

Cite as Det No. 11-0180, 31 WTD 36 (2012)

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. 11-0180
)	
... )	Registration No. . . .
)	Document No. . . . /Audit No. . . .
)	Docket No. . . .

- [1] WAC 458-40-660; RCW 84.33.091: FOREST EXCISE TAX – STUMPAGE VALUE TABLES. Effective January 1, 2006, the stumpage value tables published in WAC 458-40-660 list the stumpage value of red cedar shake and shingle blocks per cord.
- [2] WAC 458-40-610; RCW 84.33.035: FOREST EXCISE TAX – DEFINITION OF SMALL HARVESTER. Because the statute and rule define a small harvester as a person that harvests an amount “not exceeding two million board feet per calendar year” and there are no alternative methods available, there is no authority to grant Taxpayer’s request to determine its qualification as a small harvester using cords.
- [3] MISCELLANEOUS – ESTOPPEL – CONSISTENT TREATMENT OF TAXPAYERS. Whether or not similarly situated taxpayers have been required to pay tax cannot constitute grounds for non-payment of tax validly assessed against the taxpayer.

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.

Klohe, A.L.J. – Taxpayer appeals an assessment of forest excise tax on red cedar shake and shingle blocks, arguing that it correctly reported its red cedar shake and shingle blocks in Scribner Decimal C log scale. Further, Taxpayer argues that it should not have been classified and assessed forest excise tax as a “large harvester.” We deny Taxpayer’s appeal . . . .<sup>1</sup>

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

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## ISSUES

1. What is the correct method of determining the stumpage value for red cedar shake and shingle blocks using the stumpage value tables published in WAC 458-40-660?
2. Must a harvester of red cedar shake and shingle blocks convert cords to Scribner volume in board feet to determine qualification as a “small harvester” under RCW 84.33.035(14) and WAC 458-40-610(24)?
3. Is the Department estopped from assessing additional forest tax in this case because it did not correct underreporting by another similar taxpayer?

## FINDINGS OF FACT

[Taxpayer] is a sole-proprietor licensed to do business in Washington. Taxpayer purchases and harvests Western Redcedar shake and shingle blocks from private forest landowners . . . . In 2009, the Special Programs Division (Special Programs) of the Department of Revenue (Department) conducted an audit of Taxpayer’s private harvest forest excise tax returns for the period January 1, 2005, through December 31, 2008.

On December 14, 2009, Special Programs issued an assessment in the amount of \$. . . for the period January 1, 2005, through December 31, 2005, which included forest tax in the amount of \$. . ., and interest in the amount of \$. . . . The additional tax was based on Taxpayer underreporting its cedar salvage volume. Taxpayer did not appeal this audit. On July 14, 2010, Special Programs issued a second assessment in the amount of \$. . . for tax period January 1, 2006, through December 31, 2008, which included forest tax in the amount of \$. . ., interest in the amount of \$. . ., and five percent (5%) assessment penalty for substantial underpayment of the tax due in the amount of \$. . . . The second audit assessment is the subject of this appeal.

According to the Auditor’s Detail of Differences for the second audit period, Special Programs also based the additional tax for this period on Taxpayer underreporting its cedar salvage volume. However, the additional tax was much greater because the Department changed the required method of reporting cedar salvage, effective January 1, 2006. As of January 1, 2006, Red Cedar Shake and Shingle Blocks (RCS) were to be reported in cords pursuant to WAC 458-040-660. Prior to 2006, there were separate stumpage values for reporting shake and shingle blocks and stumpage values for both cedar shake and shingle blocks had to be reported in Scribner Decimal C log scale.<sup>2</sup>

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<sup>2</sup> The Scribner Log Rule System measures both gross length and diameter and then reduces the gross measurements to net measurements for any defect losses. Det. No. 05-0176, 26 WTD 136 (2007) (citing WAC 458-40-640).

