

Cite as 11 WTD 177 (1991).

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

In The Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Ruling of Tax Liability)	
of)	No. 91-142
)	
. . .)	
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)	

RULE 135, RULE 19301: LANDOWNER--SALES OF LOGS--B&O TAX --EXTRACTOR--AMOUNT SUBJECT TO TAX. When a landowner retains ownership of timber until it is scaled, the landowner is the extractor and the wholesaler of the timber, and subject to B&O tax on its gross proceeds for the timber. It is allowed a credit for the lesser of the wholesaling or extracting tax under Rule 19301. Accord: ETB 541.

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:

Taxpayer requests a ruling of tax liability on sales of logs.

FACTS AND ISSUES:

Hesselholt, Chief A.L.J. -- . . . (Accountant) requested a ruling of tax liability for a landowner on sales of logs, where title passes at time of scaling. Accountant had earlier requested an opinion from the Taxpayer Information and Education Division (TI&E), but argues that the opinion given by that division is incorrect.

Accountant had asked TI&E what the B&O tax consequences were for a landowner who sold timber to a logger, with title

passing at the time of scaling. TI&E responded that since title to the logs did not pass until time of scaling, the landowner is the timber harvester, and considered an extractor and a wholesaler, and that the landowner must report the gross amount paid by the mill for the logs under both the extracting and wholesaling classifications, and then take a credit under the Multiple Activities Credit for the lesser of the two taxes. Accountant explains his objections to this treatment as follows:

In my scenario, the landowner enters into a legal, binding contract whereby he sells the timber to a logger for \$70/MBF with title passing at the time of scaling. That is the end of it as far as the landowner is concerned. He probably doesn't even know who the logger sells the logs too (sic) much less how much the logger gets for them. Therefore, it would be at least impractical, and impossible in many cases, for the landowner to report the gross amount paid by the mill because he would have no way of knowing what that amount is. Obviously, the logger is not necessarily going to be willing to tell the landowner how much he sold the logs for. In some cases it may even be impossible to tell him even if he wanted to. That is, the logger may co-mingle the logs from one landowner with the logs from another landowner so that the source of the individual logs cannot be determined. For example, the logger may have a sorting yard that he brings all of the logs from various landowners into and sorts them and ships them to various mills.

[TI&E] also stated that the landowner must obtain a properly executed resale certificate from the mill. This is also impractical and, in many cases, would be impossible. The landowner has no legal relationship with any mill that the logger may be selling the logs to. He may very well not even know where the logs are being sold and, also, they may be co-mingled as described in the above paragraph.

In my opinion, with due consideration being given to the Multiple Activities Tax Credit, the end result of this scenario should be that the landowner pays B&O tax on the \$70.00/MBF that he receives at the Wholesaling rate. The logger pays B&O tax on the gross proceeds that he receives for the logs at the Wholesaling rate.

The issue presented is what are the tax consequences to the landowner and logger in this scenario.

DISCUSSION:

WAC 458-20-135 defines an extractor as follows:

The word "'extractor' means every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees or other natural products, or takes fish, cultivates, or raises shellfish, or other sea or inland water foods or products. 'Extractor' does not include persons performing under contract the necessary labor or mechanical services for others or persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession."

This definition is taken from RCW 82.04.100. WAC 458-20-19301 explains that an extractor who sells at wholesale is liable for both the extracting and wholesaling and is taxable under both classifications, but allowed a credit for the lesser of the two taxes. Excise Tax Bulletin 451.04/45/33.135, on which TI&E relied, states that the landowner who retains title to the timber is subject to both the timber excise tax on the stumpage value of the timber and the B&O tax on the total log selling price without any deductions for payments made to the logger. The ETB is based, in part, on WAC 458-40-620, which provides that the owner of the timber at the time the quantity by species is first definitely determined (at the time the logs are scaled) is the harvester and liable for the timber excise tax.

TI&E's analysis of the transaction was correct; as owner of the logs, the landowner is in fact the harvester of the logs. However, the measure of the tax is the gross proceeds of sale of the logs by the landowner, NOT the amount received from the mill by the logger. The landowner is selling the timber to the logger at the time of scaling. Here, the landowner is

taxable on the amount it received from the logger for the logs (\$70/MBF). With respect to the logging activity performed by the logger for the landowner, the logger is taxable as an extractor for hire, but also may be taxable under the motor transportation classification of the public utility tax for those amounts attributable to the haul from the woods to the place of sale.

RULING:

The landowner, as owner of the timber, is taxable on the amount it receives from the logger under both the extracting and wholesaling classification of the B&O tax, with a credit allowed for the lesser of the taxes under Rule 19301. As the timber owner, the landowner is also liable for the timber excise tax. The logger is liable for B&O tax under the extracting-for-hire classification and may be liable for motor transportation tax.

DATED this 30th day of May, 1991.