

Cite as Det. No. 15-0355, 35 WTD 296 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

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| 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. . . . |
| |) | |
| ... |) | Registration No. . . . |
| |) | |

[1] WAC 458-20-13501; WAC 458-40-610; RCW 84.33.041(1): FOREST EXCISE TAX – FET – TIMBER TAX – TIMBER HARVESTER – PRIVATE TIMBER – PRIVATE LAND – STUMPAGE VALUE. Owner of private forest land at time of timber harvest is a harvester whose activities are subject to forest excise tax based on the stumpage value of the harvested timber.

[2] WAC 458-20-254; RCW 84.33.096; RCW 82.32.070; RCW 82.32.100: FOREST EXCISE TAX – SUITABLE RECORDS – ESTIMATED ASSESSMENT. In the absence of suitable records, the Department is authorized to estimate and assess forest excise tax on timber harvesting activities.

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.

LaMarche, A.L.J. – Timberland owner disputes an assessment of Forest Excise Tax [[FET]], contending that he did not harvest as much timber as the estimated assessment reflects. Because the owner failed to provide suitable records to substantiate the amount of tax due, we deny the petition.¹

ISSUE

Under RCW 82.32.070, RCW 82.32.100, RCW 84.33.041(1), and WAC 458-20-13501, has Taxpayer shown that the Department erred in its assessment of [FET]?

FINDINGS OF FACT

[Taxpayer] is a timberland owner with land parcels that include sites on [Parcel One] and [Parcel Two] in . . . , Washington, from which he harvests timber. Taxpayer has been a frequent timber harvester for approximately the past 20 years.

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

The Forest Tax Program (Forest Tax), of the Special Programs Division of the Department of Revenue (Department), began investigating Taxpayer's timber harvesting activities in 2009, after observing that Taxpayer failed to report and pay taxes on a Quarter 4, 2008 (Q4/2008) timber harvest under Taxpayer's Taxpayer Reporting Account (TRA). Taxpayer did not respond to the Revenue Forester's (Forester's) letter or phone calls regarding delinquency on the TRA, and Forest Tax issued an assessment for Q4/2008 based on the Forester's field estimate. In October, 2010, the Forester observed a fully loaded log truck leave Parcel One, but noted that the only periods Taxpayer reported under his [TRA] were for Q4/2009 and Q3/2010, both of which only indicated "below minimum" Stumpage Value, for which no tax was due. In following years, the Forester noted several instances of unreported harvests and began checking aerial photos of Taxpayer's timberland, including photos for the years 2006, 2008, and 2009, noting three small clear cuts and numerous partial cutting activities during those periods. Taxpayer failed to respond to numerous attempts by the Forester to resolve the FET liability for the years 2006, 2008, and 2009, and in 2011, Forest Tax assessed FET for the periods of Q3/2007, Q3/2009, Q4/2009, Q3/2010, Q4/2010, and Q1/2011; the assessments were based on the Forester's field estimates. Taxpayer again failed to report a harvest on Parcel in Q1/2013, for which he was assessed additional FET.

In February, 2014, the Forester inspected Parcel One with another Revenue Forester, and found fresh logging activity with numerous truck loads of logs stacked on the site. Again, Taxpayer failed to report or pay FET on the harvest, for which he was assessed FET for Q1/2014, based on the Forester's field estimate. Inspecting the same site again in May, 2014, the Forester noticed fresh logging on the site, newly permitted and identified under Forest Practices Permit (Permit) # Forest Tax determined that the harvested stand consisted of high quality mature, 90-year old Douglas fir, containing approximately 400 thousand board feet (MBF), and in addition to sawlogs (felled tree trunks suitable for cutting up into timber), contained poles (commercial grade logs smaller than sawlogs) that were stacked, tagged, and ready to be hauled; Taxpayer again failed to report the harvest.