To provide some useful background information about these special forest products,<sup>3</sup> cedar shakes and shingles are used in construction for roofing and sidewalls. A “shingle” is sawn on both sides and is thinner at the butt than a shake.<sup>4</sup> A “shake” is typically split on one or both sides.<sup>5</sup> The shake and shingle industry harvests cedar blocks in three to four foot sections from cedar timber and stumps. Industry practice for purchasing cedar blocks from landowners uses the measurement unit of “cords” (a cord of wood is four feet wide x 4 feet tall x eight feet long, containing 128 cubic feet of wood and airspace). Taxpayer purchases and harvests cedar shake and shingle blocks using cords.

During the audit period, Taxpayer reported cedar shake and shingle blocks in MBF (one thousand board feet measured in Scribner Decimal C log scale).<sup>6</sup> Special Programs determined that Taxpayer owed additional forest excise tax because it should have reported its volume in cords harvested (a cord of red cedar shake and shingles is equal to 600 board feet)<sup>7</sup> multiplied by the appropriate stumpage value from the Department’s Tax Reporting Instructions and Stumpage Value Determination Tables. Special Programs also determined that Taxpayer’s harvested volume for each year of the audit exceeded two million board feet, which required the use of the Department of Revenue’s Standard Harvester Forest Excise Tax Return and Stumpage Value Determination Tables to determine the forest excise tax liability. *See* Table 1 and Table 2 below.

Table 1: Taxpayer reported Cedar Shake and Shingle Volume 2006-2008

	2006	2007	2008
. . . County	2,026 cords	2,877 cords	2,731 cords
. . . County	95 cords	809 cords	148 cords
Total Volume	2,121 cords	3,686 cords	2,879 cords
Converted to MBF*	1,272,600 bd ft	2,211,600 bd ft	1,727,400 bd ft

\* converted cords to Scribner log rule in board feet = # cords x 600

Table 2: Actual Taxpayer Cedar Shake and Shingle Volume 2006-2008

	2006	2007	2008
. . . County	3,382 cords	4,817 cords	4,555 cords
. . . County	158 cords	1,350 cords	246 cords
Total Volume	3,450 cords	6,167 cords	4,801 cords
Converted to MBF*	2,124,000 bd ft	3,700,200 bd ft	2,880,600 bd ft

\* converted cords to Scribner log rule in board feet = # cords x 600

<sup>3</sup> WAC 458-40-610(25)(c) provides that the following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), Western Redcedar flatsawn and shingle blocks, Western Redcedar shake blocks and boards.

<sup>4</sup> See the website for the Cedar Shake & Shingle Bureau, a non-profit manufacturer’s association, located at <http://www.cedarbureau.org/index.htm> (last visited March 1, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> WAC 458-40- 610(16).

<sup>7</sup> WAC 458-40-680(4)(b)(iii) (A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.)

On appeal, Taxpayer raised a number of issues. First, Taxpayer argues that they correctly reported harvested volume by converting cedar shake and shingle blocks to Scribner feet using a conversion of 600 board feet per cord. Taxpayer states that the Department's Tax Reporting Instructions never took out the verbiage "A cord of Western Redcedar shake of (sic) shingle must be converted to Scribner volume using 600 board feet per chord." Instead, Taxpayer argues, the Department's instructions only added in very, very small print that the stumpage value was per cord. Taxpayer states that these instructions are contradictory and confusing. In addition, Taxpayer argues that its accountant had another client who was allowed to report its cedar blacks in Scribner feet. Thus, it is not equitable to treat Taxpayer differently.

Taxpayer also argues that if its forest excise tax for cedar salvage volume is supposed to be paid based on the per cord value, it is not fair for the Department to use the Scribner volume in MBF to determine that Taxpayer does not qualify as a small harvester. As a small harvester, Taxpayer would have been entitled to report its harvested volume based on either the lower of the cost paid for the stumpage or the value per the tables using MBF. . . .

#### ANALYSIS

[1] In 1971, the Washington Legislature excluded timber from property taxation. Det. No. 07-0048, 26 WTD 219 (2007). In place of a property tax on timber, timber owners pay a five percent excise tax on the stumpage value of their timber when it is harvested. *Id.* RCW 84.33.041 provides:

An excise tax is imposed 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 value of the timber* harvested for sale or for commercial or industrial use multiplied by the [applicable] rate. (Emphasis added).

