

Cite as 6 WTD 193 (1988)

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 Notices of)	
Balance Due of)	88-268
)	
. . .)	Registration No. . . .
)	Pollution Control
)	Certificate . . .

[1] **RULE 242:** POLLUTION CONTROL CREDIT -- DENIAL OF CREDIT -
- CERTIFICATE IN FORCE -- FACILITY TEMPORARILY NOT
OPERATING. The Department is without authority to deny
the credit authorized by chapter 82.34 RCW while a
pollution control certificate is in force on grounds that
a pollution control facility is not operating. In order
for the Department to revoke or modify a certificate, a
pollution control agency must revise findings after
notice and opportunity for hearing.

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 HEARING: October 29, 1987

NATURE OF ACTION:

The taxpayer appeals from a series of notices of balance due which
were issued as a result of the denial of pollution control credits
claimed by the taxpayer.

FACTS AND ISSUES:

Potegal, A.L.J. -- The taxpayer held a valid pollution control
certificate for its facility in . . . , Washington. It temporarily
shut down operations at the facility The facility remained
shut down until the plant was sold It has since resumed
operations.

During the period that the facility was not operating, . . . , the taxpayer claimed pollution control credits. The Department denied the credits on grounds that the facility was no longer operating.

The taxpayer believes that the Department is without authority to make such a denial.

DISCUSSION:

The pollution control credit program is authorized by chapter 82.34 RCW. In issuing its denial of the credits, the Department relied on this language from RCW 82.34.060 (2):

(2) When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a credit may be claimed against taxes . . .

The Department said that this language implied that the facility must be operating during the period for which credits are claimed.

Upon reviewing the applicable statutes, we find the Department's prior position to be in error. The credits should not have been denied.

RCW 82.34.060 (2) goes on to say:

The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

. . .

Thus, as long as the credits are within the prescribed limitations and a certificate is in force, the taxpayer is entitled to credits. The credits were within the limitations described in the statute and those limitations are not an issue in this appeal.

RCW 82.34.100 sets forth the steps to be taken to modify or revoke a certificate. That statute provides:

The water pollution control commission or the state air pollution control board, after notice to the department and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

(1) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the department shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this chapter or against which the credit provided for by this chapter has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

(2) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the department modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified.

In order for a certificate to be modified or revoked, the water pollution control commission or the state air pollution control board must revise the prior findings of the appropriate control agency. These prior findings are those upon which the issuance of the certificate was originally based. Such revision can occur only after notice to the department and the holder of the certificate and after the holder of the certificate has been given an opportunity for hearing.

In this instance, none of these prerequisites to the denial of credits occurred.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The notices of balance due which were based upon the denial of pollution control credits claimed are cancelled.

DATED this 15th day of July 1988.

