Cite as Det. No. 96-134, 16 WTD 102 (1996)

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

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. 96-134
. . .	)	Registration No. . . .
	)	FY. . ./Audit No. . . .

RULE 180; RCW 82.16.010(8) AND (9): PUBLIC UTILITY TAX -- URBAN TRANSPORTATION BUSINESS -- MOTOR TRANSPORTATION BUSINESS -- ORIGINS AND DESTINATIONS. When determining whether a for-hire haul is subject to the urban transportation rate or the motor transportation rate, the trip is measured from the point of origin to the point of destination without regard to the actual route taken.

1 RULE 180; RCW 82.16.010(9): PUBLIC UTILITY TAX -- URBAN TRANSPORTATION BUSINESS -- STATUTORY CONSTRUCTION: Urban transportation business pertains to operating a motor vehicle carrying persons or property for-hire within the corporate limits of a city, or within five miles of the corporate limits thereof, or operating entirely within and between two cities whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either city. Three or more neighboring cities may not be linked together to create an urban commercial zone for purposes of applying the urban transportation tax classification.

[1] RULES 178 AND 180: RCW 82.12.020: USE TAX -- EXEMPTION -- MOTOR CARRIER TRAILER -- RENTAL OR LEASE. Persons buying trailers solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay retail sales tax to their vendors, and use tax is not applicable against the purchasers unless there is evidence of intervening use of the trailers by them. Cf. Det. Nos. 85-308A and 86-20A, 1 WTD 415, 436 (1986) (a vessel was exempt from use tax because there was no evidence of actual intrastate use within Washington, although it was moored here for interstate commerce purposes.)

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.

NATURE OF ACTION:

The owners of a motor common carrier business (the taxpayers) protest the assessments of motor transportation public utility tax, use tax, and wholesaling business and occupation (B&O) tax.[1]

FACTS:

De Luca, A.L.J. -- The taxpayers owned and operated a gravel pit during 1989 and most of 1990. They sold gravel from the pit and used their dump trucks to transport the gravel to the purchasers. The taxpayers reported retailing B&O tax and retail sales tax or wholesaling B&O tax, depending on the type of sale.

The taxpayers sold the gravel pit in late 1990, and began hauling gravel and dirt for-hire on a full-time basis. They hold a common carrier permit issued by the Interstate Commerce Commission (ICC). The taxpayers erroneously reported their income from hauling-for-hire under the wholesaling B&O tax classification rather than motor transportation or urban transportation public utility tax.

The Department of Revenue (Department) examined the taxpayers' books and records for the period January 1, 1989 through December 31, 1992, and assessed taxes and interest. The Department reclassified the taxpayers' hauling-for-hire income from wholesaling B&O tax to motor transportation (42.8% of the income) and urban transportation (57.2% of the income) public utility tax.

The Department assessed use tax on the value of a used "bellydump" trailer that the taxpayers purchased in Washington in 1990 and leased to a lessee in another state from February 1990 through March 1992.

The Department also assessed wholesaling B&O tax on sales of gravel.

The Department made a post-assessment adjustment (PAA) that reduced the assessment.

TAXPAYERS' EXCEPTIONS:

---

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

The taxpayers believe their records reveal that 95% of their gross income from their for-hire hauls is subject to tax under the urban transportation classification and 5% is subject to tax under the motor transportation classification. The taxpayers state that, since the audit, they have found additional documents to support this claim.

Obviously, resolving the issue whether for-hire hauls are classified as urban transportation or motor transportation requires distinguishing one from the other. The taxpayers testified that they have been frustrated and confused at times when attempting to determine whether their for-hire hauls are urban transportation or motor transportation. In particular, the taxpayers request guidance in how to determine whether for-hire hauls that involve two or more incorporated cities are classified as urban transportation or motor transportation. The taxpayers have trips that fall within this category.

