

Cite as Det. No. 97-179, 18 WTD 12 (1999)

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. 97-179
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .
)	

- [1] RCW 82.27.010 & RCW 82.27.020 -- FISH TAX -- SALMON -- IMPORTED FROM CANADA. With certain exceptions, the Washington fish tax applies to salmon caught in British Columbia and imported to this state.
- [2] RCW 82.27.040 -- FISH TAX -- CREDIT FOR OTHER TAXES PAID. Taxes paid to Canada or British Columbia for unemployment compensation or worker's compensation are not taxes on the fish and will not be allowed as a credit against the Washington fish tax, even though measured by the value of the fish caught.

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.

NATURE OF ACTION:

A buyer/seller of fish objects to the imposition of Washington's fish tax on fish caught in Canada and, alternatively, claims a credit for Canadian taxes paid.¹

FACTS:

Dressel, A.L.J. -- (Taxpayer) is a wholesaler of fish. Its books and records, in particular, its fish tickets, were examined by the Department of Revenue (Department) for the period January 1, 1993 through December 31, 1993. As a result a tax assessment, identified by the above-captioned numbers, was issued for \$ The taxpayer appeals.

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

At the hearing of this matter, the taxpayer testified as follows. Most of the fish purchased by the taxpayer are sold to buyers in Japan. In 1993, the taxpayer brought Canadian fish to its new [Washington] processing plant for the first time. Previously, according to the taxpayer, whole salmon could not be imported from Canada. The great majority of the salmon imported were of the sockeye variety. Sockeye salmon are indigenous to Canada. Sockeye cannot be caught by hook and line. They are harvested using nets. The fish imported by the taxpayer in 1993 came principally from two rivers, the Fraser and the Skeena, near Prince Rupert. The salmon were captured by independent fishermen. They were transferred to the tenders of two Canadian companies, . . . and . . .² These companies functioned as agents of the taxpayer and used taxpayer funds to purchase salmon from the fishermen. After being brought to shore, the whole salmon were trucked through British Columbia and across the border to the taxpayer's processing facility in [Washington].

Based on fish tickets received from the Department of Fisheries, the Audit Division (Audit) of the Department of Revenue assessed the tax on enhanced food fish (fish tax) on these salmon that were imported from Canada.

The taxpayer objects on two grounds. First, it contends that the fish tax should not be applied at all because the salmon at issue were caught in Canada by Canadian fishermen and were first sold to Canadian buyers. The taxpayer claims, basically, that the Department does not have the jurisdiction to impose tax on fish with such foreign connections. As an alternative argument, the taxpayer takes the position that if it is determined that the fish tax does apply, the taxpayer should be allowed deductions for several taxes that were paid on the fish to the British Columbia provincial and Canadian federal governments. The taxes claimed for deduction were paid to the Worker's Compensation Board of British Columbia, Revenue Canada, and the Pacific Salmon Commission. According to the taxpayer's testimony at the hearing, the taxes paid to the Worker's Compensation Board and Revenue Canada are both for worker's compensation and unemployment compensation insurance, as well as for other governmental purposes of which the taxpayer was not certain. The tax paid to the Salmon Commission is forwarded by them to the Worker's Compensation Board and is for the same purposes as the tax paid directly to the Worker's Compensation Board.

ISSUES:

1. Can the Washington fish tax be imposed on salmon caught in Canadian waters by Canadian fishermen and first purchased by Canadian buyers?
2. If so, should credit be allowed for Canadian taxes paid, related to the fish, including unemployment and worker's compensation taxes?

DISCUSSION:

During the audit period RCW 82.27.020 read, in part:

²Starting in 1994, the taxpayer created its own Canadian company to purchase fish directly from the fishermen.

Excise tax imposed--Deduction--Measure of tax--Rates--Additional tax imposed. (1) *In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner. . .*

...

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(b) Pink and *sockeye salmon*: Three percent.

(Italics ours.) "Enhanced food fish" were defined, during the audit period, at RCW 82.27.010 as:

. . . all species of food fish, shellfish, and anadromous game fish, including byproducts and parts thereof, originating within the territorial and adjacent waters of Washington *and salmon originating from within the territorial and adjacent waters of Oregon, Washington, and British Columbia*, and all troll-caught Chinook salmon originating from within the territorial and adjacent waters of southeast Alaska. As used in this subsection, "adjacent" waters of Oregon, Washington, and Alaska are those comprising the United States fish conservation zone; "adjacent" waters of British Columbia are those comprising the Canadian two hundred mile exclusive economic zone; and "southeast Alaska" means that portion of Alaska south and east of Cape Suckling to the Canadian border. (Italics ours.)

