Cite as Det. No. 99-309, 19 WTD 509 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 99-309
	)	
. . .	)	Registration No. . . .
	)	Forest Tax Return, Quarter 3, 1998

[1] RCW 84.33.073 and 84.33.074: FOREST EXCISE TAX – SMALL HARVESTER – ALLOWABLE DEDUCTIONS. Forest Excise Tax is a tax on the privilege of engaging in business as a timber harvester. In determining the measure of tax, the forest excise tax permits taxpayers to deduct certain itemized costs from gross receipts. Because the tax is an excise, or privilege, tax on the activity of engaging in business, the taxpayer's own labor is not included in deductible costs.

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 harvester argues his labor costs should be included in allowable deductions from gross receipts in calculating timber excise tax.[1]

FACTS:

Johnson, A.L.J. (Successor to Dressel, A.L.J.) –. . . are a married couple and have periodically harvested and sold timber. The husband represented the couple in this appeal and is referred to herein as "taxpayer." The taxpayer is classified as a small harvester for tax purposes, harvesting fewer than two million board feet of timber per calendar year.

Taxpayer sent a letter with his Quarter 3 1998 Forest Excise Tax Return expressing his frustration with the fact that the return instructions state harvesters cannot deduct as an allowable cost the value of their own labor. He filed his return and deducted allowable itemized costs,

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

stating he did not want to risk having to pay penalties for deducting any other costs; but his letter requested a finding that his labor costs could be included in his deductions.

The return showed a log sale price of $. . . . Taxpayer deducted $. . . for costs to a logging company for "cutting, yarding, loading, trucking." He also deducted $. . . for charges by a construction contractor for building a temporary road to the site. In addition, he deducted $. . . for the cost of a forest practice permit to cut the timber.

The deductions represented 50.66 percent of the total price received for the logs. Because the amount was high, the costs were reviewed by the Department of Revenue's Forest Tax Division and referred to a Department forester. The forester concluded the costs were reasonable for the area in which the harvest occurred, and the return was accepted as filed. The refund request was forwarded to the Appeals Division for consideration.

That taxpayer expressed his frustration that the value of the small harvester's labor is "not recognized by you as costs that I can deduct from the gross value to determine the taxable stumpage value. . .Forest excise tax was started to replace property tax on timber. Your policy results in you taxing my and my wife's labor."

ISSUE:

Can a small harvester deduct his labor costs from his taxable total gross receipts?

DISCUSSION:

The taxpayer comments in his petition that Forest Excise Tax was enacted to "replace net fair market value of property. Forest Excise Tax was not created to place an additional tax on one's labor."

An excise tax is, by its nature, a tax on the privilege of engaging in a particular activity. In enacting Chapter 84.33 RCW, the legislature declared its finding that the former tax scheme failed to achieve the results the legislature deemed important. It elected to replace the former taxing scheme with a privilege, or excise, tax. As to the basic rules of statutory construction, the Washington Supreme Court has consistently started from the premise that the legislature does not engage in unnecessary or meaningless acts, and it presumes some significant purpose or objective in every legislative enactment. Sellen Constr. v. Department of Rev., 87 Wn.2d 878 (1976), Wilson v. Lund, 80 Wn.2d 91 (1971).

RCW 84.33.041 states the timber excise tax is imposed "on every person engaging in this state in business as a harvester of timber on privately or publicly owned land." In this respect, the tax operates in a manner similar to the business and occupation tax, which subjects taxpayers to that excise tax "for the act or privilege of engaging in business activities." (RCW 82.04.220.) However, the privilege tax on harvesting timber taxes considerably less broadly than the B&O tax, which is levied on the gross proceeds of sales "without any deduction on account of the cost

of property sold, the cost of materials used, labor costs, . . . delivery costs, . . . or any other expense whatsoever paid or accrued and without any deduction on account of losses." RCW 82.04.070.

Small harvesters enjoy benefits not available to larger business operators. As small harvesters, they are subject only to the timber excise tax. RCW 82.04.333 grants them an exemption from the broader B&O tax. Larger harvesters are subject to both excise taxes.

RCW 84.33.074 also allows taxpayers to provide documentation of allowable costs and receive the benefit of a full deduction of those itemized costs. Alternatively, the statute permits taxpayers to deduct a flat amount if they cannot, or will not, document their actual costs. However, the legislature refused to grant such persons the benefit of the higher deduction allowed for documented costs. Instead, the flat deductible amount is a minimum of twenty-five percent and is currently capped at thirty-five percent.

RCW 84.33.073 allows itemized deductions for "only those costs directly associated with harvesting the timber from the land and delivering it to the buyer . . . ." Following the clear legislative logic of imposing an excise tax on the activity of "engaging in this state in business as a harvester", the Department has interpreted the statute as allowing substantial deductions for various documented preparation and selling costs. However, the statute does not exempt from this excise privilege tax the harvester's own labor costs incurred in engaging in the business of harvesting.

The taxpayer in this case received the benefit of deducting more than fifty percent of his taxable receipts, with itemized costs representing his allowable harvesting and marketing costs. Deductions in excess of fifty percent are normally audited and questioned, but this taxpayer received the benefit of higher deductions, because the Department's forester reviewed the amounts and concluded they were reasonable under the circumstances. However, the taxpayer is subject to tax on the privilege of engaging in this business, as are all other taxpayers engaging in business activities in this state; he cannot have the benefit of deductions not authorized by statute and not contemplated by the legislature.

Had the taxpayer preferred to try to erroneously bundle his personal labor costs into the deductible amount, he would have had to take the considerably lower flat deduction of thirty-five percent available for taxpayers who cannot, or will not, provide proof of allowable costs. However, this would clearly have resulted in a higher tax burden than the itemized method.

DECISION AND DISPOSITION:

Taxpayers' petition is denied.

Dated this 29th day of November, 1999.