

Cite as Det. No. 98-059, 17 WTD 194 (1998)

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. 98-059
)	
...)	Registration No. . . .
)	Forest Tax . . .
)	

[1] WAC 458-40-690 (Rule 690); RCW 84.33.041; RCW 84.33.077: PERSONAL PROPERTY TAX CREDIT -- TIMBER EXCISE TAX-- PUBLIC TIMBER.

A harvester of public timber may apply to the Department of Revenue for a credit of any personal property taxes it paid on timber standing on public land against any tax imposed with respect to its business of harvesting timber from publicly owned land. The credit shall not exceed the amount of excise tax due in respect to the business of harvesting timber from publicly owned land. The credit may never exceed the actual amount of property taxes the harvester has paid on timber standing on public land. Likewise, the harvester can never apply personal property tax credits that exceed the amount of excise tax the harvester owes.

NATURE OF ACTION:

Taxpayer challenges the Department of Revenue's failure to apply personal property tax credits against forest excise taxes it owed for harvesting public timber.

FACTS:

Danyo, A.L.J. -- Taxpayer¹ regularly contracts with state and local agencies to purchase and harvest standing timber on public lands.² The public timber sold under these contracts is recorded on the personal property tax rolls of the county in which the standing timber is located.³ The standing timber is valued and a tax is levied by the County Assessor's office. Each year the timber remains standing, a personal property tax assessment is issued.⁴

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

² For state and county excise tax purposes, public timber does not include timber located on land owned by the federal government. See RCW 84.33.078.

³ RCW 84.40.020 and .080.

⁴ See, generally, Title 84 RCW.

Public timber sale contracts contemplate that the purchaser will ultimately harvest the timber. Sometimes the public timber will be harvested within a short time after executing the sale contract. Other times, the timber will be held for many years before it is harvested.

A timber excise tax is imposed on every person engaging in the business of harvesting.⁵ However, harvesters of public timber, such as Taxpayer, may apply to the Department of Revenue (Department) for a credit against the timber excise tax due.⁶ The credit is for the personal property taxes the harvester paid to a county on the standing public timber held under a public timber sale contract entered into after 1982.⁷

The credit is not automatic. A harvester must apply for it by completing the Department's "Public Timber Personal Property Tax Credit Application." The application contains three parts, of which the harvester completes the first part. The harvester provides the business' name, address, and registration number; the county in which the harvested timber was located; and, the quarter and year the timber was harvested and for which the credit is to be applied. The County Assessor completes the second part by providing the year the personal property taxes were assessed (the "assessment year"); the public sale contract date and number; the value and legal description of the land on which the timber stood; and the type of timber sold. The County Treasurer completes the third part by certifying that the harvester paid personal property taxes to a specific county on the public timber sale contracts listed on the County Assessor's portion. The certification statement includes the time period for which the personal property taxes were paid, e.g., January 1, 1995 to December 31, 1995.

On July 25, 1997, Taxpayer applied to the Department for personal property tax credits to be applied against timber excise tax it owed on public timber it harvested during the second quarter of 1996. The total amount of credits Taxpayer applied for equaled \$. . . . The total amount of timber excise tax reported for Q2 '96 [exceeded the amounts of credits Taxpayer applied for]. The amount of excise tax paid was \$. . . . The total amount of personal property tax credit allowed [less than the amount claimed]. The balance of the credits requested was denied and Forest Tax Assessment No. 8719 was issued for the difference of \$. . . .⁸

The Department's Special Programs Division explained the reasons for denying a portion of the total amounts of personal property tax credits requested, as follows:

A portion of the Personal Property Tax Credits (PPTC) submitted have been denied. For a PPTC to be valid, tax must be Reported to the Department of Revenue equal to the

⁵ RCW 84.33.041.

⁶ RCW 84.33.077.

⁷ RCW 84.36.473.

⁸ According to the Department's files, there was a discrepancy between the amount of tax owed and the amount of personal property tax credits denied. The discrepancy was due to a mathematical error and the actual amount of personal property tax credit requested was \$. . . .

amount of each sale of the amount of PPTC applied. A schedule of the credits denied by dollar value and sale #s is enclosed.

