

Cite as Det. 99-317, 19 WTD 599 (2000)

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. 99-317
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .

- [1] RCW 82.27.010; RCW 82.27.020; RCW 79.96.080: FISH TAX – GEODUCKS – VALUABLE MATERIALS. Notwithstanding a provision of the *Public Lands Act* that geoducks are to be sold by the Department of Natural Resources as “valuable materials”, geoducks are shellfish and, thus, are subject to fish tax.
- [2] RCW 82.27.020: FISH TAX -- MEASURE OF -- GEODUCKS -- BONUS BIDS. The measure of the fish tax on geoducks is their value at the point of landing. That value may be calculated by adding the costs incurred up to the point of landing. Those costs include any expenditures necessary to get the geoducks to that point, including bonus bids paid to the Department of Natural Resources.

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:

Appeal of the measure of fish tax on geoducks.¹

FACTS:

Dressel, A.L.J. -- . . . (taxpayer) harvests and sells geoduck. His books and records were examined by the Department of Revenue (Department) for the period January 1, 1995 through December 31, 1997. As a result a tax assessment, captioned above, was issued for \$. . . . The taxpayer appeals a portion of the assessment.

This case is about the taxpayer’s geoduck² clam operation. Geoducks are harvested in a unique manner. Unlike conventional clams, geoduck clams are found under the surface of the water.

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

The geoduck fishery in Washington, unlike other fisheries, is controlled by the Department of Natural Resources (DNR). DNR has determined where geoducks are located on public lands. It has divided these areas up into tracts. It puts the right to harvest geoducks from these tracts up for bid. Those who bid the highest, and are otherwise qualified, obtain that right. In addition to the bid price, they have to pay so much per pound to DNR upon taking the geoducks from the salt water. Once a harvester makes a successful bid, (s)he enters into a written contract with DNR. Under terms of the agreement, the harvester has, sometimes, up to a year to harvest the geoducks in a certain tract. After that time expires, the tract is put up for bids once again.

Divers are used to harvest the geoducks. They are deployed from small boats. The divers are heavily weighted and breathe through air hoses that run from the boats. Divers walk along the sea bottom looking for geoducks in the sand. When they see one, they use a special, pressurized metal probe to blow the sand away from the geoduck. Then they simply pick it up and put it in a net they carry. The net is connected to the boat by a rope. When the net is full, it is pulled to the boat, emptied, and then re-deployed.

In the Department's audit, the taxpayer was assessed fish tax on the geoducks he retrieved. To this assessment, he has a two-pronged objection. First, he argues that a geoduck is not a shellfish and, therefore, the fish tax shouldn't apply to them at all. He cites RCW 79.96.080 for the proposition that geoducks will be sold by DNR as "valuable materials", rather than as shellfish. Secondly, he objects to the measure of that tax. Specifically, he believes that the bid payments he makes to DNR should be excluded from the measure of the fish tax. He argues that this so-called "bonus bid" is like a license fee and, thus, should not be considered as part of the value of the geoducks.

ISSUES:

1. Does the fish tax apply to geoducks?
2. Should the bonus bid, paid to DNR, be included in calculating the value of geoducks for purposes of the fish tax?

DISCUSSION:

[1] Pursuant to RCW 82.27.020, fish tax is imposed on the possession, in Washington, of "enhanced food fish". "Enhanced food fish" includes all species of food fish, except all species of tuna, mackerel, and jack; *shellfish*; and anadromous game fish" RCW 82.27.010(1). (Italics ours.) "Shellfish" is not defined in the statutory chapter relating to the fish tax, Chapter 82.27 RCW. Where a word is not statutorily defined, it shall be accorded its ordinary meaning, and resort may be had to dictionaries to ascertain such meaning. *Marino Property v. Port of Seattle*, 88 Wa.2d 822, 833, 567 P.2d 1125 (1977). *The American Heritage Dictionary, Second College Edition* (1982), defines "shellfish" as "[a]n aquatic animal, as a mollusk or crustacean,

² Pronounced "goo-ee duck."

having a shell or shell-like exoskeleton”. “Geoduck” is defined in the same dictionary as “[a] very large, edible clam, *Panope generosa*, of the Pacific coast of northwestern North America”. “Clam” is defined as “[a]ny of various usually burrowing marine and freshwater bivalve mollusks of the class Pelecypoda, including members of the genera *Venus* and *Mya*, many of which are edible”. *Id.* at 277.

