as their agents, drivers for pickup and delivery are interstate carriers and are exempt from the Washington business and occupation tax. The taxpayer therefore requests a refund of the taxes already paid, amounting to \$. . . , and exemption from any further B&O taxes.

The issue for our resolution, then, is whether a shipper which transports solely within this state is exempt from business and occupation tax when it is the agent of an interstate shipper, despite the fact that it does not itself deliver across state lines.

DISCUSSION:

When a motor carrier moves goods within Washington under the authority of an interstate bill of lading, WAC 458-20-193D applies in pertinent part as follows:

In computing public utility tax, there may be deducted from gross income so much thereof as is derived from actually transporting persons or proper

... from this state to another state or territory or to a foreign country and vice versa.

...

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 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.

[1] Thus, when a motor carrier moves goods within Washington under the authority of an interstate bill of lading, the interstate commerce deduction applies. If such movement is not under the authority of such a through bill of lading, the deduction will not apply.

When a motor carrier transports goods within Washington absent a through bill of lading on an interstate shipment, the taxability of the taxpayer's activities will be potentially governed by four Department of Revenue rules. These are: WAC 458-20-180, -194, -193D, and -179.

WAC 458-20-180 generally describes the taxpayer's activities as subject to public utility tax under the Motor Transportation (and possibly the Urban Transportation) classification.

WAC 458-20-194 provides that persons engaged in a public service business are not subject to tax on income derived from business conducted outside the state nor are they subject to

tax on income from conducting business in interstate and foreign commerce.

WAC 458-20-193D states that income derived from transporting property across this state's boundaries is deductible from the measure of the public utility tax.

WAC 458-20-179 provides that amounts paid to another person who pays public utility tax on those amounts are not taxable to the payor.

[2] Thus, when a motor carrier is paid for hauling which takes place entirely outside of Washington or for hauling across Washington's boundaries, it is not taxable. When it is paid for hauling entirely within Washington absent an interstate bill of lading, it is subject to Motor Transportation (or Urban Transportation) public utility tax. It may, however, deduct amounts paid to other motor carriers subject to tax.

Applying these rules to the facts presented by the taxpayer, we conclude that the taxpayer is entitled to deduct that gross income attributable to hauls it made subject to an interstate bill of lading. To the extent the taxpayer's trips were not subject to interstate bills of lading, it will be fully taxable under the Motor Transportation or Urban Transportation classifications, as applicable, since the taxpayer's hauling activities were solely within the state.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is granted to the extent its hauls were subject to interstate bills of lading. The case is therefore remanded to audit for a determination of the refund amount.

DATED this 31st day of October 1989.