

Cite as 11 WTD 119 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of	)	
	)	No. 91-092
	)	
. . .	)	Reg. No. . . .
	)	Forest Tax No. . . .
	)	

[1] RCW 84.33 -- TIMBER TAX -- CLASSIFICATION OF TAX.  
The tax imposed by Chapter 84.33 RCW on the  
harvesting of timber is an excise tax rather than an  
ad valorem property tax.

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.

TAXPAYER REPRESENTED BY: . . .  
. . .

NATURE OF ACTION:

The taxpayer protests a forest tax assessment on grounds the tax is an ad valorem tax.

FACTS AND ISSUES:

Roys, Sr. A.L.J.--The taxpayer submitted a Forest Excise Tax Return for the third quarter of 1989. The taxpayer listed two sales, but did not include payment. The taxpayer gave the following reason for nonpayment:

on advice of counsel I shall no longer pay Forest  
Excise Tax that is in fact an ad valorem tax.  
Statute RCW 84.33.040 prohibits such taxation.

The Department then issued the above assessment for a total of \$ . . . in tax and delinquent penalty. The taxpayer protested the assessment. The petition states in part:

This is a timely appeal from this assessment on the grounds it is in violation of state of Washington RCW 84.33.040 which exempts from ad valorem taxation timber removed from federally owned land. It is undeniable that this is an ad valorem tax in as much as it is assessed on a percentage of the amount paid to the Forest Service.

#### DISCUSSION:

Taxes are classified as (1) capitation or poll taxes, (2) taxes on property, and (3) excise taxes. Cooley, THE LAW OF TAXATION § 38 (4th ed. 1924). The term "ad valorem" means a tax or duty upon the value of the article or thing subject to taxation. BLACK'S LAW DICTIONARY 58 (4th ed. 1968). Property taxes are ad valorem taxes.

Excise taxes are "taxes levied upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges." Cooley, 2 Constitutional Limitations § 988 (8th ed. 1927). For example, Washington's B&O tax is an excise tax collected for the "act or privilege of engaging in business activities." RCW 82.04.220. The fact that the measure of the B&O tax is value of products, gross proceeds of sales, or gross income of the business does not make the B&O tax an ad valorem tax. Similarly, the fact that the forest tax is assessed on a percentage of the amount paid to the Forest Service does not make the forest tax an ad valorem tax.

The 14th amendment to the Washington State Constitution specifically authorized the taxation of timber lands by either a yield tax or an ad valorem tax. After passage of the 14th amendment in 1930, the legislature enacted the Reforestation Act (RCW 84.28) which established a system of taxation and assessment on forest lands. The Act included both an ad valorem tax on classified lands and an excise tax, a yield tax, when timber was cut.

In 1971 the legislature passed a new forest tax law. (Ch. 294, Laws of 1971, 1st Ex. Sess.). The new law provided for a three year phase out of the ad valorem tax on timber and a phase in of an excise tax on the value of timber when harvested. Only the forest land remained under the ad valorem property tax system. RCW 84.33.010(4).

The intent of the law was to encourage forestry and restocking and reforesting of Washington's forests. The ad valorem property tax had required land owners to pay tax annually on

the value of the timber standing on their lands which deterred landowners from nurturing their forests for maximum yield.

The taxpayer relied on RCW 84.33.040 which provides that:

Timber on privately owned land or federally owned land shall be exempt from ad valorem taxation.

Clearly, however, the forest tax is an excise tax, not an ad valorem tax. The tax is set forth in RCW 84.33.041:

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 shall be equal to the stumpage value of the timber harvested ... (emphasis added)

Additionally, RCW 84.33.075 refers to the "excise tax" imposed by Chapter 84.33.

The assessment at issue was not an ad valorem assessment on the value of the timber. Forest excise tax was assessed on the proceeds from two timber contracts. Accordingly, the exemption provided by RCW 84.33.040 is not applicable.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 11th day of April 1991.