

Cite as Det. No. 92-070, 12 WTD 127 (1993).

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

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| In the Matter of the Petition |) | <u>D E T E R M I N A T I O N</u> |
| For Refund of |) | |
|) |) | |
| |) | No. 92-070 |
| |) | |
| . . . |) | Registration No. . . . |
| |) | Forest Tax |
| |) | |

[1] RCW 84.33.045 and WAC 458-40-636: FOREST EXCISE TAX -- TIMBER HARVESTED FROM PUBLIC LAND -- TOTAL STUMPAGE VALUE -- OTHER CONSIDERATION -- PERMANENT ROAD CONSTRUCTION -- APPRAISED VALUE BY THE TIMBER SELLER. Where timber is harvested on public land, the taxable stumpage value also includes the other consideration of appraised value of required permanent road construction. The timber seller/public agency provides the appraised value. If not provided when requested by the buyer/harvester, it is required to report its actual costs as includable in the total taxable stumpage value.

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 a Determination.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition seeking a refund of forest excise taxes paid upon taxable stumpage value which included appraised value of permanent road construction.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) is engaged in the harvesting and sale of timber. It filed a quarterly Forest Excise Tax Return on October 31, 1989 for the tax period of July through

September 1989 (Q3-89) reporting a "grand total stumpage value" subject to the forest excise tax.

The Department of Revenue (Department) examined the tax return and noted that the taxpayer did not include within the tax return's "Block 16 Total Taxable Stumpage Value" any dollar amount for (Line B) "appraised permanent roads (DNR)." The tax return has the following pertinent instructions:

Block 16. TAXABLE STUMPAGE VALUE. For all timber sold by government agencies by competitive bidding, the taxable stumpage value is the actual amount paid for stumpage in cash or other consideration. The information requested in Block 16 is available from the selling agency.

...

Line B-(DNR sales). Enter the agency's appraised value for roads required under the timber sale contract which will have permanent use. Also include other consideration, i.e. permanent bridges, cattleguards, fences and gates built under the timber sale contract.

(Emphasis supplied.)

DNR supplied the Department with a road plan dated July 4, 1989 and "summary - road development costs" compiled July 13, 1989 totaling/appraising the costs to be \$. . . Thereupon, the Department increased the grand total stumpage value by \$. . . and issued a "Notice of Outstanding Balance" due, which has been paid in full.

In protesting the additional tax, the taxpayer asserts that DNR's notice of sale dated July 31, 1989 and the subsequent related timber sale contract did not mention any set amount for road deactivation or construction although the contract did call for road construction and associated work to be done.

The taxpayer reports that the contract stated the following:

Road construction and associated work provisions of the road plan for this sale dated July 4, 1989 are hereby made part of this contract.

However, the taxpayer points out that the road plan contained no set amount of the cost for the work but the following:

On this plan quantities are minimum acceptable values. Additional quantities required by the State because of

hidden conditions or purchaser's choice of techniques shall be at purchaser's expense.

The taxpayer asserts that the July 13, 1989 "summary--road development costs," used by the Department to increase the stumpage value, was not a part of the contract but were "all add ons." Furthermore, the taxpayer asserts that it was not supplied a copy of that document by the seller. Because the road plan states that the work is at the taxpayer/purchaser's expense, the taxpayer contends that amount for road construction subject to tax should be what the cost was to the taxpayer.

The issue is whether the Department is correct in using the agency's/DNR's estimated road development costs (appraised value) as includable in the grand total stumpage value or whether it should use the taxpayer's actual costs.

DISCUSSION;

RCW 84.33.045 in pertinent part provides:

(5) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(Emphasis supplied.)

WAC 458-40-636 (Rule 636), which has the same force and effect as the law itself, is the Department's regulation which explains and implements RCW 84.33.045. Rule 636 in pertinent part provides:

The taxable stumpage value for public timber sales shall be determined as follows:

(1) Competitive sales. The taxable value shall be the actual purchase price in cash or other consideration. The taxable value of other consideration shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the taxable value shall be the appraised value as appraised by the seller. If the seller does not provide an

appraised value for roads, the taxable value shall be the actual costs incurred by the purchaser for constructing or improving the roads.

(Emphasis supplied.)

In this case, the taxpayer did not report in the tax return, filed on October 31, 1989, DNR's appraised value for roads required under the timber sale contract pursuant to Block 16, Line B of the tax return. Although DNR supplied the Department with the July 13, 1989 "summary--road development costs," the taxpayer denied receiving a copy of it from DNR. The Department furnished it with a copy at the time when it billed the taxpayer for the balance due or thereafter. The taxpayer ignored the instructions with respect to Block 16 of requesting the appraised value from DNR, the selling agency. However, the taxpayer/purchaser in completing the tax return was then required to report its actual costs for constructing or improving the roads. Rule 636.

In any event, if the taxpayer had requested, per the tax return's instructions, the appraised value from DNR prior to October 31, 1989, they would have been available to it for reporting completely and accurately on Line B, Block 16 of the tax return. Furthermore, RCW 84.33.045 in mandatory terms states "the value of the roads shall be the appraised value as appraised by the seller." It appears to us that only when the "seller does not provide an appraised value for roads" as requested can the taxpayer/purchaser use its actual costs as the taxable value. Rule 636. No such request was made by the taxpayer. But, in this case, the seller has provided an appraised value and the statute mandates that it be the "other consideration" included in the "stumpage value of timber" subject to the forest excise tax. RCW 84.33.045. This is not a situation where DNR did not have an appraised value available to the taxpayer upon request at the time when it was preparing the tax return.

For the facts stated, the reasons expressed and the law set forth, we conclude that the Department was correct in using the DNR's appraised value as includable in the grand total stumpage value.

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

DATED this 19th day of March 1992.