

Cite as Det. No. 18-0076, 38 WTD 185 (2019)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 18-0076
)	
...)	Registration No. . . .
)	

RCW 82.16.050(6): PUBLIC UTILITY TAX – INTERSTATE AND FOREIGN SALES DEDUCTION. In order to qualify for the interstate and foreign sales deduction from the public utility tax for in-state container hauls, a Taxpayer must either provide through bills of lading or documents containing all of the elements of through bills of lading.

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.

Sattelberg, T.R.O. – A container transporter (“Taxpayer”) protests the Department of Revenue’s (“Department”) assessment of Public Utility Tax (“PUT”) under the motor transportation classification. Taxpayer argues that his container transporting qualifies for full deduction as interstate and foreign sales. We deny the petition.¹

ISSUE

Whether Taxpayer’s transportation activities qualify for deduction from the measure of PUT as interstate and foreign sales under RCW 82.16.050(6).

FINDINGS OF FACT

Taxpayer transports via motor propelled vehicle filled shipping containers to customers in Washington from the ports of . . . , and then transports the empty containers back to the ports.² Taxpayer is the owner and operator of his transportation equipment and is contracted by a logistics company for his transportation services. Taxpayer receives an annual Form 1099 MISC as documentation for compensation rendered for his transportation services from the logistics company.

At the beginning of a delivery, Taxpayer is contacted by a dispatcher from the logistics company with pick-up and drop-off destinations, and is possibly later given more specific written delivery

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

² Taxpayer identified his customers as

instructions.³ Taxpayer is not made aware of the contents of the shipping containers nor their origin. Taxpayer does not have access to the shipping documents, as they are sealed within the shipping containers. For the calendar years 2013 through 2016, Taxpayer reported all of its income under the PUT's motor transportation classification and claimed a 100 percent deduction from its income for interstate and foreign sales.

In 2017, the Department's Audit Division ("Audit") examined Taxpayer's books and records for the time period of January 1, 2013, through December 31, 2016. Audit requested documentation from Taxpayer supporting its interstate and foreign sales deductions. Taxpayer produced several documents it claimed supported the deductions. The documents fall into three main types:

1. U.S. Customs Forms

Taxpayer produced two Department of Homeland Security, U.S. Customs and Border Protection forms, titled Entry Summary forms. The forms include the country of origin and the exporting country, the foreign port of lading and the U.S. port of unlading identification numbers. The forms also include the importer of record and its address, as well as the name of the ultimate consignee and its address. The forms describe the goods being shipped, which were home furnishings. The forms do not indicate the identity of the initial carrier, the intermediate carrier, or the delivery carrier; the container number; the delivery route; the gross weight of the goods; a single freight rate for the shipment; or a bill of lading number issued by a freight forwarder or other party. The forms are dated in 2017, which is outside the audit period.

2. Logistics Company Tally Sheets

Taxpayer produced several forms from the logistics company titled Tally Sheet Driver Count. The forms include the driver's name and number, the trip #, the shipper, the consignee, and the trailer number. The forms do not contain any information about the name and place of business of the consignor; the identity of the initial carrier, the intermediate carrier, or the delivery carrier; the container number; a description of the goods being shipped; the delivery route; the gross weight of the goods; a single freight rate for the shipment; or a bill of lading number issued by a freight forwarder or other party.

3. . . . Transportation Order Sheets

Taxpayer produced several forms from . . . titled Import Transportation Order Sheet. The forms indicate the origin and destination of the goods as well as a general description of them and their gross weight. The forms do not contain any information about the name and place of business of the consignor or the consignee; the identity of the initial carrier, the intermediate carrier, or the

³ In an email from the logistics company (referred to as ". . .") to Audit, the logistics company stated the following:

. . . does not handle "importing and exporting" we only provide transportation both within and out of the state of Washington. There are many customhouse brokers, freight forwarders and Steamship Lines that create a through bill of lading or similar documentation that shows the products originated from out of country. . . . does not provide these services and for that reason it does not prepare a through bill of lading.