While RCW 79.96.080 states that geoducks will be sold by DNR as “valuable materials”, the statute does not purport to be the definition of “geoduck”. The cited statute appears as part of the *Public Lands Act*, RCW Title 79. For purposes of that act, a geoduck may well be considered a valuable material. For purposes of the *Revenue Act*, Title 82 RCW, and, specifically, for the fish tax chapter of that title, Chapter 82.27, however, the term is undefined. Therefore, we may resort to the common meaning of the word. *Marino Property v. Port of Seattle*, *supra*. The common meaning is reflected in the above-quoted dictionary definition. Under that definition, a geoduck, clearly, qualifies as a shellfish. As such, it is subject to fish tax. RCW 82.27.010 & .020.³ We reach the inescapable conclusion that a geoduck is a shellfish, notwithstanding the fact that they are sold by DNR as valuable materials.

[2] Fish tax is imposed pursuant to RCW 82.27.020. “The measure of the tax is the value of the enhanced food fish at the point of landing.” *Id.* “Landed” means the act of physically placing enhanced food fish (a) on a tender in the territorial waters of Washington; or (b) on any land within or without the state of Washington including wharves, piers, or any such extensions therefrom.” RCW 82.27.010(5). Except for oysters, the basic tax on shellfish, like geoducks, is 2.1 percent of their value. RCW 82.27.020(4)(c).

Before one may harvest geoducks in this state, one must make a successful bid on a tract of them to the Department of Natural Resources. That is the only way one may obtain the right to lawfully engage in the commercial harvest of geoducks. Following a successful bonus bid, a harvester must, as mentioned, transport divers to the tract purchased, deploy those divers, pick the geoducks from the ocean floor, send them up to a receiving vessel, and transport them to shore, where they are “landed”.⁴

The result of these work activities is a salable geoduck. Geoduck harvesters, such as the taxpayer, perform these operations so that they might sell their catch at a profit. To do that they have to determine their costs of producing a geoduck and then add a profit factor to those costs.⁵ While, certainly, the boats and divers used comprise part of the cost of production, so do the fees

³ We note that there is no exemption under the fish tax statutes for geoducks, either as to their status as shellfish or as to the applicability of the fish tax to them.

⁴ This assumes the boat into which the geoducks are placed is not a tender boat. *See* RCW 82.27.010(5).

⁵ This “cost of production” method is one way of determining the taxable value of geoducks at the point of landing. Another acceptable way is the “wholesale” method. Under this method one takes the wholesale price at which a fish buyer eventually sells his geoducks and subtracts shipping costs, packaging costs, and any processing or other costs incurred with respect to the geoducks *after* the point of landing. Although these methods begin at opposite ends of the production chain, in theory, at least, they should arrive at the same valuation of the geoducks at the point of landing.

paid DNR. DNR is paid on both a per pound basis and a bonus bid for the right to harvest a particular tract. Without paying *both*, the taxpayer cannot harvest these shellfish. Without building those fees into the price it charges for geoducks, the taxpayer could not make a profit. Without incurring the expense of both the price per pound *and* the bonus bid, the taxpayer could not get the geoducks to the point of landing, the place at which their taxable value is determined. *See* RCW 82.27.020(3). The bonus bid is an expense factor, just like any other. It is part of the value of the geoducks, because it is a necessary expenditure to get them to the point of landing.

The taxpayer analogized the bonus bid as a license fee. Even if it were a license fee, such fact doesn't, necessarily, mean that it is not part of the taxable value of the geoducks. If the price charged for the sale of geoducks includes a license fee component, it is part of the value of the geoduck for purposes of the fish tax.

We conclude that the bonus bid *is* part of the taxable value of geoducks and may not be excluded from the measure of fish tax.

We acknowledge the taxpayer's concern that similarly-situated geoduck harvesters are not including the bonus bid in their fish tax calculations. If the taxpayer has names of specific harvesters he believes are not in compliance, he should refer them to the Special Programs Unit of the Audit Division.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 30th day of November, 1999.