Taxpayer petitioned the Appeals Division for a reversal of the Department's denial of the personal property tax credits and for cancellation of the Forest Tax Assessment. Taxpayer also challenged the Department's requirement "that the credit for property tax paid on standing timber must be offset only against the harvest excise tax of the specific timber to which it applies." Taxpayer argues that there is no such restriction in either the statute⁹ or the administrative rule¹⁰. Further, Taxpayer asserts that the Department's action represents "a recent position taken by the Department of Revenue in contrast to many years' history of allowing an offset of the property tax against any harvest excise tax." Taxpayer argues that the Department's failure to allow the full amount of personal property tax credits for which it applied is based on an erroneous interpretation of RCW 83.33.077.

The Department, in response to Taxpayer's petition, states it has not changed its position and it has always applied personal property tax credits only when the harvester has paid personal property taxes on the specific timber for which the excise tax is due. Further, the Department claims this application is consistent with the legislature's intent when it enacted the credit.

ISSUE:

Whether the personal property tax credit is available to a harvester of timber¹¹ only when the personal property tax was paid on the particular public timber it harvested and for which the excise tax was due?

DISCUSSION:

According to RCW 84.33.078 "[w]hen any timber standing on public land, other than federally owned land, is sold separate from the land" the governmental unit that sold the timber "shall state in its notice of the sale" that the timber

is subject to property tax and that the amount of the tax paid may be used as a credit against any tax imposed with respect to the business of harvesting timber from publicly owned land under RCW 84.33.041.

⁹ RCW 84.33.077.

¹⁰ WAC 458-40-690.

¹¹ RCW 84.33.035(5) defines a "harvester of timber" as:

... every person who from the person's 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. . . .

Thus, the person who contracts with “the department of natural resources or other governmental unit” to harvest timber from public land, is subject to a property tax. If the timber is standing on January 1, of any year, the county assesses the tax and the harvester will pay it in the following year. If the timber was harvested, the harvester must file a timber excise tax return.

RCW 84.33.041(1) imposes the timber excise tax

on every person engaging in this state in business as a harvester of timber on privately or publicly owned land. The tax is equal to the stumpage value¹² of timber harvested for sale or for commercial or industrial use multiplied by the rate provided in this chapter.

The harvester completes the excise tax return by providing the public timber sale contract number, the legal description of the land and county where the timber was located, and excise tax due measured by the amount the harvester was paid for the timber.¹³ The tax is due for the calendar quarter in which the timber was harvested.¹⁴ However, RCW 84.33.077, grants harvesters a “credit for property taxes paid on timber on public land.” The statute reads as follows:

. . . The amount of any property taxes paid on timber standing on public land shall be allowed as a credit against any tax imposed with respect to the business of harvesting timber from publicly owned land under RCW 84.33.041. However, the amount of credit allowed shall not exceed the amount of excise tax due in respect to the business of harvesting timber from publicly owned land.

(Emphasis added.). This statute was first enacted effective January 1, 1984. It was amended effective July 1, 1984. The administrative rule implementing this statute is WAC 458-40-690 (Rule 690). Rule 690 as in effect from January 1, 1984 through December 31, 1996, explained the credit as follows:

In accordance with RCW 84.33.077 and 84.36.473, persons engaged in business as harvesters of timber from public land shall be allowed a tax credit against the timber excise tax imposed under chapter 84.33 RCW for any personal property taxes paid to a county on such public timber sales. The credit shall be allowed only for property taxes paid on public timber purchased on or after August 1, 1982. The credit shall be taken only on excise taxes due on timber harvested from public land. No excise tax credits shall be allowed against excise taxes due on timber harvested from private land.

(1) Amount of credit. The total dollar amount of all excise tax credits claimed on one or more sales shall not exceed the total amount of all personal property taxes levied and paid on such timber. No excise tax credit shall be allowed for property tax penalties or

¹² RCW 84.33.035(7) states that the stumpage value “for timber harvested from public land and sold under a competitive bidding process, . . . shall mean that actual amount paid to the seller in cash or other consideration.”

¹³ The forest excise tax rate on harvested timber is currently 5%. See, RCW 84.33.046.

