STATE OF WASHINGTON.
Board of Tax Appeals.

BURROWES & FOX LOGGING CO.

Appellant

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE

Respondent

Docket No. 31872

Re: Excise Tax Appeal

O R D E R

FINAL DECISION

This matter came before the Board of Tax Appeals for informal hearing on January 7, 1987. Present was the appellant, Stanley R. Burrowes and the respondent, Washington State Department of Revenue ("The Department") , was represented by John Conklin of the Department. Testifying for the respondent were William Dirkland and Gregory I. Potegal, also of the Department.

The Board, having heard testimony in support of the appellant's/taxpayer's appeal and of the respondent's/assessor's answer and having heard and considered arguments made on behalf of both parties, now makes its order as follows:

VALUATION IN CONTROVERSY.
January 1, 1984 - March 31, 1986.

DOCKET NO. ASSESS. NO.	DEPARTMENT OF REVENUE VALUATION	BOARD OF TAX APPEALS VALUATION
31872 2797	$10,975.00	$10,975.00

FACTUAL STATEMENTS.

This matter came before the Board of Tax Appeals pursuant to the action of the Interpretation and Appeals Division of the Department of Revenue in Determinations 86-66 and 86-66A. In both of those determinations the Department denied the appellant's petition for refund on assessment of forest excise tax.

Appellant, Burrowes & Fox Logging Co. raised two issues:

The Department's reclassification of logging conditions for Sections 6 and 7, T729, RSW from Class 2 (average logging and road

construction) as reported by the taxpayer to Class I (favorable logging conditions and easy road construction).

The Department's denial of a deduction from the taxpayer's gross timber revenue for legal fees paid in an action against the City of Port Angeles to regain easements into the taxpayer's land which lies within that city's watershed.

The partnership, Burrowes & Fox Logging Co. of Seattle, manages forest land inherited and owned by the partners (Burrowes, 50 percent and Fox, two 25 percent interests). The land in question, Sections 6 and 7, T729, R5W, was logged in the late 1930s and comprises approximately 456 acres.

As the property has not regenerated into desirable forest land since the 1930 logging, the partnership decided to employ land resource management. The partnership commenced the process with a "sanitation harvest" program.

Sanitation harvest or cutting is one method of silviculture-forest cultivation. Another method is salvage cutting. The primary difference between sanitation cutting and salvage cutting involves intent or purpose, the former for the purpose of reducing the spread of biotic pests and the latter for the purpose of putting the wood to use before it becomes worthless.

In 1973 Burrowes & Fox had the property cruised and evaluated. The cruise results indicated the property was only about 50 productive and that vigorous silviculture practices were called for to restore the property to full timber production. In 1974 action to gain access to the property began; however, it was not until late 1979 that legal access was obtained. Initial road rehabilitation started in 1980, but was not completed until October of 1983 due to adverse weather and market conditions.

A timber harvest was opened in November 1983 and road rehabilitation continued until May of 1985. About five miles of road were opened, two bridges constructed and three oversize culverts installed to accommodate minor drainages. The arterial road system is now complete and only spur roads as needed remain to be opened.

From the 4th quarter 1983 through the 1st quarter 1986, the partnership logged 2282 thousand board feet (MBF) of conifer and 1008 MBF of hardwood for a total of 3290 MBF.

This logging activity was audited by the Department of Revenue for the period January 1, 1984 through March 31, 1985. The Department through its experienced foresters also examined the subject land to determine its classification. In comparison to like forest areas or "shows" the subject property was rated as a Class I. Additionally, a determination was made by the Department that

in view of the number of board feet harvested, the appellant did not qualify as a "small harvester" 1 and as such, tax assessed would be on stumpage value and not actual revenue.

On June 26, 1985 Assessment No. 2797 was issued for Forest Tax liability and interest in the amount of $2,478.05. The assessment has been paid under protest and the taxpayer petitioned for refund.

1 A small harvester may not harvest timber in an amount . . . exceeding five hundred thousand board feet in a calendar quarter and . . . exceeding one million board feet in a calendar year." (RCW 84.33.073(1)).

CONTENTIONS.

On the first issue, the appellant believed the extraordinary costs associated with obtaining the right-of-ways plus the expenses needed for bridge construction and road rehabilitation indicate average logging conditions and average road construction as opposed to the favorable conditions and construction found by the Department of Revenue. The latter is a Class I condition and allows for no dollar adjustment per thousand board feet (MBF) net Scribner Scale while the former would indicate Class II conditions and allow for an $18.00 MBF adjustment.

The appellant contended that the following facts warrant a judgment call of "difficult road conditions".

