Cite as 1 WTD 173 (1986)

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

In the Matter of the Petition For Correction of Assessment of	F I N A L D E T E R M I N A T I O N
	No. 85-259A
. . .	Registration No. . . .

[1] FOREST TAX - RCW 84.33.071(3) - STUMPAGE VALUE - DETERMINATION - DEPARTMENT AUTHORITY - DISAGREEMENT WITH STUMPAGE VALUES - APPEAL TO BOARD OF TAX APPEALS: The department has the authority pursuant to statute to determine what stumpage value shall be. Any disagreement with stumpage values as determined by the department must be by petition to the Board of Tax Appeals within sixty (60) days from the time the values are finally adopted. The taxpayer failed to do so and therefore, cannot now contest the stumpage values.

[2] FOREST TAX - RCW 84.33.071(3) - RCW 84.33.035(5) - EFFECTIVE DATE OF NEW LEGISLATION: Under RCW 84.33.071(3), the value of timber harvests are determined by stumpage value. Stumpage values are determined by the Department and are final. RCW 84.33.035(5) does not apply, because it was not effective until July 1, 1984.

[3] FOREST TAX - DEPARTMENT CONVERSION TABLES - ALTERNATIVE METHOD - DEPARTMENT CONSENT - FAILURE TO FOLLOW ALTERNATIVE METHOD: The conversion of timber from weight to board feet is determined by the Department Tables. Deviation from these Tables may be permitted, but with the prior consent of the Department. Where the Department has provided an alternative method, but the taxpayer chooses not to follow it, the taxpayer is bound to the Tables.

[4] FOREST TAX - CONVERSION OF TIMBER WEIGHT TO BOARD FEET - ALTERNATIVE METHOD - DISCRIMINATION: Discrimination is constitutionally suspect if the state in administering the state tax laws treats taxpayers similarly situated differently. Discrimination does not exist where the state allows the same opportunity to all taxpayers similarly situated to deviate from the department's stated procedure of timber conversion to board feet. The fact that the taxpayer refuses or is unable for financial reasons to follow the alternative method does not make the method discriminatory under either the state or federal constitutions.

NATURE OF ACTION

The taxpayer's records were audited for the period beginning on January 1, 1980 and ending on December 31, 1983. A deficiency was determined and an assessment issued. The assessment was appealed to the Interpretation and Appeals Section and a determination denying the petition for relief was issued. The taxpayer appeals that denial to the Director and asks that decision be reversed.

FACTS AND ISSUES

GARRY G. FUJITA, CHIEF - This taxpayer company is in the timber harvesting business in the state of Washington. Its harvesting operation permits the taxpayer to utilize portions of trees that other harvesters would leave as essentially waste. The Department's auditor has found that there was no value which could be verified and therefore, the auditor concluded that the value, to the extent claimed by the taxpayer, did not exist.

Aside from the facts surrounding the existence of conifer utility, unresolved issues remain with respect to the question of conversion. The timber must be converted from weight to volume for purposes of the forest excise tax. The taxpayer has used a conversion factor which the Department refuses to accept.

EXCEPTIONS

In a well written and articulately stated petition, the taxpayer urges that the Department has not fully appreciated the taxpayer's harvesting operations and therefore, has failed to properly account for the timber harvested by it. First, it is argued that the Department's reliance upon the Official Log Scaling and Grading Rules (Official Rules) is misplaced,

because the Official Rules are premised upon the usual methods of harvesting. As indicated earlier, the taxpayer is arguing that its methods are unique - unusual - and thus, the Official Rules do not accurately reflect this taxpayer's operation.

Regarding this question, the taxpayer also argues that the auditor could not know what amount of conifer utility existed since the inspections were not simultaneously conducted with the harvests (in some cases, four years after the harvest). The taxpayer suggests that the only way that the auditor could have made the assessment was to draw conclusions from stumpage.