The taxpayers also request clarification as to when and where a for-hire haul begins and ends for urban transportation purposes. Specifically, the taxpayers contend that for-hire hauls can be measured only from the places their trucks are loaded at work sites to the places their trucks deliver or dump their loads. The taxpayers testified that they get paid only from the time their trucks are loaded until they are unloaded. They do not get paid for the time or distances their trucks travel empty to work sites. Consequently, the taxpayers argue that distances traveled empty by their trucks from their headquarters to work sites or from one job to different job should not count as mileage that is used to determine whether a haul is urban transportation or motor transportation because they are not being paid for those miles.

The taxpayers contend that the use tax is not due on the bellydump trailer they purchased. They bought the used trailer in Washington and provided the dealer with an ICC exemption certificate pursuant to WAC 458-20-174 (Rule 174). The taxpayers explained they purchased it to lease it to other businesses. In fact, they testified that they immediately leased the trailer to the lessee who used it in another state for his business. The lessee stated in writing that he leased it from February 10, 1990 through March 1992 and used it only in that other state except when he had it repaired or serviced occasionally at the taxpayer's business in Washington.

The taxpayers further explained that once the lease expired they sold the trailer to a buyer in Washington who paid the sales tax and registered it in his name. The taxpayers state they never

used the trailer in their business, but simply kept it on their books and records as leased equipment for accounting and tax purposes.

Finally, the taxpayers state that since the audit they have found additional records that support their claim for more wholesaling B&O tax credit. The taxpayers declare that these additional records prove that they properly paid wholesaling B&O tax. These records are similar to the ones that were credited in the PAA.

ISSUES:

1. For purposes of determining whether a for-hire haul is subject to urban transportation or motor transportation public utility tax, does the trip begin at the time the truck leaves the taxpayers' premises empty or when it picks up the dirt or gravel at a construction cite or quarry? Does the trip end upon delivery of the dirt or gravel at a site or when the truck returns to the taxpayer's premises?

2. May a motor carrier's for-hire hauls extend to multiple cities and still be classified as urban transportation for public utility tax purposes?

3. Does use tax apply to the value of the trailer the taxpayers purchased and leased to another business and subsequently sold to another person if there was no intervening use of the trailer in Washington by the taxpayers?

DISCUSSION:

We note the taxpayers' statement that, since the audit, they have found additional records to support their belief that 95% of their income from for-hire hauls was subject to urban transportation public utility tax. Ultimately, whether 95% or 57% or some other percentage of the taxpayers' for-hire haul income was subject to the urban transportation public utility tax depends on whether their records adequately show where these trips began and ended. If the taxpayers' books and accounts do not accurately show whether the transportation was urban or motor, their gross income will be taxed under the higher motor transportation rate. WAC 458-20-180 (Rule 180); Det. No. 87-267, 4 WTD 11 (1987).

Before remanding the matter to the Audit Division to review these additional records, we will establish guidelines describing how to determine where a for-hire haul begins and ends. We will also

explain the limits imposed on for-hire hauls for urban transportation purposes.

The public utility tax statute defines "motor transportation business" and "urban transportation business," respectively, in RCW 82.16.010:

(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: . . . .

(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 limits 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.

Rule 180 implements the public utility tax for both types of businesses. The rule largely repeats the definitions of "motor transportation business" and "urban transportation business" contained in RCW 82.16.010, but adds:

It [the term "urban transportation business"] does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operating extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times to be within five miles of the corporate limits of some city.

RCW 82.16.020 imposes the public utility tax upon a business' gross income. The taxpayers are not paid for the time or distances their trucks travel empty from their headquarters to the job sites. Thus, the taxpayers do not earn income until

their trucks reach a construction site or quarry and are loaded with dirt or other excavated material. Their drivers then deliver or dump the dirt or gravel at authorized sites. Once the drivers have completed their hauling from construction sites or quarries, the taxpayers are not paid for the time or distance their trucks travel empty either back to the taxpayer's headquarters or to other job sites.

