

Cite as Det. No. 92-110R, 12 WTD 365 (1992).

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. 92-110R
)	
. . .)	Registration No. . . .
)	. . . /Audit No. . . .
)	

[1] RULE 19301: B&O TAX -- MATC -- ALASKA OIL PRODUCTION TAX -- GROSS RECEIPTS TAX. MATC granted for amounts paid to the state of Alaska for oil production taxes to the extent the amounts due were computed and paid through the percentage-of-value method even though the applicable tax rate was computed using an economic limit factor.

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: . . .

DATE OF REHEARING: . . .

NATURE OF ACTION:

The taxpayer protests that portion of Det. No. 92-110 that disallowed the Multiple Activities Tax Credits taken on amounts paid to the state of Alaska for Oil Production taxes to the extent that the economic limit factor was used.

FACTS:

Okimoto, A.L.J. -- The applicable facts are stated in Det. No. 92-110 and are incorporated into this determination by reference.

TAXPAYER'S EXCEPTIONS:

Schedule II: Disallowed MATC on Alaska Oil Production Tax.

Determination No. 92-110 held that the Alaska Oil Production tax was an extracting tax under RCW 82.04.440. It further held, however, that to the extent that the tax was computed based on the cents-per-barrel method, it did not constitute a "gross receipts" tax and was not entitled to the Multiple Activities Tax Credit (MATC). Furthermore, the determination found that although the percentage-of-value method would qualify as a gross receipts tax if no further limiting factors were used, it lost that status if an economic limit factor of less than "1" was used. The Determination relied on Rule 19301 and held that use of an economic limit factor of less than "1" constituted a "formulary method resulting in a downward adjustment of the tax base." Therefore, the MATC was disallowed.

The taxpayer disputes this conclusion and argues that the Economic Limit Factor (ELF) is merely an adjustment to the rate of taxation, not a reduction in the measure of the tax base. The taxpayer argues that the measure of the tax base remains the selling price of the product less reasonable transportation costs.

ISSUE:

1) Does the use of an ELF of less than "1" in computing the amount of Alaska Oil Production tax due result in a formulary adjustment to the tax base?

DISCUSSION:

Schedule II: Disallowed MATC Where ELF Used.

[1] The Alaska oil severance and production tax for which the taxpayer claimed a MATC is codified in AS Section 43.55.011. It states in pertinent part:

Oil production tax. (a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to either the percentage-of-value amount calculated under (b) of this section . . . multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013....

(b) The percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil

produced from the lease or property after June 30, 1981; . . .

(Emphasis ours.) AS Section 43.55.013(b) sets forth the ELF formula effective for the relevant tax years:

(1) The economic limit factor for oil production of a lease or property shall be computed according to the following formula:

$$(1 - [PEL/TP]) \exp ([460 \times WD]/PEL)$$

Where: PEL = the monthly production rate at the economic

limit;

TP = the total production during the month for which the tax is to be paid.

WD = the total number of well days in the month for which the tax is to be paid; and

After further consideration, we agree with the taxpayer that the ELF is merely a variable multiplier which reduces the tax rate of the Alaska Oil Production tax and does not effect the measure of the tax base. The tax base remains gross selling price less reasonable transportation costs. Therefore, we rescind our previous ruling that the use of the ELF in computing the amount of Alaska Oil Production tax due negates that tax's eligibility for the MATC. Accordingly, the taxpayer's petition is granted on this issue subject to verification by the Audit Division.

Schedule XVIII: Disallowed Exchange Delivery Deductions.

During the rehearing of the above issue, the taxpayer's representative made several comments which convince us that our ruling in Det. No. 92-110 on exchange deliveries should be clarified. Although we agreed with the taxpayer in Det. No. 92-110 that the auditor should have accepted validly executed HST export certificates received from taxpayer's exchange partners, we also held that to the extent that the taxpayer had issued its own blanket export certificates on exchange purchases, that it had assumed any potential HST liability and documentation responsibility for those purchases. Since the very nature of exchanges dictate that exchange sales will approximately equal exchange purchases, we meant to sustain the amount of HST assessed in the audit report and to give instructions to the auditor that a credit/reduction of HST was to be allowed only if the taxpayer presented the appropriate documentation. The burden of providing adequate documentation, however, is solely on the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition is granted and remanded to the Audit Division for examination of documentation. The taxpayer is directed to provide to the Audit Division all MATC information and additional HST documentation on exchange purchases by November 30, 1992. In the event that the taxpayer fails to provide all documentation by that date, the Audit Division will prepare a post-assessment adjustment based on the documentation presented as of that date and reissue the appropriate adjusted tax assessment. Full payment of the new tax assessment shall become due and payable as of the new due date with no further payment extensions. Documentation presented after November 30, 1992 will be considered a petition for refund.

DATED this 27th day of August 1992.