"Harvester" means "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." RCW 84.33.035(6). "Timber" means all forest trees, standing or down, on privately and publicly owned land. RCW 84.33.035(17). "Stumpage value of timber" means "the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091 . . . ." RCW 84.33.035(16).

RCW 84.33.091 directs the Department each year for the period January 1 through June 30 and July 1 through December 31 to prepare tables of stumpage values of each species or subclassification of timber within these units. Stumpage values are expressed in terms of "dollar amount per thousand board feet *or other unit of measure.*" RCW 84.33.091(1) (emphasis added). By administrative rule, the Department has adopted stumpage value tables pursuant to the direction of the Legislature. The stumpage value tables are found in WAC 458-40-660.

Prior to January 1, 2006, there were separate stumpage values for reporting shake and shingle blocks. In addition, the stumpage values for both cedar shake and shingle blocks had to be

reported in Scribner Decimal C Log Scale. *See* Tax Reporting Instructions and Stumpage Value Determination Tables, July 1 through December 31, 2005 (Stumpage Value Areas 1,2,3,4,5 & 10). Effective January 1, 2006, the Department amended the stumpage value tables by administrative rule (*see* WAC 458-40-660 (amended by Order 06-02-005, filed 12/22/05, effective 1/1/06)), which combined the species codes for Western Redcedar shake and shingle blocks and changed the reporting for these products from thousand board feet (MBF) to cords. The forest excise Tax Reporting Instructions were updated accordingly.

In this case, Taxpayer reported its cedar salvage volume erroneously during the audit period by using the old method of reporting in Scribner feet that was required prior to January 1, 2006. Taxpayer used the stumpage value tables as if the Department continued to list the value per thousand board feet instead of the new reporting method, which listed the value by cord. A cord is equal to 600 board feet. By using the stumpage value tables to find the value per thousand board feet, Taxpayer significantly underreported the volume and value of its harvest by approximately forty percent.

Based on the stumpage value tables in WAC 458-40-660, which list the stumpage value of red cedar shake and shingles per cord, we conclude that Special Programs accurately determined the correct amount of forest excise tax by converting the Taxpayer's reported harvest volume in Scribner feet to cords multiplied by the appropriate stumpage value per cord. According to Taxpayer, they were not aware of the change in the stumpage value tables for reporting red cedar shake and shingles that took effect on January 1, 2006, and argue that the current rules are confusing.

The Legislature has set forth the rights and obligations of taxpayers in Chapter 82.32A RCW. Det No. 05-0040, 24 WTD 407 (2005). RCW 82.32.A.005 states, in pertinent part:

The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have an obligation to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply . . .

Consistent with RCW 82.32A.005, Taxpayer had a responsibility to inform itself about the applicable laws and any changes to those laws. The Department publishes information on its website about its rule and interpretive statement actions. *See* <http://dor.wa.gov/Content/FindALawOrRule/RuleMaking/Actions2005.aspx>. In December 2005, the Department provided the following notice on its website:

**WAC 458-40-660 Timber excise tax - Stumpage value tables - Stumpage value adjustments**

**Adoption - Effective January 1, 2006**

This rule contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is revised to provide the stumpage values to be used during the first half of 2006. *The rule also combines Red Cedar shakes and shingles into a single reporting category and requires these products to be reported by cords rather than boardfeet.*

(Emphasis added). While the Department has programs to inform taxpayers about changes in the law, the ultimate responsibility for knowing its tax obligations rests on the Taxpayer. Det. No. 01-165, 22 ETD 5 (2003). Therefore, the fact that Taxpayer was not aware of this change or found the instructions confusing is not a basis to waive or cancel the tax assessment.

