

Cite as 1 WTD 55 (1986)

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

In the Matter of the Petition for) F I N A L
Refund of) D E T E R M I N A T I O N
)
) No. 86-66A
)
. . .) Registration No. . . .
) Forest Tax Assessment No. . .
)

[1] FOREST EXCISE TAX - SMALL HARVESTER - TIMBER VALUATIONS.

A person who harvests more than one million board feet of timber per year for sale or commercial use is not a "small harvester" under RCW 84.33.073 and WAC 458-40-18702, and is not entitled to the stumpage value options for small harvesters.

[2] FOREST EXCISE TAX - STUMPAGE VALUE TABLES - ADJUSTMENTS TO VALUE.

The stumpage value tables included in WAC 458-40-18711 are current, updated, market values for species and subclassifications of timber harvested which include built-in adjustments for logging operation costs in compliance with RCW 84.33.091.

[3] FOREST EXCISE TAX - TAX MEASURE - DEDUCTIONS.

The forest excise tax is not a net income tax which provides for deductions of all business related expenses to derive a net receipts tax measure; rather, the available deductions for logging costs are built into the stumpage value tables.

[4] FOREST EXCISE TAX - DAMAGE TO STANDING TIMBER - EARLY HARVESTING - VALUATION ADJUSTMENTS.

WAC 458-40-18712 provides for applications to be made to the Department of Revenue for stumpage value adjustments due to damaged timber and resulting

additional logging costs, however, such adjustments do not include the cost of clear cutting areas before full growth based upon forest land management decisions of a harvester.

These 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: . . .
. . . (at taxpayer's request and
invitation)

HEARING CONDUCTED BY DIRECTOR'S DESIGNEES:

Gary O'Neil, Assistant Director of Policy and
Administration
Edward L. Faker, Sr. Administrative Law Judge

DATE OF HEARING: June 18, 1986

NATURE OF ACTION:

Forest excise tax was assessed and paid upon the stumpage value of timber harvested in connection with the taxpayer's management of forest lands. The taxpayer sought a refund of such tax as well as refunds of all forest excise taxes paid since the first quarter of 1984.

Determination No. 86-66 was issued by the Department's Administrative Law Judge after an original appeal hearing conducted in Seattle, Washington on August 21, 1985. The Determination sustained the tax and denied the refund request. The taxpayer has appealed to the Director.

FACTS AND ISSUES:

Edward L. Faker, Senior Administrative Law Judge--The operative facts of this case are not in dispute. These facts, and the forest tax audit and assessment details, are fully reported in Determination 86-66 and will not be restated here except as necessary for perspective of the issues presented.

There are two related issues:

1. Is the taxpayer a "small harvester," so that its value of timber harvested is based upon gross receipts less certain costs of harvesting and marketing, including logging road

construction costs, under WAC 458-40-18702(3)(a)? If so, have these costs been properly computed?

2. Is the taxpayer entitled to stumpage value adjustments because of thinning and/or damaged timber conditions due to bear damage and other "sanitation logging" considerations? If so, have these adjustments been properly computed?

The taxpayer has raised many objections, in general, to the provisions of the Forest Tax regulations, chapter 458-40 WAC, and to the Department's methods of administration of these rules and of the statutory provisions of chapter 84.33 RCW (Forest Excise Tax). However, the issues enumerated above are the only pertinent and dispositive questions in this case.

TAXPAYER'S EXCEPTIONS:

The taxpayer has expressly requested a direct and concise treatment of the forest tax issues and problems identified in this case. It has spent considerable time and energy establishing its credentials as a knowledgeable expert in forest land management and in challenging the Department's forest tax regulations and the staff who administer them. The taxpayer's primary objection is that the regulations, especially the stumpage value tables, do not represent current, actual costs and harvesting conditions encountered in the contemporary forest products industry. Thus, the regulations are unsound, both as a matter of realistic application within the industry, and as expressions of generally accepted accounting principles.