- Six years of litigation and $104,000 expense to gain right-of-way access.

- Five miles of road to harvest 456 acres.

- Necessity to traverse and bridge two major drainages plus three minor drainages requiring oversize culverts.

- Bridge construction and road rehabilitation costs of $74,000.

- Difficulty in restoring the old grade and its drainage system was comparable to building a new road system.

- Estimated road cost exceeded $20/MBF on expected yield.

On the second point, the appellant argued that the Department is asserting tax on revenue that does not exist when it did not allow for the costs associated with obtaining the right-of-way and subsequent road construction. The appellant claims the actual stumpage value is $106,833 and not the $168,846 as determined by the Department.

In response, the Department contended that the law provides that "reasonable and adequate allowances" be made in its stumpage value for costs of removal. RCW 84.33.091. The Department has done so by allowing adjustments for logging conditions, including the degree of difficulty of road construction. The difficulty of road construction, in the context of logging conditions, refers to actual road construction and not to such indirect matters as legal cost. They also contend that when viewing the subject property in relationship to other harvested areas, the conditions found warranted a Class I identification. Additionally, the Department cited a Department of Natural Resources study that found a relationship between the cost of road construction and the ease or difficulty of that construction. Conditions encountered that allowed for easy construction cost $800 or less per station (one station equals one hundred feet of distance. There are 52.8 stations in one mile). Average construction conditions cost $800-$1500 per station while difficult conditions cost $1500-$3000 per station to construct. The Department argued that the appellant's cost of construction at $600-$700 per station clearly supported a Class I determination.

As to the value of the timber, the Department noted that the forest excise tax was measured by the "stumpage value of timber", as required by RCW 84.33.041 and determined by Department of Revenue.- RCW 84.33.091. The legislature provided that the forest excise tax be measured, not on actual revenue, but on the basis of stumpage value as determined by the Department. Only if a harvester meets the definition of a "small harvester" may revenue be used in computing the measure of tax. As the appellant did not meet the small harvester requirements, the proper stumpage value was applied.

CONCLUSIONS.

On the first issue, the proper classification of the logging condition, the appellant is quite correct in stating that the determination is subjective and relative. The concern then is the consistency in applying the classification to a given situation and that all pertinent factors determining a particular classification were considered. Consistency in this case was established by the testimony of the expert and experienced local forester who made the determination. The forest tax supervisors, knowledgeable themselves, confirmed that determination.

Additionally, the factors that applied to the harvested land in question were adequately considered. It may be that some of the partnership's land represents more difficult logging conditions and would warrant a higher classification; however, only the area actually logged in this case can be considered for the purpose of classification. This Board finds that all pertinent factors were considered by the Department and that the Class I category

application represents the logging conditions encountered by the appellant.

The second issue - were all actual harvesting costs correctly identified and considered - can be addressed in a straight forward manner. The statutes are clear on this issue. The forest excise tax is measured by the stumpage value of timber. RCW 84.33.041. The stumpage value of timber is defined by the legislature as "the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091". RCW 84.33.035(5) (Emphasis Added). Thus, the legislature has provided that the forest excise tax is measured, not by actual revenue, but on the basis of stumpage value as determined by the Department. Only if a harvester meets the definition of a "small harvester" may the actual gross receipts from sale of the harvested timber minus the costs of harvesting and marketing the timber be used to establish taxable value. RCW 84.33.072 and RCW 84.33.074.

The appellant may not have initially intended to harvest the final amount; however, in so doing, the appellant removed himself from the small harvester category. Thus by law, the appellant is denied the opportunity to itemize expenses and must value its timber through the stumpage value method. And though the appellant does not believe that the method used adheres to "generally accepted accounting principles" it does conform to statutory requirements and intent. Many of the side issues raised by the appellant can only be satisfied through legislation. In seeking relief, the appellant requested that if the Department could not administer the Forest Tax laws and regulations equitably without further legislative action, then tax equity was a matter for the Board of Tax Appeals. However, this Board does not function as a board of equalization but is chartered to interpret the intent of the code and to ensure that it is applied evenly and fairly to all parties involved. It is not for us to judge whether a law or statute is fair or just but rather to determine if it is being applied fairly and justly. If the appellant believes a law or rule to be unjust, then the proper forum is either the legislature and/or at the public hearings for Forest Tax rules adoption or amendment.

DECISION.

This Board affirms the decision of the Department of Revenue in its Final Determination 86-66A.

DATED at Olympia, Washington
This 4 day of March 1987

STATE OF WASHINGTON BOARD OF TAX APPEALS