

Cite as Det. No. 02-0086, 22 WTD 169 (2003)

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 and Refund of)	
)	No. 02-0086
)	
...)	Registration No. . . .
)	Audit No. . . .
)	Docket No. . . .
)	REET

WAC 458-61-660; RCW 82.45.030; ETA 541: SALES OF STANDING TIMBER – REAL ESTATE EXCISE TAX. Sellers of standing timber are liable for real estate excise tax not the business and occupation tax, on the selling price.

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 appeals the assessment of real estate excise tax (REET) due on the sale of standing timber.¹

FACTS:

De Luca, A.L.J. -- This appeal is related to Small Claims Determination # . . . , issued May 31, 2001. The taxpayer owned standing timber in the state of Washington. The timber was harvested from the taxpayer's property . . . in 2000 and the proceeds of sales from the timber harvest exceeded \$100,000 for that year. The taxpayer filed forest excise tax returns for Q2, Q3, and Q4/2000 and paid the timber excise tax due, but did not pay business and occupation (B&O) tax on the gross proceeds. On January 2, 2001, The Forest Tax Section of the Department of Revenue (the Department) contacted the taxpayer by letter and advised him that it would assess B&O tax if the taxpayer did not tender payment. The taxpayer did not pay the tax. The Forest Tax Section issued a Notice of Balance Due on March 2, 2001 in the amount of \$

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

The taxpayer appealed the B&O tax assessment and along with his petition he enclosed a copy of Excise Tax Advisory 541 (ETA 541) and a copy of his logging contract with . . . Logging for the timber harvest in question. The Forest Tax Section had not seen the contract when it issued the balance due notice. The taxpayer argued his proceeds of sale were exempt from B&O tax because he sold standing timber. The taxpayer entered into the contract on April 26, 2000 and it continued through December 31, 2000. The contract declared the taxpayer was the owner and the seller of “standing timber.” The contract provided:

1. Sale of standing timber. The Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to buy from the Sell [sic] upon the terms and conditions contained herein, the following described standing timber

The contract also stated: “8. Timber To Be Cut. Standing trees.” The contract required the purchaser to perform all of the logging. The contract provided a purchase price as determined by certain amounts of dollars per thousand board feet for each species of trees sold. The taxpayer received payment on regular pay dates. The purchaser was required to obtain a fire and liability insurance policy for the harvest. The contract also provided:

9. Seller’s Title. The Seller covenants that he will transfer to the Purchaser unencumbered title to said Timber and that said timber is free from liens or claims upon which liens may hereafter be based.

We wrote in SC Det. #611 that ETA 541 clearly states that sellers of standing timber are liable for real estate excise tax (REET), but are not liable for the timber excise tax and B&O tax. The ETA explains purchasers are liable for the latter two taxes. We noted, though, the taxpayer’s contract provided that the taxpayer, not the purchaser, would pay the timber excise tax and the taxpayer did pay the tax under the terms of their agreement.

WAC 458-61-660 (Rule 660) concerns REET imposed on the sale of standing timber. The rule provides in part:

Timber, standing. (1) The real estate excise tax applies to the sale of timber if the ownership of the timber is transferred while the timber is standing. The tax applies to the sale of standing timber whether the sale is accomplished by deed or by contract.

We found the contract clearly indicated the taxpayer’s intent to sell, and convey title to, the standing timber to the purchaser prior to severance from the land. We also noted the taxpayer stated in the telephone conference that he sold standing timber pursuant to the contract. We found the taxpayer sold standing timber prior to severance and we cited Det. No. 96-048, 16 WTD 171 (1997); Det. No. 95-177, 15 WTD 157 (1996); and Det. No. 92-249ER, 13 WTD 138 (1993). These three determinations had facts similar to the present one concerning the sale of standing timber. All of them found the taxpayers sold standing timber and were subject to REET because title or ownership to the standing timber passed prior to severance from the land, even where the landowners retained

bare legal title to the timber until after payment was received. Det. No. 96-048 also informed the taxpayer in that matter that the taxpayer could request a refund of the B&O tax it had paid on its timber sale.

Thus, we agreed with the taxpayer that he did not owe B&O tax on the sale of the standing timber as explained in ETA 541 and we cancelled the assessment of B&O tax and related interest in Document No. However, we also explained in the determination:

Additionally, we note the only issue before us concerns the assessment of B&O tax, not REET. However, we instruct the taxpayer that he owes REET on the selling price of the standing timber if he has not already paid REET. *See* RCW 82.45.010 and .030. REET is normally paid to the county treasurer in the county where the land or standing timber sold is located. RCW 82.45.090. During our telephone conference, the taxpayer stated he has satisfied his tax obligations for this sale, including REET. If that is the case, then he has no more concern about it. If he has not paid it, he needs to satisfy the obligation.

On October 31, 2001, the Department's Miscellaneous Tax Section sent the taxpayer a letter requesting copies of REET affidavits showing REET had been paid on the sale of the standing timber in question. By March 5, 2002, the Miscellaneous Tax Section had not received the requested REET documents from the taxpayer and had not been able to find any such records with . . . Counties. Without such proof of payment, the Miscellaneous Tax Section issued two REET assessments against the taxpayer. Taxes, interest and 20% late payment penalties amounted to \$. . . as of April 12, 2002.

TAXPAYER'S EXCEPTIONS:

The taxpayer raises several points on appeal. The taxpayer claims he contracted with the logger for the timber to be cut and he (the taxpayer) sold it to [Buyer]. The taxpayer states [Buyer] paid him directly since he owned the logs and [Buyer] paid the logger for cutting and delivery. The taxpayer also claims he never transferred title to the timber to the logger.

The taxpayer explains he paid the forest excise tax, but as ETA 541 explains, the purchaser of standing timber owes timber excise tax and B&O tax and the seller owes REET. Consequently, the taxpayer asks for a refund of the timber excise tax he paid, which, he claims is about \$10,000.

Finally, the taxpayer adds the reason he challenged the B&O tax was because he had paid the timber excise tax and federal income tax and was not aware of any additional taxes. The taxpayer notes that someone, who he does not identify, told him that the payment of B&O tax would qualify him for a multiple activity tax credit (MATC) and a small business tax credit. The taxpayer seeks clarification about these credits.

ISSUES:

1. Does the taxpayer owe REET on the sale of standing timber?
2. Is the taxpayer entitled to a refund of timber excise tax?
3. Is the taxpayer entitled to the MATC and small business tax credit?

DISCUSSION:

We explained the reasons in SC Det. # . . . and above why the taxpayer did not owe B&O tax on the sale of the standing timber, and why he owed REET instead if he hadn't already paid it. ETA 541 provides in part:

(1) Sale of Standing timber (stumpage sales): Title to the timber transfers to the buyer before harvesting takes place.

In this situation, the landowner turns over title to the standing timber before it is cut from the stump. The sale may be for a lump sum amount, or a unit price may be specified for each species (eg. \$200 per thousand board feet for Doug fir, \$150 per MBF for hemlock, etc.). The purchaser satisfied the legal definition of a harvester since he is the owner of the timber at the time it is delivered to the sawmill and scaled. The tax liabilities on each party are as follows:

Landowner: For sales of standing timber, the landowner is liable only for the real estate excise tax. The sale must be recorded with the county treasurer using a real estate excise tax affidavit.

Purchaser: Since the purchaser gains title to the timber while it is still standing, he/she is legally the harvester and the one liable for paying both the timber excise tax and the B&O tax. Note that the tax base for the B&O tax is gross receipts from the sale of the logs.

During our telephone conference on May 24, 2001, the taxpayer stated he sold standing timber to the logger. Their contract provided specifically for the sale of standing timber, and the seller (the taxpayer) covenanted to transfer unencumbered title to the timber to the purchaser (the logger.) The taxpayer now claims he did not sell standing timber, but sold cut timber to [Buyer] and he did not transfer title to the timber to the logger.

The evidence, both oral and written, strongly supports our findings in SC Det. # . . . that the taxpayer sold standing timber and transferred title to the timber to the logger. We affirm those findings in this determination. We also affirm the taxpayer owes REET on the sale of the standing timber.

The taxpayer is not entitled to a refund of timber excise tax. As ETA 541 explains, normally the purchaser of the standing timber pays the timber excise tax. If the tax is not paid, the Department will assess the purchaser for it, but there is nothing to prevent the buyer and seller

from contracting between them for the seller to pay the tax. All that the state is concerned about is the tax be paid. The state does not care if the buyer and seller agree that the seller pays the tax as long as it is paid. The taxpayer agreed in his contract with the logger to pay the timber excise tax. The Department has no authority or interest to reform their contract.

The MATC (RCW 82.04.440) and the small business credit (RCW 82.04.4451), if applicable, pertain only to credits allowed against the B&O tax. The credits are not applicable in this matter because the taxpayer does not owe B&O tax. The taxpayer owes REET.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 30th day of May 2002.