The taxpayer asserts that, though it does not necessarily meet the defined qualifications for a "small harvester" under WAC 458-40-18702, it has not produced sufficient volume of harvested timber in any given period to be "legitimately" classified as other than a "small harvester." Because it should be treated as a "small harvester," the taxpayer asserts that its total costs of logging road rehabilitation, including legal costs attendant to securing access through a 25-year restricted easement from the City of Port Angeles, should be considered in computing cost adjustments to timber values. Other actual costs, including the greater than usual costs of a forest reclamation operation and "silviculture," should be considered. The forest tax regulations and the Department's administration of the tax fail to recognize these accepted principles.

The taxpayer's written petitions and oral testimony explain the various actual costs attendant to its operations in considerable detail, emphasizing that the regulations and stumpage value tables do not contemplate such actual, unique expenses. These expenses, in this case, exceed the 50 percent costs deduction from gross receipts allowed by the Department for small harvesters.

As to the second, related issue, the taxpayer asserts that Determination 86-66 ignores the factual situation caused by excessive bear damage and other timber damage factors which caused the lands in question to be logged before timber maturity. The Determination is factually incomplete, according to the taxpayer, because it fails to consider the following matters contained in the taxpayer's petitions:

FACTS RELEVANT TO EVALUATION OF THIS APPEAL

(a) Enclosed are maps prepared by the Department of Revenue showing areas in Section 6 and Section 7 that have been clear cut.

(b) The clear cut area in Section 7 was about 70% conifer and would have been a prime area for thinning and releasing and to conserve the immature conifer for later harvest, except for the discovery of excessive bear damage. Bear damage had been reported in a 1980 cruise by . . .; however, between 1980 and the beginning of logging in early 1985 the bear damage had become so widespread that thinning and releasing action was no longer feasible.

Adjoining landowners (Milwaukee and the City of Port Angeles) have been alerted to the problem as well as the State Game Department and the area was open to bear hunters both during the winters of 1983, '84, and '85.

(c) Clear cut areas in Section 6 had moderate evidence of bear damage; however, excessive snow damage and blow down was encountered. Most of the blow down was attributable to the March 1979 storm that destroyed the Hood Canal Bridge.

(d) Excessive bear damage has caused the cutting of timber prematurely--timber that should have been allowed to grow another 10-15 years. The net economic effect is to lessen the current economic yield and to completely eliminate the longer term yield. Areas scheduled for thinning and releasing now are being clear cut to recover plantable basal area.

Critique: Allowances made by the DOR have been insufficient and untimely; and are not adequately defined in Published DOR instructions to the taxpayer - (Instructions for block 12). They place an excessive administrative burden on the small landowner in gaining prior approval for relatively small areas of damage. Pre-authorization inspection by a DOR forester appears to be an uneconomic use of the forester's time.

The taxpayer stipulated that the Forest Tax Section had made adjustments to the tax assessment for bear damage but asserts that it was not sufficiently high.

In general, and in many respects, the taxpayer pointed out seeming difficulties with specific provisions of the Forest Tax regulations and procedures. It also argued that the regulations are unworkable, vague, and arbitrary in many regards, e.g., the tax reporting deadline dates are unrealistic and the stumpage value tables are based upon outdated and unreliable data. In short, the taxpayer simply challenged the validity of the Forest Tax regulations and the manner in which they are administered, in almost every respect.

DISCUSSION:

We have carefully weighed the taxpayer's arguments and representations contained in its written petitions and oral testimony. As with original Determination 86-66, the fact that each and every argument or complaint posited by the taxpayer may not be set forth herein in detail should not imply that such positions have not been fully considered. We simply find most of the points raised to be totally outside the scope of this appeal. The taxpayer lacks standing to raise many of these arguments which go to the general validity of Forest Tax regulatory provisions which had no bearing or application on the tax assessment and tax reporting periods before us here. The appropriate forums for such arguments are either before the State Legislature or at the public hearings for Forest Tax rules amendment or adoption. Accordingly, this Final Determination is limited to the pertinent facts and legal issues which bear directly upon the tax assessment and

refund requests derived from this taxpayer's logging operations during the periods in question.

