

Cite as 8 WTD 407 (1989)

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

[illegible]

**RULE 242A AND RCW 82.34.060(2):** B&O TAX -- CREDIT -- POLLUTION CONTROL -- "NET COMMERCIAL VALUE OF RECOVERED PRODUCTS" -- COMPUTATION. In deriving net commercial value, all verifiable costs, except the cost of the facility or depreciation, associated with the recovered or captured material are deducted from the gross commercial value to arrive at net commercial 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 this Determination.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: October 5, 1988

NATURE OF ACTION:

Petition concerning the calculation of "net commercial value of recovered products" in determining pollution control credits.

FACTS :

Bauer, A.L.J.-- The taxpayer engages in business activity in the state of Washington. Its activities include the sale of a sodium compound recovered from its pollution control activities.

The auditor disallowed those deductions from the taxpayer's calculation of "net commercial value of recovered products" which were costs associated with the product's actual recovery. The auditor allowed only those costs incurred after the products had already been "recovered."

#### TAXPAYER'S EXCEPTIONS AND ISSUE:

The taxpayer argues that "net commercial value of recovered products" set forth in Rule 242A, which reduces the annual pollution control tax credit provided in RCW 82.34.060(2)(b), should be reduced by all costs incurred in recovering and processing the "recovered product," except for the cost or depreciation of the facility.

Thus, the issue for our resolution is whether the auditor was correct in reducing the "net commercial value" only by expenses incurred after the product had been recovered.

#### DISCUSSION:

Under RCW 82.34.050(2) a taxpayer who is the holder of a certificate issued under RCW 82.34.030 may elect to "to take a tax credit in the total amount of the exemption . . . against any future taxes to be paid pursuant to chapters 82.04 . . . ."

This credit, however, is limited under RCW 82.34.060(2). After declaring the amount of the credit, the section limits the credit as follows:

(b) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized; Provided, That for the purposes of this chapter the determination of "net commercial value" shall not include a deduction for the cost or depreciation of the facility. [Emphasis added.]

These statutory provisions read together allow a credit to be taken against the B&O tax imposed under RCW 82.04. This credit, however, shall be reduced to the extent of net commercial value of any materials captured or recovered. The statute does not define the term "net commercial value" except

to the extent it specifically excludes a deduction for the cost or depreciation of the facility.

The Department of Revenue adopted an administrative rule to implement this part of the statute. The rule is WAC 458-20-242A (Rule 242A), which is quoted in pertinent part as follows:

(3) "Net commercial value of recovered products" shall mean the value of recovered products less the costs incurred in processing, including overhead costs, and costs attributable to their sale, or other disposition for value. The term shall not include a deduction for the cost or the depreciation of the facility.

The effect of the statute and rule is to grant and calculate respectively, a credit. To determine how much of the credit is available, there must be a computation to determine what is "net commercial value". The taxpayer contends that all expenses incurred with respect to the recovery of the material are properly deductible for purposes of net commercial value.

In computing the credit the auditor, based on 1983 instructions from the Interpretation and Appeals Division, denied those expenses that were incurred prior to the point in time at which the materials were "captured" or "recovered." The basis for that instruction began with the notion that tax credits, like deductions and exemptions, are to be narrowly construed. Evergreen-Washelli Memorial Park Co. v. Dept. of Revenue, 89 Wash. 2d 660, 574 P.2d 735 (1978). However, there was no further discussion as to why only expenses incurred after recovery are deductible and all other costs are not. The proposition was simply stated.

The taxpayer argues that such interpretation is incorrect. First, to read the statute and rule to limit costs incurred only after recovery makes the proviso (excluding a deduction for cost or depreciation of the facility) superfluous. Since the cost of the facility necessarily precedes the recovery of the material, specifically denying a deduction for cost or depreciation is nonsensical if you assume the department's interpretation is correct.

Secondly, the taxpayer contends, where the legislature has under taken specific actions to limit the deduction, that the Department should give credence to that act. The Department should give the legislature credit for knowing what it is

doing. If the legislature intended to exclude all other costs, it could and should have been as explicit as it was with respect to the cost or depreciation of the facility.

Lastly, the taxpayer argues that the Department should look at the legislative purpose of the enactment. The credit is intended to help older plants stay competitive while adding nonproductive pollution control equipment. See Kaiser Aluminum v. Dept of Ecology, 32 Wash. App. 399, 405, 647 P.2d 551 (1982). The taxpayer then completes its analysis by speculating that the legislature chose to reduce the credit by the amount of "net commercial value" of recovered material so as to distinguish between situations where the pollution control equipment is productive or nonproductive.

We recognize that the audit position (based on a 1983 Interpretation and Appeals reading on this matter) can be supported by looking at the language of the RCW 82.34.060(2). The statute makes reference to "materials captured or recovered" and arguably this could support a theory that those words created a "timing" element to the notion of "net commercial value." However, this possible explanation of the Department's position makes the statute and the rule disharmonious, a result that we do not believe a court would endorse since it is also a cannon of statutory construction to harmonize a statute. Int'l Paper v. Revenue, 92 Wash. 2d 277, 595 P.2d 1310 (1979).

We hold that RCW 82.34.060(2) and Rule 242A allow those expenses which are clearly and exclusively allocable to producing the recovered or captured material to be deducted from the market value of the captured or recovered material. These deductible costs consist of those incurred in producing a byproduct or recovered product, separate and apart from regular plant operating costs associated with producing the primary manufactured product. The burden to specifically identify such additional costs rests exclusively upon the person claiming the deduction. We specifically reject the notion that only costs incurred after the recovery or capture are deductible.

To this end, a taxpayer may adjust its tax liability in accordance with this calculation by either filing amended returns for periods included in the nonclaim period set forth in RCW 82.32.060, or by carrying over any cumulative credit amounts still owing - whether prior to or within the nonclaim period - to future periods.

DECISION AND DISPOSITION:

The taxpayer's petition concerning pollution control credits is granted and remanded to the Audit Division to verify the claimed deductions and to calculate the amount of the credit, all in accordance with this determination.

DATED this 30th day of November 1989.