Cite as Det. No. 98-206, 19 WTD 128 (2000)

BEFORE THE 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. 98-206
. . .	)	Registration No. . . .
	)	FY. . . /Audit No. . . .

[1] RULE 193D: PUBLIC UTILITY TAX – EXEMPTION -- MOTOR TRANSPORTATION — INTERSTATE COMMERCE. Interstate movement into the state ends at the point where the obligation of the interstate line haul carrier ends. Transportation performed from that point to another point within Washington is wholly intrastate and is within the taxing jurisdiction of this state.

[2] RULE 193D: PUBLIC UTILITY TAX – EXEMPTION – MOTOR TRANSPORTATION – INTERSTATE COMMERCE – SHIPPER'S INTENT. For purposes of determining whether an interstate movement ended before the goods reached the ultimate consignee, the fact that the shipper knew the identity of the ultimate consignee at the time of shipment is immaterial.

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:

Trucking firm protests disallowance of interstate deduction for hauls of new automobiles between railheads in Washington and dealerships in Washington, contending the hauls are interstate commerce and, therefore, the income is nontaxable.[1]

FACTS:

---

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

Prusia, A.L.J. -- The taxpayer is a motor freight company that hauls new and used automobiles. This appeal concerns the taxation of income from hauls of new automobiles between points within Washington.

The Department of Revenue (Department) examined the taxpayer's books and records for the period January 1, 1993 through March 31, 1997. As a result of the audit, the Department issued a deficiency assessment, Document No. . . . . Under Schedule 4, the Department disallowed interstate deductions from the public utility (motor transportation) tax taken on revenue from delivering motor vehicles from ports and railheads in Washington to dealerships in Washington. The Department concluded that this activity was not a continuation of the importation process, and, therefore, not deductible.

The Department's Audit Division explained the Schedule 4 assessment as follows. WAC 458-20-193D (Rule 193D) provides that the interstate movement of cargo ceases when the goods have arrived at the destination to which they were billed by the out-of-state shipper. Once the interstate movement ends, no deduction is permitted of the gross income derived from transporting the goods from that destination to another point in this state. In this case, the audit examination found no documentation to show that the local vehicle dealer was the ultimate consignee on an interstate through bill of lading. Rather, it appeared the shipper (the vehicle manufacturer) hired the taxpayer for a local haul from the port or railhead to the dealer. Therefore, the deduction was disallowed.

The taxpayer appealed Schedule 4 of the assessment. The petition contended all of the hauls for which the taxpayer had claimed an interstate deduction were interstate in nature, and qualified for the deduction. The taxpayer subsequently modified its appeal. It now protests Schedule 4 only to the extent it disallows the deduction for hauls from railheads. It states it is unable to show the movements from port facilities to dealerships were part of a continuous through foreign commerce movement, and, therefore, does not continue its claim that the ship/truck traffic qualifies for the interstate deduction. The taxpayer states that approximately 75 percent of the new automobiles it hauled to Washington dealerships during the audit period were hauled from railheads.

The taxpayer established the following facts concerning its hauls from railheads in Washington to automobile dealerships in Washington. All of the automobiles are manufactured outside Washington. The manufacturers select, direct, and pay both the rail carrier and the motor carrier (the taxpayer). The manufacturer knows the final dealer location of each vehicle at the time of shipment, and designates the final dealer destination on shipping/release documents at the time the automobiles are loaded on the rail cars at the out-of-state shipping point. The dealer/ultimate consignee has no control over the movement of the automobiles by the carriers involved and does not pay any of the freight charges.

Currently, shipping information and instructions for rail/truck movements are transmitted electronically and by fax. The old-style bill of lading usually is not used. Automobile manufacturer H, for example, sends the shipping information and instructions electronically from its manufacturing facility in the North Central United States to its office in Oregon at the time the automobiles are loaded on the railcars at the manufacturing plant. At the Oregon office, the information and instructions are printed, and then faxed to the taxpayer. The instructions identify the rail carrier, the origin of rail movement, the rail destination, the rail unloading facility, the motor carrier, and the ultimate dealer/consignee of each vehicle. The manufacturer also puts a label on each vehicle at the time of shipment, which has the ultimate dealer's name and address.

When the automobiles are unloaded at the railheads in Washington, the taxpayer transports them to the dealers pursuant to the written shipping instructions. The taxpayer does not issue bills of lading. The taxpayer bills the manufacturer for its portion of the transportation.

The taxpayer contends that the freight movements from railheads are interstate in nature, and therefore not subject to the public utility tax. In relies upon an Interstate Commerce Commission (ICC) policy statement issued in 1992 -- ICC Ex Parte No. MC-207, and an ICC decision issued in 1990 – No. MC-C-30146. The taxpayer states the ICC determined, based upon court decisions, that whether transportation between two points in a state is interstate or intrastate in nature depends upon the essential character of the shipment, and crucial to the determination of the essential character is the shipper's fixed and persisting intent at the time of shipment. It argues that in this case all of the cargo originated outside Washington, and clearly the shipper intended at the time of shipment that the automobile dealers be the final destination. Therefore, the essential character of the transportation the taxpayer performs within Washington is interstate.

