

Cite as Det. No. 14-0196, 34 WTD 036 (2015)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) Assessment of)) . . .)))	<u>D E T E R M I N A T I O N</u> No. 14-0196 Registration No. . . .
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[1] RCW 82.04.260(7) – ETA 3019.2014 – B&O TAX – STEVEDORING AND ASSOCIATED ACTIVITIES – VESSEL BERTHING. Dockage charges for vessel berthing for the purpose of moving goods and commodities in waterborne interstate or foreign commerce is subject to tax under the stevedoring business and occupation (B&O) tax classification, pursuant to RCW 82.04.260(7)

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.

Eckholm, A.L.J. – A Washington public port district appeals an assessment of public utility tax on its dockage revenue, asserting that it correctly reported its dockage revenue from charges for vessel berthing for the purpose of moving goods and commodities in waterborne interstate or foreign commerce, under the stevedoring business and occupation (B&O) tax classification, pursuant to RCW 82.04.260(7). The taxpayer’s petition is granted.¹

ISSUE

Whether dockage revenue from charges for vessel berthing for the purpose of moving goods and commodities in waterborne interstate or foreign commerce should be reported under the stevedoring B&O tax classification, pursuant to RCW 82.04.260(7).

FINDINGS OF FACT

[Taxpayer] is a municipal corporation and one of Washington’s public port districts authorized by Chapter 53.04 RCW. The taxpayer operates an import-export distribution center on [a body of water] that includes, among other facilities, . . . container terminals, . . . breakbulk terminals, intermodal rail facilities, and the availability of a variety of third-party logistics service providers (3PLs).² . . .

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

² The taxpayer’s “Facilities & Services 2014 Summary,” available at the taxpayer’s website: <http://. . .> (last accessed June 2, 2014).

The rates and charges, and the regulations applicable to services performed by the participating terminals, docks, and wharves at the port, are set forth in Terminals Tariff No. . . . (Tariff).³ The Tariff defines dockage as the “charges assessed against an ocean vessel for berthing at a wharf, pier, bulkhead structure, or bank, or for mooring to a vessel so berthed,” and the charges are computed based on the length-overall of the vessel.⁴ Dockage charges are assessed when the vessel is made fast to the wharf or comes within a berth, and continue until the vessel vacates the berth.⁵ Berthed vessels not engaged in loading or unloading cargo may be required to move out of the berth, and vessels that arrive prior to scheduled load or discharge of cargo, that are permitted to berth subject to availability, will be assessed “Lay Berth Status” charges.⁶

The Department of Revenue’s (Department) Audit Division reviewed the taxpayer’s records for the period January 1, 2007, through September 30, 2010, and as a result issued an assessment for taxes due.⁷ The taxpayer and the Audit Division reached agreement as to most of the amounts assessed but disagreed regarding the assessment resulting from the reclassification of the taxpayer’s dockage revenue from the stevedoring B&O classification to public utility tax (PUT).⁸ The taxpayer appealed the PUT assessment.

The taxpayer submitted briefing in support of its assertion that vessel berthing services are encompassed within “stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce,” as defined by RCW 82.04.260(7), and the dockage revenue for such services is taxable under the stevedoring B&O tax classification.⁹ The taxpayer describes the dockage revenue as:

The dockage tariff paid to [the taxpayer] by owners and operators of ships that are engaged in the transportation of goods and commodities in interstate and foreign commerce, and is paid in order to be able to load and/or unload their cargoes at a Port terminal site. By paying to dock at a terminal, ships are able to take advantage of dockside labor for loading and/or unloading of vessels, as well as obtain other transportation and incidental services, in an efficient and cost-effective manner.¹⁰

The taxpayer also indicated that dockage has been part of its tariff structure for decades, and that “at all times since the 1979 advent of the stevedoring classification, and including during the current audit period, [the taxpayer] has reported dockage revenues under the stevedoring

³ Tariff No. . . . , effective November 1, 2003, is available at: <http://www. . . .> (last accessed June 6, 2014). Tariff No. . . . was in effect for the majority of the audit period, and was replaced by Tariff No. . . . on July 3, 2010. Provisions cited within this determination are the same in both tariff documents.

⁴ *Id.*, Items . . . -

⁵ *Id.*, Item

⁶ *Id.*, Items . . . -

⁷ Document No. 201202150, issued August 15, 2012, includes assessment of public utility tax of \$. . . , a credit of stevedoring B&O tax of \$. . . , and interest of \$. . . , for a total amount of \$. . . .

⁸ The Audit Division approved the taxpayer’s reporting of income from charges for the following activities under the stevedoring B&O tax classification: wharfage (the use of its wharf to load and unload cargo); loading and unloading of railcars, trucks, and containers; container movement; handling; transload; and service charges related to the movement of cargo. Audit No. 176964-001, Workpaper A.

⁹ The taxpayer’s Memorandum In support of Correction of Assessment at pages 10-12.

