

BEFORE THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

AUBURN TIMBER, INC.,)	
)	
Appellant,)	Docket No. 36603
)	
v.)	Re: Excise Tax Appeal
)	
STATE OF WASHINGTON)	FINAL DECISION
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	
_____)	

This matter came before the Board of Tax Appeals (Board) for an informal hearing on November 8, 1989, to review a Determination of the Department of Revenue assessing Appellant timber excise tax for timber harvested pursuant to contracts with the United States Forest Service (USFS). Don Ryan, Attorney, appeared for Appellant, Auburn Timber, Inc. (Auburn); and Mike Walch, President, testified. Gregory Potegal, Administrative Law Judge, represented Respondent, Department of Revenue (Department).

FACTS AND ISSUES

The Department's forest tax section audited Auburn's timber harvesting activities for the period January 1, 1983, through December 31, 1986. The audit led to an assessment of timber excise tax with respect to contracts Auburn had with the USFS. Auburn filed an appeal from the assessment with the Department. The Department denied that appeal. Auburn appeals that decision to this Board.

The issue in this appeal is whether Auburn's contracts with the USFS were assumptions of defaulted contracts or new contracts between Auburn and the USFS. If they were assumptions, timber excise tax pursuant to WAC 458-40-18670 and WAC 458-40-18677 does not apply. If they were new contracts for the harvest of timber from publicly owned land, excise tax does apply.

Before August 1, 1982, the timber excise tax did not apply to timber harvested from public land. The legislature extended the tax to timber harvested from public land effective that date. When doing this, the legislature stated: "This 1982 amendatory act shall not be construed to affect

timber contracts in effect on the effective date of this 1982 amendatory act." Laws of 1982, 2nd Ex. Sess., ch. 4, { 4.

Between 1982 and 1985, Auburn purchased a number of defaulted timber contracts which were resold by the USFS. According to Auburn, the USFS claimed that these were all defaulted contracts which were sold to Auburn under the same terms and conditions that they were sold to the previous owners. The previous owners held the contracts prior to August 1, 1982.

Auburn contends that the contracts it was a party to were in effect prior to August 1, 1982. Auburn argues that it assumed contracts that had been awarded to other logging companies prior to July 1, 1982; therefore, timber excise tax should not apply.

For many years Auburn had harvested timber from public land without tax liability. Neither the USFS nor the Department advised Auburn of the timber excise tax change in time for it to incorporate this change into its bids.

Auburn's contracts in question involved the same general geographic areas for which the USFS had awarded contracts to other logging companies prior to July 1, 1982. The other logging companies defaulted on their contracts.

Auburn submitted bids to the USFS for the areas covered by the defaulted contracts and the USFS awarded the contracts to Auburn.

The Department contends that the record does not reflect that the other logging companies played any role in the sale process between the USFS and Auburn. Although the same general geographic areas were involved, the contracts in question differed in the number of acres to be cut, the time in which the contracts were to be performed, and the prices to be paid to the USFS. Auburn entered into separate, new contracts with the USFS. It did not assume any of the duties owed to the USFS by the other logging companies but undertook its own obligations. The other logging companies were not parties to any of the contracts between Auburn and the USFS.

ANALYSIS AND CONCLUSIONS

Auburn and the Department were each given full opportunity to place their arguments before the Board. The Board, having considered all the testimony and documentary evidence submitted by the parties in support of their

respective positions, hereby enters the following analysis and conclusions:

The law is not ambiguous in this case. Laws of 1982, 2nd Ex. Sess., ch. 4, § 4 provides: "This amendatory rule shall take effect on August 1, 1982, and shall not be construed to affect any timber contracts in effect prior to that date." The purpose of this clause is to avoid retroactive taxation which might be a due process violation.

Were these present contracts held by Auburn in effect prior to August 1, 1982? In order to answer that question, we must determine whether: (a) the parties are the same, (b) Auburn received a successor's interest, (c) there are third party beneficiaries, and (d) the terms and conditions are the same.

Auburn has presented no evidence or authority, nor are we aware of any, to support the proposition that the contracts which it entered into with the USFS were assumptions of the same contracts the USFS had with third parties. While the two sets of contracts did encompass the same general geographic areas, share the same sale area names, and many of the terms and conditions of sale were the same, there are important distinctions between them.

The most obvious difference is that the parties to the contracts are not the same. Auburn separately bid for, and was separately awarded, each of the contracts with the USFS. There is no document which transfers the obligations of the third parties to Auburn. Auburn did not undertake to fulfill any of the obligations owed to the USFS by the logging companies which had previously contracted with the USFS. No evidence has been presented to support the position that the earlier contracts were assigned to Auburn, either by the USFS or by the other logging companies.

There are other differences in the contracts. Even though the same general geographic areas are involved, the number of acres to be cut are different.¹ The prices paid by Auburn vary from the prices contracted to be paid by the other logging companies. The time for performing the contracts differed from the original contracts. Therefore, we find that: (a) the parties are not the same, (b) Auburn did not receive a successor's interest, (c) there are no third party beneficiaries, and (d) some of the terms and

¹ We agree with Auburn that this is most likely the result of the previous contractor having logged some of the land.

conditions differ. We conclude that the contracts in question were not in effect prior to August 1, 1982.

While we sympathize with Auburn's claim of ignorance of the new law at the time it finalized its contacts with the USFS, we must agree with the Department that acts of the legislature are performed in the public eye and are effective regardless of the lack of knowledge of any particular person.

DECISION

Based on the evidence presented to this Board, the Department's assessment of timber excise tax is affirmed.

DATED this _____ day of _____, 1990.

BOARD OF TAX APPEALS

LUCILLE CARLSON, Chair

RICHARD A. VIRANT, Vice Chair

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A timely Petition for Reconsideration may be filed to this Final Decision within ten days pursuant to WAC 456-10-755, a copy of which was provided to you earlier either on form BTA300, Your Right To An Appeal, or form BTA305, Answering The Assessor's Notice Of Appeal.

