

Cite as 10 WTD 29

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment)	
of)	No. 90-234
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RULE 135 & RULE 180: B&O TAXES -- CONSTRUCTION OF LOGGING ROAD -- EXTRACTING VS. MOTOR TRANSPORTATION -- BILLED ON PER YARD BASIS. The tax consequences of a contract to construct a logging road in connection with a timber harvesting operation do not change solely because the taxpayer computes and bills the contract on a per yard of rock transported basis and/or stockpiles the rock at an intermediate location prior to the actual road construction.

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.

TAXPAYER REPRESENTED BY: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

A taxpayer protests additional taxes and interest assessed in an audit report.

FACTS:

Okimoto, A.L.J. -- . . . , (taxpayer) operates a logging road construction company in . . . , Washington. Taxpayer's books and records were examined by a Department of Revenue (Department) auditor for the period . . . through An audit resulted in additional taxes and interest owing in the amount of \$. . . and Assessment No. . . . was issued in that amount on The taxpayer has protested the above assessment, and it remains due.

The taxpayer described its business during the teleconference as follows:

The taxpayer contracts with landowners for the construction of logging roads related to ongoing or anticipated timber harvesting operations.

The landowner will normally clear the right of way and do the major earth moving for the logging road in question. Once this work is done, the landowner will contract with the taxpayer for finishing the logging road. This contract requires the taxpayer to transport rock which is furnished by the landowner from the landowner's gravel pit over private roads to the site of the new logging road. Once there, the taxpayer spreads and compacts the rock to the specifications indicated by the landowner. The taxpayer testified at the teleconference that it normally transports the rock from the pit to the construction site in one haul, but for certain isolated and limited access sites, a combination truck and trailer lack sufficient room to turnaround. In these cases, the taxpayer finds it more efficient to load a truck and trailer with rock and transport both to an intermediate stockpile located nearer to the construction site. The trailer is disconnected and unloaded at the stockpile, while the truck continues to the construction site to spread, form and pack the rock into a finished logging road. Within a few days, single trucks return to pick up the rock left temporarily at the stockpile so that it can complete the journey to the construction site.

The taxpayer separately computes its billing to the landowner based on the number of yards of rock transported from the pit to the stockpile, and from the stockpile to the construction site.

In the audit report, the auditor allowed income received for hauling rock on a per yard basis from the landowner's pit directly to the logging road site to be reported under the extracting tax classification because he considered it to be road construction performed "in conjunction with a logging contract." The auditor, however, considered amounts billed on a per yard basis for transporting rock from the pit to the stockpile to be preliminary to the actual road construction, and reclassified that income to the Motor Transportation tax classification.

TAXPAYER'S EXCEPTIONS:

The taxpayer argues that it has a contract to construct a logging road, and that the hauling of rock from the gravel pit to the stockpile location is merely the first step in its complete road building process. Although the owner is separately charged on a per yard basis for transporting the rock from the pit to a stockpile, the taxpayer argues that in substance, all of its income is for performing logging road construction. Accordingly, the

taxpayer believes that no part of its income should be taxed under the Motor Transportation tax classification.

The taxpayer also argues that the income is not taxable under the Motor Transportation classification because it is not engaged in hauling for hire over public roads, but only privately owned roads. It also notes that it is not regulated by the Washington Utilities and Transportation Commission, and that it does not receive the standard hauling for hire rate set by the Commission.

ISSUE:

If a taxpayer has a contract with a landowner to construct a logging road in connection with a timber harvesting operation, do the tax consequences of the contract change solely because the taxpayer computes and bills the contract on a per yard of rock transported basis and/or stockpiles the rock at an intermediate location prior to the actual road construction?

DISCUSSION:

[1] WAC 458-20-135 (Rule 135) describes the types of activities included under the Extracting tax classification. It states in part:

...The following examples are illustrative of operations which are included within the extractive activity:

(1) Logging operations, including the bucking, yarding, and loading of timber or logs after felling, as well as the actual cutting or severance of trees. It includes other activities necessary and incidental to logging, such as logging road construction, slash burning, slashing, scarification, stream cleaning, miscellaneous cleaning, and trail work, where such activities are performed pursuant to a timber harvest operation... (Emphasis ours.)

Subsequent to the teleconference, the taxpayer supplied a sample contract of its logging road construction contracts. It states in pertinent part:

Description of Project: CONTRACTOR shall load, haul and spread rock to the roads shown on Exhibit A and in accordance with the rock volumes per station as shown on Exhibit B. Rock shall be available to CONTRACTOR from the

Under the terms of the contract, it is clear that the taxpayer's contract required it to "load, haul and spread" rock in the performance of its logging road construction contract. The fact that the taxpayer hauled a portion of the rock in two steps and computed the billings on a per yard basis, does not change the substance or character of the contract. It remains a logging road

construction contract and all income attributable to that contract is taxable under the Extracting tax classification. We, therefore, sustain the taxpayer's petition on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 1st day of June 1990.