

Cite as Det. No. 15-0112, 34 WTD 533 (2015)

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. 15-0112
	)	
...	)	Registration No. . . .
	)	

WAC 458-40-660, WAC 458-40-670; RCW 84.33.035, RCW 84.33.041; RCW 84.33.091: TIMBER TAX – FOREST EXCISE TAX – FET – MEASURE – SCALED VOLUME – WEIGHT – CHIPWOOD – APPROVED DESTINATION. Logs delivered to a facility were subject to timber tax based upon their scaled volume, not their weight as chipwood, unless the facility was designated as an approved chipwood destination at the time of delivery.

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.

M. Pree, A.L.J. – A forest harvester protests timber tax assessed on the scaled volume of logs sold to a chipwood processor. Because the buyer’s facility was not an approved chipwood destination when the logs were delivered, the harvester could not pay the tax based on the weight of the wood. We deny the petition.<sup>1</sup>

ISSUE

Under WAC 458-40-670, could a forest harvester pay timber tax based on the weight of the wood it sold when it delivered the logs to a chipwood processor’s facility prior to the time the facility was an approved chipwood destination?

FINDINGS OF FACT

[Taxpayer] harvests timber from its private lands in Washington. The taxpayer hired a trucking company that delivered some of the logs to [the processor’s reload facility] in Washington. [The processor] paid the taxpayer based on the weight of the logs delivered. [The processor] states that the logs were not sold or delivered to another location. According to the taxpayer, [the processor] chipped the logs at [the processor’s reload facility].

The Department of Revenue’s (Department) Forest Tax Section of the Special Programs Division audited the taxpayer for the period from January 1, 2010 through December 31, 2012

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

(audit period). The Forest Tax Section noted that during the audit period, [the processor's reload facility] had not been approved by the Department as an approved chipwood destination. After the audit period, on February 24, 2014, the Department approved [the processor's reload facility] as a chipwood destination effective January 1, 2014. The Forest Tax Section concluded that the taxpayer had improperly reported sawlogs delivered to that facility as chipwood measured by their weight. Consequently, the Forest Tax Section assessed timber tax<sup>2</sup> on the logs measured by their scaled volume.

On December 10, 2014, the Forest Tax Section issued Document Number . . . , which totaled \$ . . . and assessed \$ . . . in timber tax, \$ . . . in penalties, and \$ . . . in interest. The taxpayer appealed the entire tax assessment, but during the hearing only contested the reclassification of chipwood delivered to [the processor's reload facility], which had not yet become an approved destination.

The assessment included various reclassifications resulting in the additional timber tax due. The Forest Tax Section assessed: (1) \$ . . . in timber tax on the reclassification of wood to the correct species; (2) \$ . . . in timber tax on the reclassification of logs delivered to [the processor] at [the processor's reload facility]; (3) \$ . . . in the reclassification of logs delivered to other non approved chipwood destinations; (4) \$ . . . in timber tax on other Forest Tax Section changes; and (5) \$ . . . in timber tax assessed from sawlogs reported under the incorrect species. These amounts totaled the \$ . . . timber tax assessed. The taxpayer disputes the \$ . . . additional timber tax on logs delivered to [the processor] at [the processor's facility] with the corresponding penalty and interest.

## ANALYSIS

Timber tax is imposed on timber harvesters as provided under RCW 84.33.041(1):

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.

“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 . . . , fells, cuts, or takes timber for sale or for commercial or industrial use. . . .” RCW 84.33.035(7). There is no dispute that the taxpayer was a harvester of the trees at issue, which it cut from its own land.

“Timber” means all “forest trees, standing or down, on privately and publicly owned land.” RCW 84.33.035(18). RCW 84.33.041 measures timber tax by the “Stumpage value of timber,”<sup>3</sup>

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<sup>2</sup> The assessment document (No. . . . ) labeled the tax as forest tax private, and in prior determinations, we sometimes referred to the tax as “forest excise tax” or “FET.” However, because the Department refers to the tax as “Timber Excise Tax” in chapter 458-40 WAC, and the legislature uses the term “timber tax” when referring to the timber tax distribution account in RCW 84.33.081, we will refer to the tax as “timber tax.” See also RCW 84.33.200, “Legislative review of timber tax system.”

<sup>3</sup> “[S]tumpage value shall be the amount that each species or sub-classification would sell for at a voluntary sale made in the ordinary course of business for purposes of immediate harvest.” RCW 84.33.091.]

which means “the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091.” RCW 84.33.035(17).

RCW 84.33.091(1) directs the Department each year for the periods 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). 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.

The taxpayer delivered the logs at issue to [the processor’s reload] facility. [The processor] paid the taxpayer based on the weight of the logs. According to the taxpayer, the logs were chipped. The taxpayer reported the logs based on their weight under WAC 458-40-670(2). The Forest Tax Section measured the tax based on the dollar amount per thousand square feet for sawlogs per WAC 458-40-660.

Normally, under WAC 458-40-660, stumpage values are measured by volume, per thousand board feet net scribner log scale. WAC 458-40-660(2). WAC 458-40-660(3) does not allow a harvest adjustment for chipwood. Under this general rule, logs delivered and chipped are scaled and taxed per thousand square feet, not weight. However, under WAC 458-40-670(2), logs delivered to the log yards approved as “chipwood destinations” for the purpose of being chipped may be reported as chipwood and have the tax measured by weight.

WAC 458-40-670 provides a process for chipwood processors to obtain an approved “chipwood destination” designation. To qualify as an approved destination, “not less than ninety percent of the weight volume of logs delivered to and purchased by the log processor for chipping at a specified log yard or location must be processed to produce chips or chip products.” WAC 458-40-670(2)(b).

The Department maintains and updates a list of approved “chipwood destinations” at least twice a year. WAC 458-40-670(2)(a). That list was available to harvesters during the audit period and did not include [the processor’s reload facility]. [The processor] had another facility on the Department’s list of approved “chipwood destinations,” but not for [the processor’s reload facility], where [the processor] states the logs stayed. The application process for approval of “chipwood destinations” requires notification to the Department and inspection to assure the chipwood destination meets and continues to meet the requirements. The [Department’s] February 24, 2014 approval letter states that the approval became effective January, 1, 2014. Prior to that date, [the processor’s reload facility] was not an approved chipwood destination. Therefore, we conclude that during the audit period, the taxpayer’s logs delivered to [the processor’s reload facility] were not delivered to an approved chipwood destination.

WAC 458-40-670(4) instructs us how to measure the timber tax for logs delivered to other chipwood processing locations, which were not listed as approved destinations:

Logs processed at locations other than those listed on the approved list of chipwood destinations maintained by the department of revenue and other than as provided in

subsection (3) of this rule may be reported as chipwood volume when scaled as utility grade logs, based on log scaling or upon approved sample log scaling methods.

If a harvester reports chipwood volume that was delivered to a location that is not listed as an approved chipwood destination and there has been no log scaling or approved sample log scaling, the chipwood volume so reported will be converted by the department of revenue to the appropriate sawlog volume in accordance with WAC 458-40-680 for purposes of timber excise taxation.

Because the taxpayer's logs delivered to [the processor's reload facility] were not delivered to an approved chipwood destination during the audit period, the Forest Tax Section properly assessed timber tax during the audit period on the appropriate sawlog volume in accordance with WAC 458-40-680. We uphold the assessment.

#### DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 24th day of April, 2015.