¹⁰ *Id.* at pages 1-2.

classification and paid B&O taxes thereon at the stevedoring rate.”¹¹ The taxpayer indicated at the hearing that it operates one marine terminal and leases the other terminals to third-party operators. The taxpayer also indicated that as a terminal operator, it charges fees for the use of its facilities for waterborne commerce, and it contracts with union longshore labor forces to provide stevedoring services.¹²

Following the audit and the taxpayer’s appeal, the Department issued Excise Tax Advisory 3019.2014 (ETA 3019), amending the ETA in effect at the time of the audit.¹³ The Audit Division did not have the benefit of ETA 3019 as amended, and relied on the prior version of the ETA in issuing the assessment. The amended ETA 3019 specifically addresses the issue in this appeal and is discussed below.

ANALYSIS

RCW 82.16.020 imposes PUT on the act or privilege of engaging within this state in specified businesses, among which is a “public service business,” including “wharf” and “dock” businesses. RCW 82.16.010(7)(a); RCW 82.16.020(1)(f). In 1979 the Legislature created the stevedoring B&O tax classification, now codified in RCW 82.04.260(7), applicable to businesses engaged in specified activities and exempting the revenue from those activities from PUT. *See* Laws of 1979, 1st Ex. Sess., ch. 196, § 2. The stevedoring B&O tax classification in RCW 82.04.260(7) applies to the business of “stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce,” which is specifically defined in the statute as:

. . . all activities of a labor, service or transportation nature *whereby cargo may be loaded or unloaded to or from vessels or barges*, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. . . .

(Emphasis added.)

The statute then goes on to delineate specific activities included in the definition:

Specific activities included in this definition are: *Wharfage*, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the

¹¹ *Id.* at page 6.

¹² *See* Tariff, Items . . . ; “Facilities & Services 2014 Summary,” fn 2, *supra*.

¹³ ETA 3019.2014 was issued April 29, 2014, and replaces ETA 3019.2009, issued February 2, 2009. ETA 3019.2009 was originally issued as Excise Tax Bulletin 140.16.179 (ETB 140) in 1966, prior to the enactment of the stevedoring B&O tax classification in RCW 82.04.260(7), and was renumbered to ETA 3019.2009 without substantial change. ETA 3019.2009 provides, in part, “ ‘Berthage’ is tying up for a short time; ‘moorage’ is tying up for a longer period, such as during the winter season. . . . Gross income derived from charges for berthage and moorage [is] subject to public utility tax.”

receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

RCW 82.04.260(7) (emphasis added).

ETA 3019 explains the application of RCW 82.04.260(7) to port charges for docking and berthing of ocean vessels, providing, in part:

Ports assess charges for ocean vessel accommodations for docking, berthing, and mooring. These charges are taxable under the Stevedoring Business & Occupation Tax classification when the vessel accommodation is provided for the purpose of conducting activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce as provided in RCW 82.04.260. When ocean vessels are docked for other purposes, such as repair or lay berth, the income to the port is subject to the Public Utility Tax. RCW 82.16.010 and 82.16.020.

Though the activities of “docking” and “berthing” are not specifically included in RCW 82.04.260(7), the ETA correctly recognizes that vessel berthing is encompassed within “stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce,” as defined by the statute. This interpretation is consistent with the rules of statutory interpretation.

The goal when construing statutory language is to carry out the intent of the Legislature. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 6, 721 P.2d 1 (1986); *Yakima v. Fire Fighters*, 117 Wn.2d 655, 669-70, 818 P.2d 1076 (1991). To do so, we look first to the language of the statute, and unless a contrary intent is revealed, the meaning of a statute must be derived and determined from its language alone. *Spokane v. State*, 198 Wash. 682, 691, 89 P.2d 826 (1939); *St. Paul & Tacoma Lumber Co. v. State*, 40 Wn.2d 347, 350, 243 P.2d 474 (1952).

The statute provides that “stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature *whereby cargo may be loaded or unloaded to or from vessels or barges*, passing over, onto or under a wharf, pier, or similar structure; . . . ” RCW 82.04.260(7) (emphasis added). The taxpayer’s vessel berthing services are encompassed within such activities because berthing allows vessels the necessary access to the wharf or pier “whereby cargo may be loaded or unloaded to or from vessels.”

In addition, vessel berthing services are actually encompassed within the “wharfage” activity specifically included in the statutory definition of “stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce.” RCW 82.04.260(7).

“Wharfage” is not defined in the statute. When statutory terms are not defined in the statute, courts and the Department look to their “ordinary dictionary meaning.” *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000); Det. No. 04-0147, 23 WTD 369, 374 (2004). Washington courts use *Webster’s Third New International Dictionary* in the absence of other authority. *State v. Glas*, 106 Wn. App. 895, 905, 27 P.3d 216 (2001), *rev’d on other grounds*, 147 Wn.2d 410 (2002).

“Wharfage” is defined as:

(1)(a) the provision or the use of a wharf; (b) the handling or stowing of goods on a wharf; (2)(a) *the charge for the use of a wharf for freight handling or ship dockage*; (b) a charge assessed for handling incoming or outgoing cargo on a wharf; (3) *the wharf accommodations of a place*.

WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2599-2600 (1993) (emphasis added).

“Wharfage” includes ship dockage and wharf accommodations; therefore, vessel berthing services are encompassed within the definition of “stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce” in RCW 82.04.260(7).¹⁴

This meaning of “wharfage” is in harmony with the balance of the statutory provision, RCW 82.04.260(7). When construing specific words it is necessary to “take into consideration the meaning naturally attaching to them from the context, and adopt the sense of the words which best harmonizes with the context.” *State v. Jackson*, 137 Wn.2d 712, 729, 976 P.2d 1229 (1999). A broad range of activities that occur at a marine terminal are listed in the statute, including loading and unloading cargo, related documenting activities, terminal stevedoring services, and incidental vessel services. RCW 82.04.260(7). These types of activities may be performed by a range of providers, including marine terminal operators, stevedoring companies, or other third-party service providers, and it is not uncommon for the types of activities performed by the different providers to overlap.¹⁵ The berthing of a vessel, which is one of the first acts to occur prior to loading and unloading of cargo, is encompassed within this range.

A good description of how stevedoring and marine terminal activities may overlap, and the necessity of docking a vessel whereby loading or unloading cargo may proceed, is provided in a

¹⁴ The taxpayer charges dockage separately from wharfage and other facility or service charges. The Tariff provides that wharfage is a “charge assessed all cargo passing, or conveyed over, onto or under wharves, or between vessels (to or from barge, lighter or water), when berthed at a wharf, piling structure, pier, bulkhead structure, or bank, or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf, and does not include charges for any other service.” Tariff, Item No. . . . Whether the Tariff measures and assesses the charges for wharfage and dockage separately does not alter the ordinary dictionary meaning of the term “wharfage.” As discussed above, the ordinary dictionary meaning of the term “wharfage” is in harmony with the balance of the statutory provision, RCW 82.04.260(7).

¹⁵ See “Facilities & Services 2014 Summary,” fn 2, *supra*; *All Marine Moorings v. ITP Corp. of Baltimore*, 1996 WL 264720, at *1 (FMC), 27 SRR 539 (1996).

1996 decision of the Federal Maritime Commission (FMC).¹⁶ In *All Marine Moorings v. ITP Corp. of Baltimore*, 1996 WL 264720 (FMC), 27 SRR 539 (1996), the FMC addressed whether a marine terminal lease providing exclusive rights to provide stevedore and marine terminal services included line handling services (tying a vessel to the wharf or pier). The FMC adopted the findings of the ALJ's Initial Decision and stated that, "[l]ine handlers work sometimes with tugboats during docking and most frequently with ships' deck crews in tying up and untying ships to the piers. The function of line handling can be considered part of stevedoring functions, part of marine terminal operations, both, or neither." *All Marine Moorings*, 1996 WL 26720, at *1. "When one considers that any stevedore/marine terminal operator cannot reasonably be expected to perform stevedoring or marine terminal services if the customers' ships are not first tied up properly to a pier, it is apparent that line handling is a necessary auxiliary service, at least as much as towing ships to their berths."¹⁷ *All Marine Moorings, Inc. v. ITO Corp. Baltimore*, 1995 WL 610825, at *23 (FMC), 27 SRR 342 (1995)(I.D.); see *All Marine Moorings*, 1996 WL 264720, at *13 (FMC reference to Initial Decision finding). The FMC's decision is consistent with ETA 3019 in recognizing that berthing and tying up a vessel is a necessary service whereby the loading and unloading of cargo can proceed.

Pursuant to the plain language of RCW 82.04.260(7), and ETA 3019, the taxpayer's dockage revenue from vessel berthing for the purpose of moving goods and commodities in waterborne interstate or foreign commerce, should be classified under the stevedoring B&O tax classification. The taxpayer's petition is granted.

DECISION AND DISPOSITION

The taxpayer's petition is granted.

Dated this 16th day of June 2014.

¹⁶ The Federal Maritime Commission is an independent regulatory agency of the United States charged with administration and enforcement of the Shipping Act of 1916, 46 USC § 816.

¹⁷ The findings in the Initial Decision were based on testimony from persons in the industry and findings made in an FMC investigation of rates and services provided at marine facilities. 1995 WL 610825 at *4 (citing *Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities*, 24 SRR 1260, 1269 (1988)). The Initial Decision notes the FMC investigation finding that:

. . . operations at marine terminals could not be neatly divided into categories such as stevedoring or terminal operations. The opinion also relied on a survey of persons involved in the industry. In this survey, 46 terminal operator and stevedore respondents classified vessel berthing or mooring as a terminal service, 21 as a stevedoring service, 14 as both a terminal and stevedoring service, and 34 as neither a terminal nor a stevedoring service. (24 SRR at 1283.) Thirty-six carrier respondents classified vessel berthing or mooring as a terminal service, 12 as stevedoring, 21 as neither, and five as both. (24 SRR at 1289.) . . .

1995 WL 610825 at *4.