¹⁴ RCW 84.33.086.

interest charges imposed on delinquent property taxes. No excise tax credits shall be allowed prior to payment of personal property taxes, and the amount of credit allowed shall not exceed the amount of property tax actually paid as certified by the county treasurer.

(2) Excess credits and refunds. If the amount of the credit exceeds the amount of timber excise tax due for the calendar quarter in which the credit is claimed, the excess credit shall be carried forward to the new quarterly reporting period and applied against the amount of timber excise tax due, if any, on public timber. Excise tax refunds for unused credit shall be made only if the taxpayer has no public timber sales pending against which to apply the unused credit.

The statute has not been revised since amended, effective July 1, 1984. The rule, however, was amended, effective January 1, 1997. The amended language is found in subsection (2) which now allows a harvester to obtain a refund for unused personal property tax credits “rather than carrying forward the excess credit to the following reporting period.” This change removes the Rule’s prior language which did not permit a refund unless the harvester had “no public timber sales pending against which to apply the unused credit.” No other language in the rule has been changed or amended.

In December 1995, before the rule was amended, the Department issued a “Notice to Harvesters of Public Timber” to clarify and explain the circumstances under which the Department will allow a personal property tax credit. It states in pertinent part:

Standing timber on state and local government lands sold after August 1, 1982 is subject to both personal property tax payment and the payment of timber excise tax. Any personal property taxes paid on “standing timber” on or after January 1, 1984, can be taken as a tax credit against the public timber excise tax due on that particular timber.

The allowance for the personal property tax credit is limited to those situations where the timber excise tax liability actually has been paid on the timber for which the credit is sought.

(Emphasis added.)

Taxpayer claims the statutory language creating the credit is clear and unambiguous and that the Department’s interpretation, as expressed in the December 1995 Notice, effectively amends it with the result of denying harvesters the benefit the legislature intended to confer upon them. Taxpayer also emphasizes that this Notice substantially changes the application of the law without any statutory revisions.

The Department, on the other hand, thought the statute in need of clarification. The Department claims that the legislature did not intend to apply the credit unless the property tax and the excise tax were actually paid on the same timber. The Department believes the word “any” in the statute is ambiguous.

An administrative agency's interpretation of the statutes it implements is given deference and, as a general principle, tax statutes conferring credits, refunds or deductions must be construed narrowly, and any ambiguity must be resolved in favor of taxation. See, In re All-State Constr. Co., 70 Wn.2d 657, 665, 425 P.2d 16 (1967); Corporation of Catholic Archbishop v. Johnston, 89 Wn.2d 505, 507, 573 P.2d 793 (1978). The primary objective of statutory construction, however, is to carry out the intent of the legislature. Yakima v. Fire Fighters, 117 Wn.2d 655, 669-70, 818 P.2d 1076 (1991). Thus, only when a statute is ambiguous, or where language is unclear, would such "extrinsic aids . . . as . . . legislative history" be used to discern legislative intent. See, Paulson v. Pierce County, 99 Wn.2d 645, 650, 664 P.2d 1202 (1983), appeal dismissed 104 S.Ct. 386 (1983). Conversely, when statutory language is plain the statute is not open to construction or interpretation. See, N.W. Steel v. Department of Rev., 40 Wn.App. 237, 240, 698 P.2d 100, review denied, 104 Wn.2d 1006 (1985). "An ambiguity exists if the language of the statute is susceptible to more than one meaning." Yakima v. Fire Fighters, *supra*. See also, Pope & Talbot, Inc. v. Department of Rev., 90 Wn.2d 191, 194, 580 P.2d 262 (1978); Vita Food Products v. State, 91 Wn.2d 132, 134, 587 P.2d 535 (1978); Snow's Mobile Homes, Inc. v. Morgan, 80 Wn.2d 283, 494 P.2d 216 (1972). But, "a statutory provision should be interpreted to avoid strained or absurd consequences that could result from a literal reading." Christie-Lambert v. McLeod, 39 Wn.App. 298, 302, 693 P.2d 161 (1984).