[1] Thus, clearly, the fish tax applies to salmon caught in British Columbia (BC) that are brought to Washington. The fish at issue originated in BC in that they were harvested there. The fact that the sockeye salmon, which are the subject of this appeal, were caught in BC by BC fishermen and first sold to BC buyers is irrelevant because the quoted statute specifically extends the tax to those salmon originating from Oregon, BC, and parts of Alaska, as well as to those that originate in Washington.

Solidifying our conclusion that salmon caught in BC and brought to Washington are subject to fish tax is the exemption statute, RCW 82.27.030. During the audit period, it read, in part: "The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced food fish originating outside the state which enters the state as (a) frozen enhanced food fish or (b) enhanced food fish packaged for retail sales;" If the fish tax were intended not to apply to fish originating outside the state, as has been

urged by the taxpayer, there would be no need to exempt frozen or packaged fish because they would already be exempt. As we said in *Det. No. 87-304A*, 10 WTD 1, 6-7 (1990):

In giving effect to the legislature's intent in enacting a statute, the statute as a whole must be considered and harmonized with related statutes. *Stewart Carpet Serv., Inc. v. Contractors Bonding & Ins. Co.*, 105 Wn.2d 353 (1986), *State v. Bernhard*, 108 Wn.2d 527 (1987). "A statute is not to be interpreted in such a way that it produces an absurd result or renders meaningless its enactment." *Kirk v. Moe*, 114 Wn.2d 550, 554.

On the first issue, whether the fish tax applies to salmon landed in BC, the taxpayer's petition is denied.

Whether assorted Canadian taxes may be credited against the Washington fish tax is the second issue for our resolution. The statute that allows credit for other taxes is RCW 82.27.040. It reads, in part:

Credit for taxes paid to another taxing authority. A credit shall be allowed against the tax imposed by RCW 82.27.020 upon enhanced food fish with respect to any tax previously paid *on that same enhanced food fish* to any other legally established taxing authority. To qualify for a credit, the owner of the enhanced food fish must have documentation showing a tax was paid in another jurisdiction. (Italics ours.)

[2] The Canadian taxes for which credit is sought are for worker's compensation and unemployment insurance. They are common, payroll deduction-type taxes. Even though they may be measured by the value of the fish, they are not taxes on the same enhanced food fish per se. They are taxes on the privilege of doing business in BC and are paid by workers in *every* industry, not just those in the fishing industry. As such, they are not taxes "on that same enhanced food fish".

For purposes of determining which taxes may be credited against the Washington fish tax, in addition to the measure of the tax for which credit is sought, we are equally concerned with the incidence of that tax. If the incidence of the tax is similar to what it is in Washington, namely, possession of enhanced food fish,³ it will qualify for credit. The incidence of the worker's compensation insurance tax and the unemployment insurance compensation tax is not upon possession of enhanced food fish at all, rather it is upon the privilege of doing business in British Columbia, Canada.

Worker's compensation and unemployment insurance taxes are deducted from the pay of Washington workers by the state of Washington as well. The Department has not allowed those taxes to be credited against the fish tax on fishing activities that take place wholly within this state. It would, indeed, be an anomalous result if the unemployment and worker's compensation taxes of other jurisdictions could be credited against the fish tax but not those same taxes imposed by this

³ See RCW 82.27.020.

jurisdiction. As we stated earlier, "[a] statute is not to be interpreted in such a way that it produces an absurd result or renders meaningless its enactment." *Kirk v. Moe*, 114 Wn.2d 550, 554, 789 P.2d 84 (1990). We conclude that the credit under RCW 82.27.040 is limited to severance or extracting type taxes, imposed upon the same enhanced food fish.

In *Det. No. 87-304A, supra*, and in *Det. No. 87-304*, 4 WTD 113 (1987), we permitted, on a prospective basis, import duties paid the United States as a credit against the fish tax. The taxpayer has submitted evidence that it paid such duties. It, too, will be allowed a credit for those. The Audit Division of the Department will adjust the audit accordingly.

At the hearing the taxpayer also stated that Audit assumed that the figures on which it based the fish tax were in American dollars. The taxpayer claims, however, they were in Canadian dollars. Audit will investigate this claim as well.

DECISION AND DISPOSITION:

The taxpayer's petition is denied in large part and granted in small part.

DATED this 29th day of August 1997.