

Cite as Det. No. 007-0048, 26 WTD 219 (2007)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

|   |                        |
|---|------------------------|
| In the Matter of the Petition For Correction of ) | <u>DETERMINATION</u>   |
| Assessment of )                                   |                        |
| )   | No. 07-0048            |
| )   |                        |
| ... )   | Registration No. . . . |
| )   | Document Nos. . . .    |
| )   | Docket No. . . .       |
| )   |                        |

[1] RCW 84.33.0775, RCW 84.33.046: FOREST EXCISE TAX – ENHANCED AQUATIC RESOURCE CREDIT – TAX RATE. RCW 84.33.046 imposes a 5% tax rate on timber harvested after July 1, 1988. RCW 84.33.0775 allows a .8% Enhanced Aquatic Resource credit on some qualifying timber harvests. Thus, the 4.2% rate contained in the Washington State Department of Natural Resource invitation to bid was correct, representing a net tax rate taking into account the applicable .8% Aquatic Resource Credit.

[2] RULE 228; RCW 84.32.105(2): FOREST EXCISE TAX -- PENALTY WAIVER – WAIVER BASED ON PRIOR TWENTY-FOUR MONTHS REPORTING RECORD FOR THAT PROGRAM. Where Taxpayer did not file tax returns for periods prior to a late return because RCW 84.33.086 does not require taxpayers to file tax returns during quarters when there has been no timber harvesting activity, Taxpayer qualifies for the twenty-four month waiver provided in RCW 82.32.105(2).

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. – Taxpayer failed to timely report and pay Forest Excise Tax (“FET”) on a lot of timber purchased from the Washington State Department of Natural Resources (“WSDNR”). The Department of Revenue (“Department”) billed Taxpayer and added interest, late-payment penalties, and assessment penalties to the assessments. The facts disclose that Taxpayer was aware that Forest Excise Tax (“FET”) was due on the transaction. There is no basis to cancel the interest. Because Taxpayer timely filed all FET returns due for the 24 months prior to the [Quarter 1, 2005 (“Q1/05”)] tax return, the late-payment penalty added to that assessment will be cancelled under the provisions of RCW 82.32.105(2). The provisions of RCW 82.32.105(2) do

not apply to either the late-payment penalty assessed on the Q2/05 tax return or the assessment penalties assessed on the Q1/05 and Q2/05 tax returns. Accordingly, the late-payment penalty related to the Q2/05 tax return and the assessment penalties related to the Q1/05 and Q2/05 tax returns are sustained.<sup>1</sup>

#### ISSUES:

1. May Taxpayer's request for cancellation of interest, late-payment penalty, and assessment penalty be granted [based] on Taxpayer's claim of lack of knowledge?
2. Did the Department use the correct tax rate when it billed Taxpayer for the Forest Excise tax?

#### FINDING OF FACT:

On . . . , 2005, Taxpayer filed a Petition for Correction of Assessment with the Department's Appeals Division. The petition requested cancellation of interest and late-payment and assessment penalties related to the late-payment of FET. Taxpayer also maintained that the assessment computed the FET using the wrong tax rate.

Taxpayer successfully bid on a lot of timber auctioned by the WSDNR [in] December . . . 2004. . .

The "Special Remark" section of the "Timber Notice of Sale" invitation to bid stated:

The successful Purchaser(s) will be required to purchase logs from the sale area upon delivery to their location specified in the bid submitted. Logs will be delivered to the Purchaser's delivery location by the State's Contract Harvester. Purchaser must pay the forest excise taxes associated with the log sorts awarded to them per G-252 clause. The tax rate for this sale is 4.2%.

Taxpayer's petition states that during April 2005, after having received a "Contract Harvest Forest Excise Tax Statement" from the WSDNR, Taxpayer telephoned the Department at (360) 570-3203 for tax reporting instructions.<sup>2</sup> Taxpayer remembers being told not to worry about the notice from the WSDNR.

The Department's Forest Tax section states that it sent Taxpayer "Reporting forms which included instructions as well as the public sales pre printed on the summary page of the return." [The Forest Tax section also states that] taxpayer had reported no activity for the second quarter.

On August 17, 2005, the Department completed tax returns for Q1/05 and Q2/05 and issued two corresponding assessments: one for taxes due Q1/05 and one for taxes due Q2/05. . . . The two invoices (assessments) reflected the tax computations on the tax returns. The assessments

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

<sup>2</sup> The telephone number is the number for the Forest Tax Program.

computed the tax due using a 5% tax rate and then allowing the .8% Enhanced Aquatic Resource Requirement credit. RCW 84.33.0775.

On August 25, 2005, Taxpayer spoke with a person at the Department regarding the assessments. Subsequently, on September 16, 2005, Taxpayer filed a Petition for Correction of Assessment. Taxpayer also disagrees with the WSDNR passing along the timber tax to the buyer and using a 5% rate rather than the 4.2% rate stated in the "Invitation to Bid."

A review of Taxpayer's reporting history disclosed that Taxpayer timely filed a FET return reporting no harvest for Q1/03. On that return, Taxpayer indicated there would be no future harvests. . . .

#### ANALYSIS:

[1] In 1971, state law excluded [standing] timber from property taxation. In place of a property tax on standing timber, timber owners pay a 5 percent excise tax on the stumpage value of their timber when it is harvested. RCW 84.33.041 provides:

An excise tax is imposed on every person engaging in this state in business as a harvester of timber on privately or publicly owned land. The tax is equal to the stumpage value of the timber harvested for sale or for commercial or industrial use multiplied by the rate provided in this chapter.

