

Cite as Det. No. 16-0011, 36 WTD 282 (2017)

BEFORE THE APPEALS 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. 16-0011
)	
... )	Registration No. . . .
)	

RCW 82.04.610: B&O TAX- IMPORT or EXPORT COMMERCE – ADDING OF PORT INSTALLED OPTIONS (“PIO”) TO IMPORTED VEHICLES. The adding of PIO involves a business purpose, rather than a direct shipping need, which results in a break in import transportation and application of B&O tax on the imported vehicle.

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.

Lewis, A.L.J. – An importer of motor vehicles manufactured in Asia protests the assessment of wholesaling business and occupation (“B&O”) tax on the sale of vehicles it asserts were in the process of import transportation until received by the buyers in Washington. Taxpayer asserts that all activities undertaken at other United States ports outside Washington where the vehicles are unloaded from a ship are related to shipping needs, which does not interrupt import transportation. We conclude the processing and handling involves a business purpose, rather than a direct shipping need, and thus results in a break in import transportation. We affirm the vehicles are subject to wholesaling tax.<sup>1</sup>

ISSUE:

Under RCW 82.04.610, does the adding of PIOs to the vehicles by Taxpayer after the vehicles have arrived in the United States interrupt the process of import transportation and allow Washington to assess B&O tax on the revenue derived from sales of vehicles delivered in Washington?

FINDINGS OF FACT:

Taxpayer is an importer of motor vehicles, and parts and accessories for those vehicles. Taxpayer sells its imported products to independent automobile dealers located throughout the United States, including Washington.

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

The dealers purchase the motor vehicles, and the parts and accessories at the same time. The imported vehicles arrive from [Asia] at ports located outside Washington, either . . . or . . . . After the ship docks, the vehicles are unloaded and are: 1) Inspected for damage; 2) washed and fueled; 3) required labels affixed; 4) and . . . PIOs are added to the vehicle.

These . . . PIOs are of two types:

**Throw-ins** – include floor mats, cargo nets, cargo trays, iPod cables, and first aid kits. These PIOs are literally “thrown-in” to a vehicle as it is being prepared to be shipped to the dealer/buyer.

**Attachments** – include guards, sunroof wind deflectors, roof rack cross rails, and rear spoilers. These PIOs are attached to or installed in a vehicle as it is being prepared to be shipped. The installation time of an individual PIO can be a few minutes to less than an hour.

The Audit Division audited Taxpayer’s books and records for the period January 1, 2010, through March 31, 2012. On November 3, 2014, the Department issued a \$ . . . assessment.<sup>2</sup> The Audit Division determined that the addition of the PIOs to the vehicles created a break in the import transportation and as such, the vehicles, and parts and accessories were subject to B&O tax.

Taxpayer disagreed with the assessment. On December 16, 2014, Taxpayer filed a petition with the Appeals Division requesting cancellation of B&O tax assessed on imported vehicles that had PIOs added to them prior to delivery to the buyer.

#### ANALYSIS:

Washington State imposes a B&O tax on the privilege of engaging in business in this state. RCW 82.04.220. The rate of the tax is determined by the classification of the business activity. [*Id.*] The Taxpayer imports and sells automobiles for retail sale by authorized dealerships. This business activity is taxed at the wholesaling B&O tax rate measured by the gross proceeds from sales in this state. RCW 82.04.270. Washington may impose the B&O tax on sales made in this state when the goods sold are delivered to the purchaser in this state and the seller has nexus. WAC 458-20-193 (“Rule 193”); WAC 458-20-103 (“Rule 103”); *Det. No. 04-0232*, 24 WTD 230 (2005).

The fact that the Taxpayer is making wholesale sales of vehicles in Washington and has nexus with Washington are not contested. Rather, the point of dispute is whether the sales of imported vehicles are exempt from taxation because the vehicles are in the process of import transportation [until delivered to dealers in Washington.]

The issue then is whether adding the PIOs to the vehicles after they are unloaded from ships at ports located [out-of-state] result in a break in import transportation. It is the break in import transportation that triggers the tax because if the vehicles remained in import transportation until they are received by the dealers, [Taxpayer’s sales of the vehicles] would be exempt from B&O tax.

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<sup>2</sup> The \$ . . . assessment consisted of \$ . . . tax, and \$ . . . interest.

RCW 82.04.610 provides an exemption from B&O tax for “tangible personal property in import or export commerce.” RCW 82.04.610(1). . . .