ISSUE:

Did the transportation in question constitute interstate commerce?

DISCUSSION:

A public utility tax is imposed upon every person for the act or privilege of engaging within this state in the motor transportation business. RCW 82.16.020. RCW 82.16.050(6) allows a deduction from gross income in computing the tax for amounts "derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States."

WAC 458-20-193D (Rule 193D) deals with transportation, communication, public utility activities, and other services in interstate or foreign commerce. Rule 193D provides, in relevant 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 exactions 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.

Examples of Exempt Income:

(1) Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.

With regard to when interstate movement of goods ends, Rule 193D states:

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.

Excise Tax Advisory 250.16.179/193 (ETA 250) provides further clarification on the subject:

WHERE INTERSTATE COMMERCE ENDS AND INTRASTATE COMMERCE BEGINS

Where goods are shipped under a bill of lading by an interstate carrier in interstate commerce to a point in this state and a local carrier moves the goods to another point in this state under a separate bill of lading, has the haul in interstate commerce ended bringing the local haul within the taxing jurisdiction of this state?

The taxpayer, a trucking company, was assessed a Public Utility Tax upon income derived from local transportation services performed on goods moving in interstate commerce. The shipments in question were of goods originating in Alaska which moved by water to Seattle and Tacoma. The Alaska shipper consigned the merchandise on bills of lading to dockside at one or the other of those locations. The taxpayer then moved the goods on a separate bill of lading at the direction of the consignee from dockside to destinations at the consignees' places of business. The taxpayer contended that the transportation services involved were exempt from the Public Utility Tax as being charges made for the transportation of commodities for hire in interstate commerce, a tax on the

> gross income derived from such services being prohibited by RCW 82.16.050(6). The taxpayer argued that the movement in this state was actually an interstate movement, being merely a continuation of the original intended commercial journey. The taxpayer pointed out that the Interstate Commerce Commission had set an interstate rate for the movement here involved and stated that such rates were considerably lower than would have been charged if the carriage were classified as an intrastate haul.
>
> The Tax Commission noted that Rule 193 states
>
>> "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. . . .
>
> The Tax Commission ruled that the interstate movement of goods terminated at the point where the obligation of the interstate haul carrier ended, i.e., the point of destination shown on the bill of lading issued by such carrier. Any transportation services performed from that point to another point within this state are wholly intrastate and are within the taxing jurisdiction of the State of Washington. The Commission further ruled that regulation or non-regulation by the Interstate Commerce Commission was not in itself a determinative factor as concerned the taxing jurisdiction of the State of Washington.
>
> Therefore, the Commission held that the local transportation services performed by the taxpayer were sufficiently disassociated from interstate commerce to bring it within the taxing jurisdiction of the State of Washington. See Convoy Co. v. Taylor, 1959, 53 Wn. 2d 439.

Thus, with respect to goods moving into the state, the Department's position is that interstate movement terminates at the point where the obligation of the interstate line haul carrier ends. Any transportation services performed from that point to another point within this state are wholly intrastate for purposes of taxation.

Historically, the Department has based its determination of where the obligation of the interstate carrier begins or ends (and therefore where the interstate activity begins or ends) on bills of lading issued by the carrier. A bill of lading is a document issued by a commercial carrier to a shipper, acknowledging receipt of goods and agreeing to deliver them to a designated place. The shipper usually prepares it. It constitutes a receipt for the goods received, and a transportation contract between the carrier and the shipper.[2] The Department consistently has taken the position that to be a participant in an interstate movement, a motor carrier who moves goods entirely within the state of Washington must move them under authority of a through bill of lading. A through bill

---

[2] See Wasem, Inc. v. State, 63 Wn.2d 67, 385 P.2d 530 (1963).

of lading is one in which the interstate carrier remains obligated for the proper delivery of the goods to their final destination.[3]

Several Departmental determinations provide examples of the application of the principle, in addition to those given in Rule 193D and ETA 250. In Det. No. 87-138, 3 WTD 73 (1987), the Department held that a taxpayer who transported Alaska salmon from a Seattle terminal to Marysville was not entitled to a deduction of interstate hauling, because it did not haul under the authority of a through bill of lading. The Department said:

> In this case, the taxpayer performed only the local haul from Seattle to Marysville. Thus, the facts here fit within the example in [Rule 193D]. The original bill of lading was to Seattle, not Marysville. The taxpayer was hired and paid by the broker [who received the salmon at Seattle], not the interstate hauler, Sea Land. Under these facts, we find that there was not a through bill of lading to Marysville.

In Det. No. 89-503, 8 WTD 341 (1989), the Department held that a taxpayer who picked up packages at the Spokane airport and delivered them to recipients in the local area could deduct income attributable only to hauls that it made under authority of a through bill of lading. The Department stated the applicable principle as follows:

> 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.

