

Cite as Det. No. 01-117, 21 WTD 136 (2002)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 01-117
)	
... )	Registration No. . . .
)	Notice of Balance Due
)	B . . . D
)	Docket No. . . .

RULE 259; RCW 82.04.100; RCW 82.32.050; ETA 541. EXTRACTING B&O TAX – INTEREST – SMALL HARVESTER – STATUTE OF LIMITATIONS. The Department’s assessment of B&O tax and interest in 2001 is not time-barred against a small harvester of timber whose gross proceeds exceeded \$100,000 in 1997 for a harvest that occurred that year. Furthermore, the Department’s records show the Department informed the taxpayer in 1997 of his B&O tax liability.

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.

NATURE OF ACTION:

A small timber harvester (the taxpayer) protests the assessment of business and occupation (B&O) tax and interest on income he earned from harvesting timber on land he owns.<sup>1</sup>

FACTS:

De Luca, A.L.J. -- In March 1995, the taxpayer filed an application with the Washington State Department of Natural Resources to harvest timber on land he owns in [Washington] County. The Department of Natural Resources processed and granted the permit on April 14, 1995. The taxpayer is not a commercial logger. Instead, he is a small harvester. *See* WAC 458-20-259 (Rule 259) and Excise Tax Advisory (ETA) 541, discussed below. The Department of Revenue (the Department) has previously provided the taxpayer with copies of Rule 259 and ETA 541.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

There is a question when the taxpayer actually harvested the timber. He claims the harvest occurred in Q4/96, but the forest excise tax return he filed on July 2, 1997 indicated he harvested the timber in Q1/97. We note the taxpayer renewed the harvesting permit with the Department of Natural Resources on April 12, 1997 because the original permit was valid for only two years. Regardless of the date of harvest, the taxpayer stated during the telephone conference that he did not receive the proceeds from the sale of logs until 1997 due to a lag in receiving settlement checks from the mill where the logs were milled.

The taxpayer states he paid the timber excise tax in person at the Department's . . . office because when he telephoned earlier for assistance in filling out the forest excise tax return the Department did not have anyone available at that moment who could assist him. The taxpayer states the Department did not inform him when he paid the timber excise tax of any B&O tax obligation he had incurred due to the sale of the logs.

The Department's records show the Department employee who assisted the taxpayer in filling out the forest excise tax return referred the matter on July 29, 1997 to a Department forester for follow up to determine if any timber excise tax reporting changes were necessary. The Department's forester [Ms. D] signed and filed a Harvester Verification Report on August 18, 1997 for this particular harvest. The report indicates the harvest occurred during Q1/97. In the section of the report for "Remarks On Changes Made" the Department Forester wrote: "no change – informed tp [taxpayer] of his b&o liability – gave him [Ms. R] phone # at TA&A." [Ms. R] is a Department employee who works in the Taxpayer Account and Administration Division, which processes tax returns and taxpayers' accounts for taxes other than forest excise tax, such as B&O tax, retail sales tax, use tax, etc.

The Department reviewed the taxpayer's account late last year and on January 8, 2001 issued a Notice of Balance Due for \$ . . . in extracting B&O tax, plus \$ . . . in interest (totaling \$ . . . ), for the calendar year 1997.

#### TAXPAYER'S EXCEPTIONS:

The taxpayer protests both the B&O tax and the interest that the Department assessed. The taxpayer believes the Department waited too long to assess him. He contends the Department should have told him about the B&O tax when he paid his timber excise tax in person in July 1997. The taxpayer stated that he does not recall the conversation with the Department's forester in August 1997 about his B&O tax liability.

#### ISSUE:

Is the Department time-barred from assessing the B&O tax and interest?

## DISCUSSION:

We find the taxpayer harvested his timber in 1997. The forest excise tax return he filed on July 2, 1997 declares both that the harvest occurred during Q1/97 and the grand stumpage value for the sale of his logs exceeded \$100,000. The Harvester Verification Report dated August 18, 1997 also states the harvest occurred during Q1/97. Furthermore, the taxpayer renewed his timber harvest permit with the Department of Natural Resources in 1997. If the harvest had been completed in 1996, there would have been no need for the taxpayer to renew his permit. Significantly, the taxpayer stated that he did not receive the proceeds from the sale of the logs until 1997, which is important because the B&O tax does not apply until the calendar year the gross proceeds from the timber harvest exceed \$100,000, as explained immediately below.

Rule 259(3)(a) defines “small harvester” in accordance with RCW 84.33.073(1). That statute was in effect during the period in question and until it was repealed on 7/22/2001. A “small harvester” means. . . .

every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use:

- (i) Prior to July 1, 1995, in an amount not exceeding five hundred thousand board feet in a calendar quarter and not exceeding one million board feet in a calendar year; and
- (ii) After June 30, 1995, as provided by chapter 325, Laws of 1995, in an amount not exceeding two million board feet in a calendar year.

Rule 259 further provides:

1) **Introduction.** Harvesters of timber are generally subject to business and occupation (B&O) tax in the extracting classification. RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters of timber (as defined in RCW 84.33.073) whose value of product harvested, gross proceeds of log sales, or gross income of the timber harvesting business is less than \$100,000 per year.

(2) **Registration - return.**

(a) A person whose only business activity is as small harvester of timber and whose gross income in a calendar year from the harvesting of timber is less than \$100,000, is not required to register with the department for B&O tax purposes.

(b) A small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceed the exempt amount.

(c) When the gross proceeds received during a calendar year from timber harvested by a small harvester exceed the exempt amount, a return shall be filed and shall include all proceeds received during the calendar year to the time when the filing of a return is required. See WAC 458-20-228 and WAC 458-20-22801 for penalties, interest and return filing periods.

(d) A harvester of timber must register with the forest tax division of the department for payment of timber excise tax.

Because the taxpayer's gross proceeds in 1997 from the timber harvest exceeded \$100,000, he was required to pay B&O tax, in addition to the timber excise tax, on those gross proceeds.

The Department issued the B&O tax assessment in January 2001 on the gross proceeds that the taxpayer earned in 1997. RCW 82.32.050(1) provides

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

RCW 82.32.050(3) limits the time that the Department may assess tax and interest, with some exceptions not applicable here. We find the Department's tax assessment was timely pursuant to the statute:

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation.

Thus, the Department may legally assess taxes that became due in 1997 until the end of 2001, which is within four years after the close of the tax year 1997. As shown, the law requires the Department to add interest to tax that is past due.

Despite RCW 82.32.050(3), we are aware that the taxpayer strongly contends, as a matter of fairness, the Department waited too long to notify him and assess the B&O tax after he sought the Department's assistance to pay his timber excise tax in July 1997. However, the Department's Harvester Verification Report shows that the Department forester expressly informed the taxpayer in August 1997 that he had a B&O tax obligation then, and she gave him the name and telephone number of a Department employee who could assist him in satisfying his B&O tax obligations. We find this report to be credible. The Department did not recently prepare the report for this appeal. The report had been in the Department's files since the forester signed it and the Department's Forest Tax Section stamped it "Received" on August 18, 1997. The report is not based upon someone's recollection years after the event. Instead, the report was prepared in the Department's ordinary course of business at that time. The report was the result of a referral made in July 1997 by the Department employee who assisted the taxpayer with his forest excise tax return. There is nothing suspicious about the report that persuades us to discount it.

We find the Department timely assessed the B&O tax and interest pursuant to RCW 82.32.050. We have no basis in law or fact to cancel the assessment.

**DECISION AND DISPOSITION:**

The taxpayer's petition is denied.

Dated this 20<sup>th</sup> day of August, 2001.