RCW 82.04.610 explains when property is in the import transportation process:

(2) Tangible personal property is in import commerce while the property is in the process of import transportation. Except as provided in (a) through (c) of this subsection, **property is in the process of import transportation from the time the property begins its transportation at a point outside of the United States until the time that the property is delivered to the buyer in this state.** Property is also in the process of import transportation if it is merely flowing through this state on its way to a destination in some other state or country. However, **property is no longer in the process of import transportation when the property is:**

(a) Put to actual use in any state, territory, or possession of the United States for any purpose;

(b) Resold by the importer or any other person after the property has arrived in this state or any other state, territory, or possession of the United States, regardless of whether the property is in its original unbroken package or container; or

(c) **Processed, handled, or otherwise stopped in transit for a business purpose other than shipping needs, if the processing, handling or other stoppage of transit occurs within the United States, including any of its possessions or territories, or the territorial waters of this state or any other state, regardless of whether the processing, handling, or other stoppage of transit occurs within a foreign trade zone.**

(Emphasis added.) *Id.*; see also RCW 458-20-193C.

Thus, qualification for the exemption depends on whether the activities performed at the ports are for a shipping or business need. If the activities are for a shipping need, the import transportation is not interrupted and the B&O tax exemption applies. Conversely, if the activities are done for a business need, the import transportation is interrupted and the B&O exemption does not apply.

Taxpayer asserts that the activities at the ports of either throwing in PIOs or attaching them to the vehicle are part of the shipping consolidation process, which combines goods for shipping that have already been ordered (the vehicles and the PIOs). Taxpayer also asserts that Taxpayer could eliminate the issue if it separately shipped the vehicles and the PIOs to the dealers. . . .

In addition, Taxpayer argues that the statute expressly provides that “processing” of products may occur in the United States and not deprive the importer of the exemption if the processing is for the importer’s shipping needs. Taxpayer maintains that the legislature contemplated that the importer could perform a final assembly of imported products in the United States as part of its shipping process and still qualify for the exemption.

We disagree with Taxpayer's broad interpretation of what constitutes a shipping need. RCW 82.04.610 does not define the term shipping needs. Absent a definition in statute, we look to common meaning. "Words in a statute are given their ordinary and common meaning absent a contrary statutory definition." *John H. Sellen Constr. Co. v. Dep't of Rev.*, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976); *Det. No. 05-0217E*, 26 WTD 91 (2007). The first and most common definition of need as a noun is a "necessary duty; obligation." *Webster's Third New International Dictionary*, p. 1512 (1993). Thus, the plain meaning of a shipping need is something necessary for shipping or something one is obliged to do in order to ship an item.

This analysis of what constitutes a shipping need is also supported by case law addressing what activities will interrupt import or export transportation. "Temporary interruptions 'due to the necessities of the journey or for the purpose of safety and convenience in the course of the movement' do not break the continuity of transit; however, stoppages that serve the owner's business purpose interrupt the goods' continuity of transit, rendering them subject to the taxing power of the state." *Virginia Indonesia Co. v. Harris County Appraisal Dist.*, 910 S.W.2d 905, 908 (Tex. 1995) (quoting *Minnesota v. Blasius*, 290 U.S. 1, 9-10, 54 S.Ct. 34, 36-37 (1933)). Accordingly, activities undertaken for the carrier/transporters' requirements, safety restrictions, or convenience while underway constitute processing, handling, or a stoppage for shipping needs which do not disrupt import-export transportation. In contrast, shipping activities that serve an owner's business purposes, such as cost reduction, but which are not necessary for transportation, do interrupt import-export transportation.

"Generally, the state may tax where the delay may be characterized as having a business purpose or advantage, rather than just an incidental interruption in the continuity of transit. A temporary interruption of transport that "is reasonable and in furtherance of the intended transportation" will not break the continuity of transit." *Great Lakes Dredge & Dock Company v Dep't of Rev.*, 381 So.2d 1078, 1083 (Fla. App. 1979) (citing *Champlain Realty Co. v. Brattleboro*, 260 U.S. 366, 43 S.Ct. 146 (1992)).

Here, Taxpayer's processing activities at the port of debarkation are not just an incidental interruption arising from transportation needs, or a temporary interruption that furthers the transportation, but rather are activities that add parts and accessories to the vehicles and/or physically modify and change the vehicles. Accordingly, we conclude that these activities are undertaken for a business purpose other than shipping needs and therefore interrupt import transportation under RCW 82.04.610.

In making this ruling, we note that our holding is consistent with case law applying the import-export clause of the United States Constitution. See *Michelin Tire Co. v. Wages*, 427 U.S. 276 (1976), and *Dep't of Rev. v. Ass'n of Wash. Stevedoring Co.s*, 435 U.S. 734 (1978).

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 12th day of January 2016.