Email to auditor Junie Zhu from . . . Vice President, Field Operations . . . dated May 17, 2017.

delivery carrier; the container number; the delivery route; a single freight rate for the shipment; or a bill of lading number issued by a freight forwarder or other party.

After reviewing all of the documents Taxpayer submitted, Audit concluded that the documents were insufficient to support the claimed deductions. As a result, Audit disallowed Taxpayer's interstate and foreign sales deductions for the entire period, and issued Taxpayer an assessment totaling \$. . . on August 24, 2017.⁴

Taxpayer timely petitioned for review, arguing that the Department is placing an impossible documentation requirement on it. Taxpayer asserts that the containers must be for use in foreign commerce as it moves them to and from the two Washington ports. Taxpayer states the fact that it is dispatched and compensated by the logistics company, and that the logistics company does not provide it with the shipping documents, does not negate the import/export nature of its work.

ANALYSIS

Income from transporting property for hire is generally subject to PUT under the motor transportation classification when the haul originates or terminates more than five miles beyond the corporate limits of any city. RCW 82.16.010; RCW 82.16.020; WAC 458-20-180. However, there is a deduction for “[a]mounts 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.” RCW 82.16.050(6). [Under the Department's interpretation, this includes activities that consist of the actual transportation of persons or property across the state's boundaries. WAC 458-20-193D.⁵]

The Department has consistently held that a motor carrier who moves goods entirely within the state of Washington must move them under authority of a “through bill of lading” in order to qualify for the interstate and foreign sales deduction. Det. No. 97-080, 16 WTD [220] (1987); Det. No. 93-240, 13 WTD 369 (1994); Det. No. 13-0164, 33 WTD 105 (2014); Det. No. 15-0353, 36 WTD 183 (2017). A “through bill of lading” is a bill of lading by which the shipping line remains obligated for the proper delivery of the goods to the final destination, even if other carriers may be involved in providing the transportation services. *See* Det. No. 99-330, 19 WTD 519 (2000). A typical through bill of lading commonly contains: (1) the name and place of business of the consignor; (2) the name and place of business of the consignee; (3) the identity of the initial carrier, the intermediate carrier, and the delivery carrier; (4) the container number; (5) a description of the goods being shipped; (6) the delivery route; (7) the gross weight of the goods; (8) a single freight rate for the shipment; and (9) a bill of lading number issued by a freight forwarder or other party. *Id.*

⁴ The assessment consisted of \$. . . in PUT under the motor transportation classification, \$. . . in interest, and a \$. . . substantial underpayment penalty.

⁵ [Rule 193D does not create a deduction or exemption, but merely interprets the federal constitutional limits on Washington's business activities taxes (B&O tax and PUT) as applied to transportation services. Under *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995) and other United States Supreme Court cases interpreting the dormant Commerce Clause, Washington is not prohibited from taxing income from transporting property across state boundaries under the B&O tax and PUT. The income is subject to tax so long as no state deduction or exemption applies, no federal law expressly preempts the state tax, and the four-part dormant Commerce Clause test set out in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977) is met.]

Here, Taxpayer has not provided through bills of lading for its in-state hauls. Instead, Taxpayer argues that the documentation it has provided should be sufficient to substitute as through bills of lading. We disagree. The documents Taxpayer provided do not include the needed information commonly contained in a through bill of lading. For example, none of the documents contain the identity of the initial carrier, the intermediate carrier, and the delivery carrier; the container number; the delivery route; the single freight rate for shipment; or the bill of lading number issued by a freight forwarder or other party. More importantly, the documentation fails to show that the goods Taxpayer transports came from outside of Washington or are destined for points outside of Washington. As the documents Taxpayer has provided are not through bills of lading, nor do they contain the elements necessary to substitute as through bills of lading, we conclude Taxpayer's documentation fails to show that its income from hauling containers was deductible under RCW 82.16.050(6). Accordingly, we deny Taxpayer's petition.

DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 12th day of March 2018.