[1] When determining whether a for-hire haul is subject to the urban transportation rate or the motor transportation rate, the trip is measured from where the truck picks up dirt or other excavated materials to where it delivers or dumps the materials. The hauls are not measured from the taxpayer's depot to job sites or between jobs sites when they travel empty. Mailing addresses on invoices also do not determine where a for-hire haul occurred. The Department has ruled that it ". . . examines only the points of origin and destination [of the goods transported], without regard to the route actually taken." Det. No. 87-267, supra, at 14. However, the taxpayers' records must show where those origins and destinations were.

[2] Rule 180 and RCW 82.16.10 clearly explain that the urban transportation rate applies if a for-hire truck is operated entirely within the corporate limits of any city or within five miles of the city's corporate limits.

The same rate also applies if the for-hire truck operates 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 town or city. Rule 180 further explains a for-hire haul that extends from a city to a point that is more than five miles beyond its corporate limits is not urban transportation, even though the route continues through intermediate cities, which allows the truck at all times to be within five miles of the corporate limits of some city.

In other words, a motor carrier cannot string together more than two cities in an attempt to report gross income from a for-hire haul under the urban transportation classification when the corporate limits of the pickup and delivery cities are more than five miles apart. For example, hauling property from Seattle, where pickup occurs, to Puyallup or Tacoma, where it is delivered, is not urban transportation even though the trip may allow the truck to be within five miles of the corporate limits of some city at all times. Det. No. 87-267, supra.

> Det. No 87-267, supra, at 13, explains why the interpretation of urban transportation business, as defined in RCW 82.16.010(9), pertains only to two cities or towns that are within five miles of each other:
>
> The use of the preposition "between" and the pronoun "either" suggests that only two cities or towns are involved. If the legislature had intended otherwise, they [sic] would have specified "operating entirely within and among cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of any thereof."
>
> . . .
>
> In other words, three or more neighboring cities may not be linked together to create an urban commercial zone for purposes of applying the Urban Transportation classification as the taxpayer suggests.
>
> The following shipments are examples of urban transportation, assuming the corporate limits of cities A and B are within five miles of each other.
>
> [1] Pickup is within city A and delivery is within city A.
>
> 1. Pickup is within city A and delivery is to a point no more than five miles outside of city A's limits, and vice versa.
>
> 1. Pickup is at a point no more than five miles outside of city A's limits and delivery is to a point no more than five miles outside of city A's limits.
>
> 1. Pickup is within city A and delivery is within city B.
>
> 1. Pickup is within city A and delivery is to a point no more than five miles outside of city B's limits. Note, delivery could occur in city C if the place of delivery in city C lies not more than five miles from City B's limits. Delivery to parts of city C that lie beyond five miles from city B's limits would be motor transportation.

1. Pickup is at a point no more than five miles outside of city A's corporate limits and delivery is to a point no more than five miles outside of city B's limits. Note again, delivery could occur in city C if the place of delivery in city C lies not more than five miles from city B's limits. Delivery to parts of city C that lie beyond five miles from city B's limits would be motor transportation.

1. Pickup is in city A or at a point no more than five miles outside city A's limits. The shipment travels through city C and delivery occurs either within city B or at a point no more than five miles beyond city B's corporate limits. City C lies between cities A and B. Again, city A's and city B's corporate limits are no more than five miles apart from each other.

1. Pickup is in city A or at a point no more than five miles outside city A's corporate limits. Delivery occurs either within city B or a point no more than five miles beyond city B's corporate limits. The shipment goes through city C (at the motor carrier's hub, for example), which may be beyond the five mile limit from city A and/or city B. The critical fact is that city A and city B are no more than five miles apart. This example is given in Det. No. 87-267, supra, which states that ". . . the Department examines only the points of origin and destination, without regard to the route actually taken."

