

Cite as Det. No. 91-190, 12 WTD 7 (1993).

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

In the Matter of the Petition        ) D E T E R M I N A T I O N  
For Correction of Assessment of        )  
  )                   No. 91-190  
  )  
  )                   Registration No. . . .  
  )                   Forest Tax Assessment  
  )

[1] FOREST TAX RULES 458-40-680, 458-40-682, and 458-40-684: SCALING AND GRADING METHODS -- RECORDKEEPING REQUIREMENTS. Rules for reporting volume of harvested timber contain strict requirements on reporting methods and recordkeeping. Taxpayer alleging that logs were of low quality without producing supporting records fails to meet statutory requirements, and the value predicated on survey by Department's forester will control.

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 petitions for correction of assessment of forest tax based on reclassification of timber-quality percentages reported.

FACTS:

Adler, A.L.J. -- Taxpayer is engaged in business as a timber harvester. His forest tax returns for Quarters Three and Four, 1989, were reviewed by the Department's Excise Tax examiner. The examiner referred the returns to the Forest Tax Division after finding that an unusually-high percentage of the total harvest was reported as Conifer Utility (CU), wood which is of little use other than as chips. The normal reporting of CU for similar

types of stands is usually 2%-3%, but virtually always under 5%. 100% of taxpayer's logs reported by weighing were listed as CU.

The forester visited the site to make an inspection of the logged area. This was done to study various factors affecting the reporting percentages, such as the species and grades of trees harvested, growth patterns, size, possible clues as to whether disease was present, volume per acre, and overall logging conditions. The areas immediately adjacent to the logged area are also surveyed, because they provide the best possible comparisons to the site. The forester also visited the log yard which purchased the harvest, in an attempt to determine whether the yard purchases a specific type or size of log. This factor could have supported the reporting method used by taxpayer if the yard was found to purchase a certain type of log exclusively, which was not the case here.

The forester next contacted the taxpayer to discuss and hear taxpayer's side of the issue. At that time, the forester requested records supporting the percentages; none were produced. All logs on which the valuation is protested were sold on a weight basis, as opposed to being scaled, and were reported as CU. No scale tickets or sample scaling records were made or kept to substantiate the grade. The weight tickets indicated only that the wood was Hemlock.

For Quarter Three, the forester reduced the amount of CU; reallocated that amount to Hemlock; then dropped the value assigned to the Hemlock in recognition of the fact that the wood was "low-quality sawmill grade." He used the same methodology to adjust the Quarter Four return.

#### TAXPAYER'S EXCEPTIONS:

Taxpayer contends his harvest was accurately reported. He claims the change in value was arbitrary and without justification. He faults reliance on an inspection of the log yard. Further, he states

[a]s a land owner, the decision to send a log to a chipping market is one of economics. In most cases that is the lowest price for a wood product, and I expect and demand that my logger sort each log for its highest and best value, which is generally the export market. In this case the stand of timber was of very poor quality--open grown--very limby and generally heavy to the fiber sort. It was obvious when the trees were standing that this was evident -- but after logging it would take a prophet to say that the logger was incorrect in his sorting without true physical

evidence. In addition the stuff was so poor that I had a hard time getting paid from the chipper.

In conclusion -- the logs were allocated to their proper destinations and I question how an excise tax forester can "second guess" without solid evidence to the contrary what the real quality of these logs were. Certainly looking through a log yard at someone else's logs does not constitute proof that my wood should be "upgraded," therefor raising my tax burden.

Taxpayer also contends "this was all cull wood that went for chips -- there were five sorts grading out all sawable wood." He submitted two letters from "the recipients of the log loads that were reclassified." Those letters state

all logs purchased by [us] are purchased for the purpose of producing pulp at [our] mill.

and

Regarding alder sold & delivered to [us] in calendar year 1989 from your timberlands, let me state the following:

1. All alder received was pulp grade.
2. All alder received was processed & sold as pulp chips.
3. No sawlog grade alder was received that could have been sorted and re-sold.
4. For purposes of determining state excise tax on these logs, 100% should be classified as alder pulp wood.