The word "any" is not defined in the statute. In the absence of a statutory definition "words used in a statute must be given their ordinary meaning unless a contrary intent appears." King County v. Seattle, 70 Wn.2d 988, 425 P.2d 887 (1967). The ordinary dictionary meaning of the word "any" is:

1. One or some, regardless of sort, quantity or number. 2a. One or another selected at random. b. One or another without restriction or exception. 3. The whole amount of: all. 4. An indeterminate number or amount.

Webster's II New Riverside University Dictionary, p.115, 1984. Applying this ordinary meaning of the word "any" within the context of the statute, we find the Department's interpretation of the statute, as expressed in the December 1995 Notice, to be contrary to the plain language the legislature used to create the credit. This conclusion is supported by looking at the "historical and statutory notes" following RCW 82.33.077 which refers the reader to the historical and statutory notes following RCW 84.36.473, the legislative action that removed standing timber on public land from business inventories. In the note, entitled "Short title--Intent--Laws 1983, 1st Ex.Sess., ch. 62:" subsection (3) explains that:

This act is intended to lessen the impact of the property tax shift. Relief is provided by the following means: . . .

- (b) Persons purchasing timber on public lands after August 1, 1982, are required to continue to pay property tax on those timber inventories. They will receive a credit against the timber excise tax for these property tax payments.

Unless a contrary intent is revealed, the meaning of a statute must be derived and determined from its language alone. In other words, "[t]he intention of the legislature is to be deduced from what it said". Spokane v. State, 198 Wash. 682, 691, 89 P.2d 826 (1939); See also St. Paul & Tacoma Lumber Co. v. State, 40 Wn. 2d 347, 243 P.2d 474 (1952); Christie-Lambert v. McLeod, *supra*. What the legislature said in RCW 84.33.077 is

The amount of any property taxes paid on timber standing on public land shall be allowed as a credit against any tax imposed with respect to the business of harvesting timber from publicly owned land under RCW 84.33.041.

(Emphasis added)

Cognizant that “the spirit or the purpose of legislation should prevail over the express but inept language” (Christie-Lambert, *supra*.), of a statute, we do not find the language of this statute either ambiguous or unclear. Also, we cannot find any “intent” that is contrary to the plain language of the statute. Further, we cannot find any statutory authority for the restrictions promoted by the limiting language contained in the Notice. Finally, Rule 690 does not impose such restrictions nor was it amended to reflect the restrictions found in the Notice, notwithstanding that the Rule was amended after the Notice was issued.

We conclude that the Department’s December 1995 Notice to Harvesters of Public Timber effectively amends the statute it seeks to administer. By administering the credit in the manner proposed in the Notice, the Department has denied Taxpayer the benefit the legislature intended to confer upon harvesters of public timber. An administrative agency may not interpret the statute it implements in a manner which has the effect of amending it. See, Snow’s Mobile Homes, Inc. v. Morgan, *supra*; Vita Food Products, *supra*.

Therefore, we find that there is no basis in the statute to support the Department’s position that the personal property tax credit may only be applied when a harvester of public timber has paid the property taxes on the particular public timber that was harvested and on which excise tax was also due. To the extent that the Department denied Taxpayer personal property tax credits for this reason, the Department erred. To the extent that the Department did not apply the personal property taxes Taxpayer actually paid as a credit against excise taxes Taxpayer owed for the 2nd quarter of 1996 with respect to its business of harvesting timber on public land, the Department erred and the assessment is canceled.

Until such time as the statute may be amended, Taxpayer may continue to file its application for credit of any personal property taxes it paid against any timber excise taxes it owed with respect to its business of harvesting public timber. The credit may never exceed the actual total amount of property taxes Taxpayer has paid on timber standing on public land. Likewise, Taxpayer can never apply personal property tax credits that exceed the amount of excise tax Taxpayer owes.

Taxpayer may rely on this determination for future reporting purposes with respect to the personal property tax credit available in accordance with RCW 84.33.077.

DECISION AND DISPOSITION:

Taxpayer's request for cancellation of the tax assessment is granted provided that Taxpayer actually paid the personal property taxes on timber standing on public land and that the credit amount requested did not exceed the amount of excise tax due for timber harvested in the second quarter of 1996. This matter is remanded to the Special Programs Division - Forest Tax Section for further action in accordance with this determination.

Dated this 31st day of March, 1998.