In July and October of 2014, and again in January 2015, the Forester re-inspected Parcel One with the Forest Tax Operations Manager in order to better ascertain FET liability, and assessed additional FET for the periods of Q2/2014 and Q3/2014.² Taxpayer met with Forest Tax on December 18, 2014, and presented the Forester with five timber receipts from a buyer for the months of July and August, 2014 in Q3/2014, showing a total of 38 MBF in timber volume and \$. . . in gross timber receipts. However, the Forester concluded that Taxpayer's receipts showed only a small portion of the timber Taxpayer logged during Q3/2014, which the Forester confirmed by a later field inspection; for this reason, Forest Tax decided not to adjust the assessment for Q3/2014. The field estimate for Q3/2014 was based on aerial photos and field visits, which included observation of felled timber on Parcel One, and actual measurements of stumpage.

² The FET assessment for Q3/2014 (the only period Taxpayer contests), dated December 1, 2014, totaled \$. . . , consisting of \$. . . FET, a delinquent return penalty of \$. . . , and face interest of \$ \$. . . was applied to the account on December 18, 2014, leaving a balance as of December 30, 2015 of \$. . . FET and \$. . . interest, or \$ The FET was based on the tables required under RCW 84.33.091(1), and shows an estimated Taxable Stumpage Value of \$. . . , comprised of a . . . MBF harvest of Douglas Fir with an Adjusted Stumpage Value of \$. . . /MBF.

Taxpayer timely filed an appeal, contesting only the period of Q3/2014, arguing that Forest Tax erred in its estimate of harvested timber and resulting FET liability for that period. At the telephonic hearing on April 7, 2015, Taxpayer stated that the Forester's estimate of 400 MBF for the entire parcel is incorrect, because the aerial photos do not show that one-fourth of Parcel One was logged in the 1950's and 1960's. Taxpayer also stated that although he indicated on his permit for the harvest on Parcel One, Permit # . . . , that the harvest would be 400 MBF, he harvested only 38 MBF. Taxpayer indicated that he took dated photos showing that much of the timber had rot and was of lower value; Taxpayer indicated that he gave the bad timber to his son. Although Taxpayer stated that he would provide photos showing the poor quality of the timber, he did not provide them to the Department's Appeals Division.

ANALYSIS

The FET 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).

“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,”³ which means “the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091.” RCW 84.33.035(17). There is no dispute that Taxpayer was a harvester of the timber at issue, which he cut from his own land.

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 administrative provisions of Chapter 82.32 (except except RCW [82.32.045](#) and [82.32.270](#)) apply equally to the administration of the FET. RCW 84.33.096. RCW 82.32.070 requires every person liable for payment of excise taxes to keep and preserve suitable records. Specifically RCW 82.32.070(1) requires:

³ [“[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.]

Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records and invoices shall be open for examination at any time by the department of revenue. . . .

Rule 254(3)(b), the administrative rule regarding recordkeeping, states in pertinent part:

It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the department or its authorized representatives which will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

. . .

If a taxpayer fails to keep and preserve suitable records, then RCW 82.32.100(1) provides that the Department “shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax.” Thus, in the absence of suitable records, the Department has authority to estimate tax liability based on the available information “as it may deem best.” *Id.*

Here, Taxpayer failed to produce suitable records to support his claim. Although Taxpayer provided some receipts for Q3/2014, they did not correlate with the auditor’s observations during field visits both before and after the assessment, which indicated a much larger harvest. We note that the Forester has personally observed Parcel One over approximately 7 years, including numerous field visits and study of aerial photos over several years. Moreover, Forest Tax based the estimate for Q3/2014 on actual observations of harvested timber still at the site during Q3/2014, including measurements of the felled timber and stumpage, and close observation of the quality of the timber. Further, Forest Tax again visited Parcel One after Taxpayer contested the Q3/2014 liability, and confirmed its estimate.

Therefore, we conclude that Taxpayer failed to provide suitable records upon which to calculate tax due, and that Forest Tax did not err when it estimated FET due for Q3/2014. Accordingly, we uphold the assessment, and deny the petition.

DECISION AND DISPOSITION

We deny the taxpayer's petition.

Dated this 5th day of January, 2016.