#### DISCUSSION:

[1] As directed by Chapter 84.33 RCW, the Department has promulgated rules governing the acceptable methods of reporting excise tax liabilities on volume harvests. Called "acceptable scaling and grading" rules, they are published in the Washington Administrative Code, Chapter 458-40. These rules have been adopted at public hearings and in accordance with the Washington Administrative Procedures Act. They, therefore, have the same legal effect and force as the law itself.

WAC 458-40-680 specifically states that the acceptable log scaling and grading rule "shall be the Scribner Decimal C log rule."

A very limited exception is contained in WAC 458-40-682, which permits "sample" scaling of the harvest, but states that the

sample method "shall not be used for tax reporting purposes without prior written approval of the department." (Emphasis supplied.)

Persons who deviate and measure the logs by weight only must comply with WAC 458-40-684, which states

[t]he following definitions, tables, and conversion factors shall be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods, other than those listed are not to be used for tax reporting purposes without prior written approval of the department.

(1) WEIGHT MEASUREMENT. If the original unit of measure was by weight, and the harvester has not applied for approval of sample scaling, the following table shall be used for converting to Scribner Decimal C. Harvesters must keep records to substantiate the species and quality codes reported. (Emphasis supplied.)

The legislature and the rules have placed the burden of retaining and providing documentation of harvest volumes and grades squarely on the taxpayer. As a result, two grounds of taxpayer's protest are without merit:

(1) contentions which attempt to place a burden on the Department to disprove taxpayer's accuracy; and

(2) contentions which attempt to place a burden on the Department to prove that the timber was of a grade different than that surveyed by the Department's forester.

As stated previously, the Department's experienced forester conducted an on-site survey of the actual property in question, adjacent property, and the log yard. Based on the forester's actual knowledge of the timber areas in question, previous reporting of logs extracted from this area, and sight inspections of this and adjacent timber areas, it is clear that the taxpayer's reporting of timber values was not accurate. The forester is an expert in his field. The taxpayer has failed to present evidence to overcome the forester's estimate. The overwhelming weight of the evidence supports the forester's conclusions.

Further, the stumpage-valuing system as enacted by the legislature is concerned with valuing logs at the time of harvesting and weighing. Grading methods are prescribed by statute to determine, for excise tax purposes, what the taxable

value of the logs is. The methods attempt to take in all contributing factors present at the time of the harvest to arrive at a fair value for tax purposes. However, post-harvest factors cannot be considered "records" which substantiate a claim that the proper value was assigned at the time of the scaling or weighing. As a result, the nature of the eventual use by taxpayer's purchasers is immaterial, as is the fact that one purchaser was reluctant to pay for the logs. Any number of other factors or problems could have caused those decisions by the purchasers. The letters supplied by taxpayer fail to qualify as "records" or to substantiate his claim, especially because there is no clear trail connecting the letters to the actual wood harvested.

The entire issue and problem before us derives from the very failure of the taxpayer to develop and preserve any records which actually reflect exactly how he graded logs or determined their value. The rules require use of the Scribner rule, prior written approval of other methods of "sampling," and adequate records to support use of weighing.

Here, taxpayer's unsubstantiated claim is that it did "five sorts grading out all sawable wood," with the result that the remainder of the wood was 100% cull wood. No proof of this was submitted. While the claim could theoretically be true and the percentage of CU accurate, no adequate documentation was provided to prove that the weight method was properly used and that the calculation was correct.

There is also no evidence whatever that the taxpayer utilized a proper, acceptable method compliant with either the prevailing Department rule or the Puget Sound Scaling Bureau's rule. Taxpayer's protest appears to be founded on the belief that a lack of scaling slips is perfectly logical where logs were weighed. Be that as it may, it does not exempt any harvester from keeping and producing the records supporting the weights reported. Here, no records of any kind prove that the taxpayer accurately reported the actual weight, type, or grade.

Further, upon a review of the taxpayer's file, the Forest Tax Division found that taxpayer's Quarter Four, 1987, return had also been questioned and recalculated. At that time, taxpayer was cautioned about the manner in which he determined and reported his weights and gradings.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 25th day of July 1991.