RCW 84.33.046 imposed a five percent tax rate on timber harvested after June 30, 1988. RCW 84.33.0775 allows a .8% Enhanced Aquatic Resource Credit on timber meeting certain requirements designated by the WSDNR.

When timber is harvested from private land, the person who owns the timber at the time of harvest is responsible for the FET. Contractors performing labor and services for the timber owner are not responsible for payment of the FET. When the timber is harvested from public lands, the owner is the first person (other than the public entity) to acquire title or possessory interest to the timber. RCW 84.33.035(6). In this case, Taxpayer purchased the timber from a public entity. Taxpayer was the first possessor of the timber and thus owed the FET.

Taxpayer complained that the WSDNR should not be able to pass on the FET to the buyer, who is neither the seller nor the harvester. RCW 84.33.035(6) makes clear that the incidence of the FET falls on the buyer. In this case, Taxpayer is the buyer and thus was correctly assessed the tax.

We also find that the Department correctly computed the tax using a 5% tax rate. The tax rate the Department used is required by RCW 84.33.046. Additionally, the Department allowed a .8% Enhanced Aquatic Resource credit when computing the tax. Thus the net tax rate Taxpayer

paid was 4.2%, the rate contained in the WSDNR's "Invitation to Bid." There is no conflict between what the WSDNR stated in its "Invitation to Bid" and what the Department charged.

[2] In situations of late paid tax the Department is required to assess interest and penalties. RCW 82.32.050 provides for the mandatory assessment of interest:

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

RCW 82.32.105 (3) provides the only basis for canceling interest:

The department shall waive or cancel interest imposed under this chapter if:

- (a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or
- (b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

Taxpayer's late payment was not of the result of written instructions from the Department. Nor was there an extension of the due date for payment of the assessment for the Department's sole convenience. Accordingly, we uphold the interest assessed.

RCW 82.32.090(1) provides for the imposition of a late-payment penalty:

If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection.

RCW 82.32.090(2) provides for the imposition of an assessment penalty:

If the department of revenue determines that any tax is due, there shall be assessed a penalty of five percent of the amount of the tax determined by the department to be due; and if payment of any tax determined by the department to be due is not received by the

department by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection.

The only basis for canceling penalties is found in RCW 82.32.105(1) and RCW 82.32.105(2). RCW 82.32.105(1) provides:

If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.

Taxpayer's petition maintained the failure to report and pay the tax timely was based on lack of knowledge and misunderstanding, rather than intentional neglect. Taxpayer's argument conflicts with the facts. The "Invitation to Bid" put the bidder on notice that the successful bidder would be subject to payment of FET. In addition, after making a successful bid Taxpayer received a "Contract Harvest Forest Excise Tax Statement" from the WSDNR. Based on the facts we conclude that Taxpayer was aware that FET was due on its purchase of timber from the WSDNR. However, even if we concluded that Taxpayer . . . lack[ed] . . . knowledge of the tax, the relief that Taxpayer requests could not be granted as [WAC 458-20-228(9)(a)(iii) (Rule 228(9)(a)(iii))] specifically states that lack of knowledge is not a circumstance beyond the control of the taxpayer.

RCW 82.32.105(2) allows the cancellation of late-payment penalties when a taxpayer has a clean reporting record for the previous 24 months. [That subsection provides:]

The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

- (a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or **84.33.086**; and<sup>3</sup>
- (b) The taxpayer has timely filed and remitted payment on all **tax returns due for that tax program** for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. (Bolding added.)

. . . RCW 84.33.086 provides for the payment of FET:

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<sup>3</sup> RCW 84.33.086 refers to the forest tax at issue.

- (1) The taxes imposed under this chapter shall be computed with respect to timber harvested each calendar quarter and shall be due and payable in quarterly installments. Remittance shall be made on or before the last day of the month next succeeding the end of the quarterly period in which the tax accrues. The taxpayer on or before such date shall make out a return, upon such forms and setting forth such information as the department of revenue may require, showing the amount of tax for which the taxpayer is liable for the preceding quarterly period and shall sign and transmit the same to the department of revenue, together with a remittance for the amount of tax. . . .
- (3) Any harvester incurring less than fifty dollars tax liability under this section in any calendar quarter is excused from the payment of such tax, but may be required by the department of revenue to file a return even though no tax may be due.

RCW 84.33.086 requires a taxpayer to file a return<sup>4</sup> and remit tax “on or before the last day of the month succeeding the end of the quarterly period in which the tax is due.”

Taxpayer’s reporting history shows Taxpayer timely filed a FET return reporting no harvest for Q1/03. On that return, Taxpayer indicated there would be no future harvests. [Because] Taxpayer had no active timber permits from Q2/03 [until the periods at issue], it was not required to file FET returns for those periods. Because Taxpayer timely filed all FET returns due for the twenty-four months preceding the Q1/05 delinquent tax return, Taxpayer qualifies for the twenty-four month waiver provided in RCW 82.32.105(2).

Accordingly, we grant cancellation of the late-payment penalty assessed on the Q1/05 return. We affirm the assessment of late-payment penalties related to the Q2/05 assessment because the provisions of RCW 83.32.105(2) do not extend to the late-payment penalty assessed on the Q2/05 tax return and, as we have already ruled, the delinquency was not a circumstance beyond the control of the Taxpayer.

#### DECISION AND DISPOSITION:

Taxpayer’s petition is granted in part and denied in part.

Dated this 27th day of February, 2007.

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<sup>4</sup> RCW 82.32.330(1)(b) defines “return” as:

a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed . . . .