

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</u>
<u>N</u>		
For Correction of Assessment of)	
)	No. 90-279
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

[1] RULE 172 & RULE 226: SALES TAX -- CLEARING LAND -- TREE REMOVAL & STUMP GRINDING. The activity of removing individual trees located on a landowner's property, or grinding stumps to below ground level is a tree thinning or pruning activity taxable under the Service and Other Activities tax classification.

[2] RCW 82.12.035: RETAIL SALES TAX -- CREDIT FOR SALES TAX PAID TO OTHER STATES -- DOCUMENTATION. Invoices showing that the taxpayer paid Idaho sales tax on purchases of other similar equipment is insufficient documentation to show that it paid Idaho sales tax on the equipment taxed in the audit report.

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

DATE OF TELECONFERENCE: . . .
(Conducted by Potegal, ALJ)

TAXPAYER REPRESENTED BY: . . .

FACTS:

Okimoto, A.L.J. (Successor to Potegal, A.L.J.) -- . . . (taxpayer) operates a tree-trimming, tree-spraying and tree or stump-removal service based in . . . , Idaho. The taxpayer has no business office within the state, but regularly makes two/three week excursions to nearby towns in the . . . Washington area. A Department of Revenue (Department) auditor examined the taxpayer's books and records for the period . . . through As a result of this audit examination, Document No. . . . was issued on . . . for additional taxes, interest and penalties in the amount of \$ A subsequent post-assessment adjustment reduced this amount to \$. . . . The taxpayer protested the entire assessment and it remains due.

TAXPAYER'S EXCEPTIONS:

Schedule III: Unreported Retail Sales Per Sales Invoices

In the audit report, the auditor assessed retailing and retail sales tax on charges made by the taxpayer for tree removal and stump grinding services in accordance with the following instructions stated in his audit report.

The grinding of tree stumps to slightly below ground level is a retail sale unless it is performed on improved city or urban residential property for the purpose of allowing more sunlight, improve a view, or get rid of a damaged or diseased tree. The removal of stumps on unimproved land to allow room to build a house or on improved land to create a garden space is clearing of land and is a retail sale.

Because the taxpayer did not separately itemize the amounts billed for tree trimming and tree or stump removal, the auditor considered it all to be retail. In addition, if the auditor could not determine from the invoices the reason or extent of the tree removal services performed or the type of land involved, he assumed that they were for "clearing land" and classified them as retail.

The taxpayer protests this classification and explained during a supplemental telephone call that its business consists primarily of trimming healthy trees, removing individual diseased, fallen, or potentially hazardous trees, or grinding and removing stumps. Normally the removed trees cannot be

felled with one cut, but must be topped, and thereafter cut in sections until the entire tree is down. The taxpayer explained that its equipment, which consists of boom trucks, chain saws, and hand-held grinders, is especially suited for cutting down individual trees located near houses or other buildings, and not for the large scale removal of trees necessary for "clearing land." Although the taxpayer concedes that it may remove multiple trees for one customer, they are not grouped in one location, but spread throughout the customers property. Nearly all of the taxpayer's services are performed on improved residential property.

The taxpayer further explains that it is not practical for customers to hire it to clear land because it would be too expensive. The taxpayer explains that it is much cheaper to clear unimproved land by simply "getting a logger to cut a tree down and then using a bulldozer or front-end loader to remove the roots that would be necessary to work up the ground." The taxpayer states that it does not perform that type of work nor does it own that type of equipment.

The taxpayer argues that WAC 458-20-226 (Rule 226) subsection D applies and that all of its activity should be taxable under the Service & Other Activities tax classification as "the pruning of trees and shrubs." In the alternative, the taxpayer refers to ETB 369.04.172 and states that its activity is "tree thinning" as opposed to "land clearing" and therefore not subject to retail sales tax.

Schedule IV: Items Subject to Use Tax and/or Deferred Sales Tax

In the audit report, the auditor assessed use tax on equipment acquired outside the state, and thereafter brought into the state for purposes of conducting the taxpayer's business activity. The taxpayer does not dispute that the tax is due, but requests credit for having paid retail sales tax on the assessed equipment to Idaho and Montana. Although the taxpayer has been unable to locate purchase invoices for the equipment taxed in the audit report, it has submitted invoices of other equipment showing that it does pay Idaho sales tax on its purchases.

ISSUES:

1. Does cutting down and removing individual trees or grinding stumps on a landowner's property constitute "land clearing" within the meaning of RCW 82.04.050?

2. Do purchase invoices showing that the taxpayer paid Idaho sales tax on similar purchases of equipment constitute sufficient documentation to show that the taxpayer paid sales tax on equipment assessed in the audit report?

DISCUSSION:

Schedule III: Unreported Retail Sales Per Sales Invoices

[1] In respect to interpreting taxing statutes, the Washington State Supreme Court has stated: "... if there is any doubt as to the meaning of a tax statute, it must be construed against the taxing power." Mac Amusement Co. v. Department of Revenue, 95 Wn.2d 963,966 (1985); See also, Foremost Dairies, Inc. v. State Tax Commission, 75 Wn.2d 758, (1969). RCW 82.04.050 states in part:

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following: ...
 (b) the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;
 (Emphasis ours)

Keeping the above rule of statutory construction in mind we conclude that the auditor's classification of the taxpayer's business to be in error. The statute plainly states that only the "clearing of land" is defined as a retail sale. We believe that the Legislature intended that phrase to mean more than the mere removal of individual trees located on a landowner's property or the grinding of individual stumps to below ground level. We consider this activity to be more of a tree thinning or pruning activity taxable under the Service and Other Activities tax classification. See WAC 458-20-226 and ETB 369.04.172. Accordingly, we will grant the taxpayer's petition on this issue.

[2] RCW 82.12.035 states in part:

A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property in Washington.

Therefore, the taxpayer is entitled to a credit for retail sales taxes paid to Idaho or Montana on any equipment that the auditor has assessed Washington use tax, provided that the taxpayer supplies the proper documentation of having paid those taxes. Proper documentation is an invoice or other receipt separately stating the amount of sales tax paid on each piece of equipment for which the credit is being sought. It is insufficient to show that the taxpayer has paid retail sales tax on other equipment purchased in Idaho, or that it is probable that such tax was paid. Because the taxpayer has failed to supply the proper documentation, we must deny the taxpayer's petition on this issue.

DECISION AND DISPOSITION:

The taxpayer's petition is sustained in part and denied in part.

DATED this 5th day of July, 1990.