Issue No. 1. RCW 84.33.073(1) defines the term "small harvester" to mean:

. . . 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 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. . . (Emphasis supplied.)

RCW 84.33.074 then provides for an election of methods for calculating the value of timber harvested by small harvesters.

WAC 458-40-18702 and -18703 simply and directly implement the statutory provisions.

[1-2] The record reveals, and the taxpayer's petition and testimony confirm, that it harvested more than 1,000 MBF per year in 1984 and 1985. Thus it was not a "small harvester" by definition during the periods in question here. Thus, as a matter of law, the taxable stumpage value options of RCW 84.33.074 and WAC Rule 18703 were not available for use by the taxpayer. As Determination 86-66 fully and properly explains, the taxpayer must use the stumpage valuation tables prepared by the Department pursuant to RCW 84.33.091.

The valuations are set forth in detail at WAC 458-40-18711. They are kept current and reflect the best available valuation information. RCW 84.33.091 provides that the stumpage value shall be the amount that each species or subclassification of timber would sell for at a voluntary sale made in the ordinary course of business. The tables in the rules are updated every six months to reflect the latest market prices from public auctions and other public sales of timber. The rules conform with statutory requirements and intent in all respects. The appropriate tables for use during the periods in question here are set forth in Determination 86-66. They inherently include the only adjustments to value available for harvesters other than small harvesters. Also, these built-in adjustments already account for such things as road construction costs and logging difficulty which the taxpayer pleads for in this case.

[3] Moreover, because the taxpayer is not a small harvester under the law, the nature of the logging roads as temporary or permanent is not properly an issue for consideration in this case. All costs adjustments are considered in the preparation of the valuation tables. We note, in passing, that such things as legal costs attendant to gaining access to timber lands are property management costs which are not directly related to logging timber. Such costs would be incurred even if roads were not built or rehabilitated or timber was never logged. The forest excise tax is not an income tax to be measured by net income from sales after deducting all costs of engaging in business. In conclusion on this point, we are not persuaded by the taxpayer's arguments and the evidence submitted that the valuation tables do not properly reflect the correct stumpage value for tax reporting in this case. Contrary to the taxpayer's assertions, the law does not require that actual harvesting costs be computed in each case and deducted from actual revenues received from each particular sale in order to determine the Forest Tax measure. If it did, there would be no need whatever for the stumpage valuation methods and tables mandated by the statutes.

Issue No. 2

[4] The evidence and testimony presented by the taxpayer do not establish that bear damage and silvicultural conditions prevailed which merit further adjustment to timber values than that already allowed by the Forest Tax section. The gravamen of the taxpayer's testimony was simply that it had to log certain areas earlier than anticipated and before full growth of timber was attained. However, under the laws and rules for measuring the tax due, the Department valued only the timber logged. Considerations pertaining to the land management reasons for logging the area earlier than expected or making decisions to clear-cut bear damaged or windblown areas have no tax consequences. It is not necessary to understand or consider all of the tenets of silviculture or quality forest land management in order to simply determine the current market value of stumpage as timber is removed. The Department does not profess to have the forest land management expertise of the taxpayer. Nor is it necessary in order to legally, equitably, and uniformly administer the forest tax laws of this state. The taxpayer has not been treated unfairly by the Forest Tax section in its uniform and consistent application of the valuation procedures under the law. Moreover, it is simply not adequate to challenge the equity of the entire Forest Tax system as it may apply to forest land reclamation, sanitation harvesters, and silviculture, without specifying

real issues based upon real factual disputes. The Department is not required to defend the basic principles of a mass appraisal system except with regard to specific facts and issues pertinent to a specific case.

Determination 86-88 fully and properly reports the Department's position, under the law, with respect to timber value adjustments for bear damage and any other unusual expenditures meriting such tax measure adjustments. That Determination is incorporated herein by this reference and its conclusions with respect to this issue are sustained.

DECISION AND DISPOSITION:

The taxpayer's petitions and refund requests are denied and the findings and conclusions of Determination No. 86-66, as further explained herein, are sustained.

DATED this 5th day of August 1986.