It is further contended by the taxpayer that the original determination was based, at least in part, upon a finding that the taxpayer had inadequate records to establish the volume of conifer utility. This, the taxpayer says, is incorrect, because the taxpayer has provided adequate records to establish the volume.

All of the foregoing does not meet the legislative intent, according to the taxpayer, because the intent is to tax the actual value of the timber harvested; the auditor as well as the administrative law judge do not reach that intent in this case. Where the Department's rules and procedures frustrate that intent, the taxpayer believes that the Department should make exceptions.

The taxpayer takes further exception to a perceived department interpretation that determines the value of the timber by what the timber could have been used for instead by what the timber was actually used for.

The taxpayer also argues that the conversion factor used by it should be accepted, because the taxpayer has requested approval of the method over many years with no response as to the rejection or acceptance of the proposed method. Due to the department's inaction, the taxpayer should not now be barred from using its method.

ISSUES

ISSUE ONE: How is the value of the timber harvest valued?

ISSUE TWO: How is the weight of timber converted to board feet?

DISCUSSION

ISSUE ONE: How is the value of the timber harvest valued?

CONCLUSION: Under the legislative scheme, value of timber harvest is determined by the "stumpage value of timber." Stumpage value as determined by the Department of Revenue is final unless appealed to the Board of Tax Appeals.

[1] This question raises a number of issues. First, there is the question as to whether the Department's stumpage value properly reflects the value of the timber harvested by the taxpayer. The Department under the authority of RCW 84.33.071(3) determines what the stumpage value will be in any given area. If a taxpayer disagrees with the Department's valuation, that taxpayer can appeal to the Board of Tax Appeals within sixty (60) days from the time the Department valuations are finally adopted. RCW 84.33.071(4). There is no evidence in this case that this (an appeal duly filed) was done. Therefore, on this ground alone, there is no basis for relief, even if the methods of valuation employed by the Department were erroneous.

Secondly, to what extent does the stumpage value take into consideration the taxpayer's method of operation? As above indicated, the stumpage values as determined by the Department are final. However, the taxpayer's appeal record shows that the Department did give the taxpayer the opportunity to establish that there was a higher conifer utility rate than what the stumpage values would generally permit. The Department indicated that it would consider adjustments if the taxpayer would take a five percent (5%) or ten percent (10%) sample of the bureau or yard scale records, respectively. This was a procedure that the Department felt would tend to prove or disprove the taxpayer's assertion of the amount of conifer utility. The taxpayer has not done this; the taxpayer argues that there are sufficient other records to determine the amount of the conifer utility. The Forest Tax section has reviewed those records and found them insufficient. We will not second guess their findings where they conclude that the records presented do not permit a reasonable indication of the conifer utility.

[2] Next, the taxpayer argues that the stumpage value means actual value. This construction evolves from RCW 84.33.035(5). This statute was adopted in the 1984 legislative session and was effective on July 1, 1984. The assessment period currently in issue covers January 1, 1980

through December 31, 1983. Simply put, the taxpayer's argument is based upon a statute that was not in existence at the time in question. Therefore we reject the taxpayer's argument concerning the construction of the statute on this basis alone and we do not offer any opinion as to the construction of the 1984 language. Further, since the statute applicable to this audit period requires the use of stumpage value, the fact that the auditor may have inspected only the stumps located at the site and did not, nor could he/she have seen the tops of the trees harvested, is of no significance in resolving these issues now before us.

Nor is it significant that there is a perceive distinction between potential use and actual use of the logs, because this argument rests heavily upon the taxpayer's analysis of a statute which was not applicable at the time of the assessment.

The petition is denied on this issue.

ISSUE TWO: How is the weight of timber converted to board feet?

CONCLUSION: The method to convert weight to volume is to use the Department Tables unless the department accepts a different method to determine the amount of timber harvested. In this case there was only the Department Tables, because an alternative method was not accepted.

It is not contested that the Department Tables are the proper measurement. It also is not disputed by the auditor that deviations from those Tables are permitted where such deviations have been earlier approved by the Department. In this case, the dispute is that the Department has not accepted the taxpayer's method.