#### CONVERSION METHOD FOR QUALIFICATION AS A SMALL HARVESTER

[2] RCW 84.33.035(14) defines "small harvester" as "every person who from his or her 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 two million board feet in a calendar year. . . .*" (Emphasis added); *see also* WAC 458-40-610(24). RCW 84.33.074 then provides that a qualified "small harvester" may elect to compute its tax using the actual gross receipts for the sale of the standing timber rather than the Department's stumpage value tables. Taxpayers that do not qualify as "small harvesters" under RCW 82.33.035(14) and WAC 458-40-610(24) must use the Department's stumpage value tables.

During the audit period, Taxpayer primarily used the Small Harvester returns to report its timber excise tax.<sup>8</sup> The Department requires taxpayers to use a separate detail page for each different harvest permit, section, and harvest unit.<sup>9</sup> For most of Taxpayer's detail pages, Taxpayer used the Standard Detail form. However, for some of the harvest permits, Taxpayer used the Small Harvester Detail form and reported the purchase price that it paid for the timber rather than the volume and value from the stumpage value tables. Because Taxpayer harvested more than 2 million board feet each calendar year during the audit period, Taxpayer did not qualify as a "small harvester" and did not have the option of reporting the purchase price that it paid for the timber instead of the volume and value from the stumpage value tables under RCW 84.33.074.

As a result of Taxpayer incorrectly reporting its forest excise tax using a method only allowed only for small harvesters (purchase price paid for the timber instead of volume and value from the stumpage value tables), Taxpayer underreported its harvest volume. *See supra*, Table 1 and Table 2. Taxpayer argues that the Department should not be able to convert cords to Scribner board feet to determine qualification as a "small harvester," while at the same time requiring harvesters to report cedar shake and shingle volume in cords.

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<sup>8</sup> Except for Q2/2006 and Q4/2008 when Taxpayer used the Large Harvester/Standard Harvester tax returns.

<sup>9</sup> See the Tax Reporting Instructions and Stumpage Value Determination Tables for January 1, 2006, through June 30, 2006 for Stumpage Value Areas 1, 2, 3, 4, 5 & 10 at 4. Available on the Department's website online at [http://dor.wa.gov/Docs/Pubs/ForestTax/fh2006/04\\_01\\_West.pdf](http://dor.wa.gov/Docs/Pubs/ForestTax/fh2006/04_01_West.pdf).

Because the statute and rule define a small harvester as a person that harvests an amount “not exceeding two million board feet per calendar year” and there are no alternative methods available, we find that there is no authority to grant Taxpayer’s request to determine its qualification as a small harvester using cords. Under the definition of “small harvester” in RCW 84.33.035(14), Taxpayer must convert its cords to board feet using the procedures in WAC 458-40-680(4)(b)(iii) (“[a] cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord”) to determine if it is eligible to be taxed as a small harvester.

### EQUITABLE ESTOPPEL

[3] Taxpayer has alleged that its accountant had another client that Special Programs audited at the same time who was allowed to report cedar shake and shingle blocks on the forest excise returns in Scribner feet. Taxpayer argues that it is not equitable to treat similarly situated taxpayers differently. Consistent treatment of taxpayers is a legitimate concern, so we will briefly address it, although we are prohibited by the Legislature from discussing any specific actions taken on another taxpayer’s account. RCW 82.32.330. Even if we could discuss Taxpayer’s claims, alleged transactions with one taxpayer will not form the basis for finding that another taxpayer is exempt from tax. Det No. 92-004, 11 WTD 551 (1992); *see also* Det. No. 98-099, 17 WTD 428 (1998).

The Department has long held that whether similarly situated taxpayers have not been required to pay tax cannot constitute grounds for non-payment of a tax validly assessed against the taxpayer. *Id.* (citing *Frame Factory v. Dep’t of Ecology*, 21 Wn. App. 50, 583 P.2d 660 (1978)). In *Frame Factory*, the Court of Appeals rejected an allegation of selective enforcement in the absence of a claim that the person was selected for enforcement on a prohibited basis such as race or religion. 21 Wn. App. at 57. The taxpayer makes no such claim here. Therefore, there is no basis to provide relief and cancel the assessment.

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### DECISION AND DISPOSITION

Taxpayer’s petition is denied . . . .

Dated this 26<sup>th</sup> day of May 2011.