We will remand this issue to the Audit Division to review the taxpayers' additional records in accordance with the guidelines set forth above.

[3] We next address the use tax assessed against the bellydump trailer. As noted, the taxpayers hold an ICC permit that allows them to operate as a motor carrier. RCW 82.08.0263 exempts from sales tax motor vehicles and trailers that are purchased by motor carriers that hold ICC permits, providing the carriers tender an exemption certificate to the seller, as described in Rule 174. The taxpayers provided their trailer dealer with a Rule 174 ICC exemption certificate when they purchased the trailer. Thus, sales tax was not due from the taxpayers at the time of purchase.

The taxpayers have testified that they purchased the trailer to lease it without operator to other businesses. In fact, the lessee has submitted a letter stating that he leased the trailer and used it in outside of Washington for over two continuous years. Rule 180 provides that:

persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay the retail sales tax to their vendors.

> Furthermore, RCW 82.04.050(1)(a) exempts from the definition of "retail sale" purchases of tangible personal property for the purpose of resale in the purchaser's ". . . regular course of business without intervening use by the person." (Underlining ours.)
>
> The taxpayers testified that they never used the trailer in their business operations, but immediately leased it to the lessee and serviced and repaired it occasionally for him when necessary. They sold the trailer to a purchaser in Washington shortly after the lessee's lease expired. They simply kept the trailer on their books for accounting and tax purposes.
>
> Use tax applies upon the use of any tangible personal property that has not been subjected to sales tax upon its purchase or acquisition. Use tax liability arises at the time the property is first put to use in this state. RCW 82.12.020 and WAC 458-20-178 (Rule 178).
>
> We have been presented with no evidence of intervening use of the trailer in Washington by the taxpayers. Therefore, use tax on the value of the trailer should not have been assessed. Cf. Det. Nos. 85-308A and 86-020A, 1 WTD 415, 436 (1986) (a vessel was exempt from use tax because there was no evidence of actual intrastate use within Washington, although it was moored here for interstate commerce purposes).
>
> The final issue is solely one of fact, that is best resolved by the Audit Division. The taxpayers claim to have found additional records since the audit that demonstrate they paid wholesaling B&O tax. We will remand the issue to the Audit Division to review the additional records and grant a credit, if applicable.

DECISION AND DISPOSITION:

> The taxpayers' petition is granted to the extent that the use tax assessed against the value of the bellydump trailer be deleted. We remand the matter to the Audit Division to review the taxpayers' additional records to determine whether more of their gross income should be reclassified from motor transportation to urban transportation public utility tax, and whether they are

entitled to additional credit for wholesaling B&O taxes that they claim they paid.

The reporting instructions in this Determination constitute "specific written instructions" within the meaning of RCW 82.32.090. Failure to follow the instructions would subject the taxpayer to the additional ten percent penalty mandated by that statutory section.

This decision will become final September 23, 1996, unless you seek reconsideration of the decision or appeal the decision to the Board of Tax Appeals. If you decide to ask the Department to reconsider this decision, it is your responsibility to comply with the requirements for reconsideration contained in WAC 458-20-100(5). A copy of WAC 458-20-100 is enclosed with this decision.

You may appeal the decision to the Board of Tax Appeals (BTA). The BTA is not a part of the Department of Revenue; the BTA is a separate agency. The BTA's appeal procedures are set forth in chapter 82.03 RCW, in chapter 456-09 WAC (formal appeals), and in chapter 456-10 WAC (informal appeals). It is your responsibility to comply with the statutory and administrative requirements to perfect your appeal to the BTA.

Alternatively, you may appeal the decision to Thurston County Superior Court. Your attention is specifically directed to RCW 82.32.180. It is your responsibility to comply with the requirements of RCW 82.32.180 in order to appeal the decision to Thurston County Superior Court. The Thurston County Superior Court is the only court in the state that has original jurisdiction to hear excise tax matters.

Dated this 22nd day of August, 1996.