In this vein, the taxpayer argues that the conversion formula it used should be accepted for two reasons. First was the fact that the taxpayer asked the Department for approval, but the Department never responded to the requests for approval. Second is that the method required by the Department discriminates against this taxpayer.

In the taxpayer's audit immediately preceding the one now in question, the Department informed the taxpayer that it would accept the thirty percent (30%) figure in that <u>particular</u> audit but that for future reporting purposes, that figure would not be accepted without further documentation. That

documentation was to be samples from the scale loads. The instructions were explicit and not ambiguous as to what the Department would require in future reporting periods. The taxpayer chose not to follow the explicit reporting instructions. The taxpayer has had ample notice what proof would be required to establish a deviation from the Tables and which this taxpayer has failed to meet.

[3] Thus, with respect to the first of the taxpayer's argument, the fact that the Department did not accept the taxpayer's method is not the equivalent to the Department not responding to the taxpayer's request for approval. Quite to the contrary, the Department did give the taxpayer the opportunity to change the method of valuation, but for whatever reasons pertinent to the taxpayer's business operations, that method (scale samples) was not followed. The taxpayer cannot now be heard to say that the Department has not responded simply because the Department did not agree with the taxpayer's requested method.

With respect to the second argument, the department's method of valuing timber is in accordance with what is mandated by the statute. The statute provides a taxpayer the opportunity to contest the valuation method by filing a notice with the Board of Tax Appeals. This the taxpayer did not do. As above indicated, this fact alone prevents the taxpayer any relief under these circumstances.

However, we choose in this case to engage in further discussion because of the allegation of discrimination. An allegation of discrimination is of significant magnitude and the Department does not take allegations such as this lightly. Therefore, this determination will address that assertion.

Essentially, the taxpayer believes that there is discrimination present, because the Department's requirements are difficult to meet. This is so, because the taxpayer is having financial difficulties (certainly, we take judicial notice that the lumber industry is having difficult financial times) and therefore cannot feasibly satisfy the Department's specifications.

While it is fully appreciated that the taxpayer believes that this is discrimination,[1] it is not discrimination in terms

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[1] It seems that the taxpayer is drawing this conclusion based upon its perception that the department is creating two different

measured by the federal or state constitutions. The Department recognizes that the taxpayer may have an operation that is different from others. Many taxpayers make the same claim that they are somehow different from other operators. To recognize the potential differences, the Department has informed the various taxpayers what records must kept to support the difference in treatment.

[4] In this case the taxpayer either will not or cannot meet the requirements to properly document the timber harvested. All taxpayers similarly situated are required to meet the same record keeping standards and therefore, are all treated in precisely the same manner. If there was evidence that the Department was arbitrarily treating similarly situated taxpayers differently, there would be merit to the taxpayer's argument. There is, however, absolutely no evidence of we which we are independently aware, or of which the taxpayer has made us aware, that would support such a finding.

In fact if the Department were to treat this taxpayer more favorably (a less accurate way of measuring the timber volume or quality) than others who are similarly situated (but who meet the more stringent records requirement), then the Department would be discriminating and would be violating both the state and federal constitutional rights of those similarly situated who do comply with the more stringent standards. Thus, we are not inclined to enter a decision now, in favor of this taxpayer, that would cause the Department to be violation of the constitutions.

The petition is denied on this issue.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

DATED this 15th day of September 1986.

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classes of taxpayers and treating them differently by forcing the taxpayer who is in disfavor to pay a higher tax than required. For example, a class of taxpayers who can afford to do the sampling and a class of taxpayers who cannot. Another example might be a class of taxpayers who harvest like the taxpayer and a class who do not. In either situation, regardless of which might be the case the taxpayer believes applies to it, the taxpayer is suggesting that harvesters who cannot afford to sample or have unique harvesting techniques are treated differently and therefore, unfairly.