In Det. No. 97-074, 17 WTD 48 (1998), the Department held that a taxpayer who, in Washington, received and briefly stored goods of military personnel being moved from California, and then delivered the goods to their ultimate destination in this state under authority of a government bill of lading, was engaging in an exempt interstate movement in transportation to the final destination. The Department noted that for its services, the taxpayer either billed the primary carrier or, if the primary carrier authorized it to do so, billed the governmental entity directly.

---

[3] BLACK'S LAW DICTIONARY 210 (4th ed. 1957) defines a bill of lading, a straight bill of lading, and a through bill of lading as follows:

> A [bill of lading is a] written memorandum, given by [the commander of a merchant vessel or a carrier of goods by land], acknowledging the receipt on board . . . of certain specified goods, in good order or 'apparent good order,' which he undertakes, in consideration of the payment of freight, to deliver in like good order . . . at a designated place to the consignee therein named or his assigns.
>
> A *straight* bill of lading is one in which it is stated that goods are assigned to a specific person.
>
> A *through* bill of lading is one by which a railroad contracts to transport over its own line for a certain distance carloads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per carload for the whole distance.

[1] In the present case, the transactions are not memorialized by traditional bills of lading. Rather, the manufacturer designates all carriers who are to transport the goods to the ultimate consignee in written instructions that are transmitted electronically. Nonetheless, the same principle would apply. The interstate journey ends where the interstate carrier's obligation ends. Subsequent transportation by another carrier is entirely intrastate, and clearly can be taxed by the state.

Based upon the evidence presented in the present case, we find that the rail carrier's obligation ends at the railheads in Washington. The taxpayer has not documented that the interstate rail carrier bore responsibility for the entire through movement including the billing for local hauling. To the contrary, the documents and facts provided establish that the manufacturer, not the rail carrier, selects and pays the taxpayer. The taxpayer, not the rail carrier, bills for the local cartage. Therefore, compensation for the transportation performed within the state by the taxpayer is not exempt under Rule 193D.

We find no substantial difference between the method of shipment in this case and a method described in Convoy v. Taylor, supra, which the Supreme Court found resulted in a purely intrastate movement by the taxpayer. In Convoy v. Taylor, an automobile manufacturer in California arranged for transportation of the automobiles to Seattle by rail, and for their transportation from Seattle to the dealers by truck by the taxpayer. The California manufacturer, as consignor, prepared a uniform, straight bill of lading with itself, c/o the taxpayer, Seattle, as consignee. The bill of lading contained a detailed description of each vehicle, together with the name of the ordering dealer and the city in which it was located. Upon arrival of the rail car at the taxpayer's spur track in Seattle, the taxpayer unloaded the automobiles, prepared freight bills to cover the truck portion of the movement, and delivered the designated vehicles to the respective dealers, as shown on the original bill of lading. No joint through-rates were in effect for rail-truck shipments of motor vehicles between the geographic points involved. The manufacturer paid both the rail and truck transportation charges.

The taxpayer argues that the ICC, which formerly regulated interstate transportation, determined that transportation like that the Department attempts to tax in Schedule 4 is interstate in nature. It argues that the audit determination is inconsistent with the ICC interpretation, and, therefore, must be incorrect. In the determination referenced in ETA 250.16.179/193, we ruled that regulation or non-regulation by the ICC is not in itself a determinative factor.

[2] For state tax purposes, the fact that the goods originated outside Washington and were identified at the time of shipment to their ultimate destination is immaterial. In the transportation of goods, whether the carrier's activity is local or interstate is determinative of tax liability. Here, the interstate carrier's activities ended at the railheads in Washington. It had no obligation with respect to transporting the goods beyond that point. The taxpayer's activities were performed entirely within the state. See Chicago, Milwaukee and St. Paul Railway v. Iowa, 233 U.S. 334 (1913); Baltimore & Ohio Southwestern Railroad Co. v. Settle, 260 U.S. 166 (1922); Convoy Co. v. Taylor, supra.

As Rule 193D also states, and Convoy v. Taylor makes clear, even if we assumed that the transportation in question was interstate commerce, Washington could tax it without contravening the constitutional limitations of the commerce clause of the federal constitution.[4]

We conclude that the audit assessment correctly taxed the income to the full extent permitted under the law.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

Dated this 30th day of November 1998.

[4] The courts have consistently held that a state can tax the local portion of a through interstate freight movement as long as constitutional prohibitions are not violated. Complete Auto Transit v. Brady, 430 U.S. 274 (1974); Convoy Co. v. Taylor, supra. As long as the tax does not impose a direct tax on the privilege of engaging in interstate commerce, does not discriminate against interstate commerce in favor of competing intrastate commerce of like character, and there is no attempt to tax interstate activity carried on outside Washington's borders, it is not invalidated by the Commerce Clause of the U.S. Constitution. See Interstate Oil Pipeline Co. v. Stone, 337 U.S. 662 (1949); Maine v. Grand Trunk R. Co., 142 U.S. 217 (1891); Convoy Co. v. Taylor, supra. As long as all of the activities upon which the tax is imposed are carried on in the state, there is no due process objection to the tax. Interstate Oil Pipeline Co., supra; Convoy Co. v. Taylor, supra.