

Cite as 10 WTD 352 (1990).

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. 90-402
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	
)	

[1] RULE 106: B&O TAXES -- CASUAL SALE -- SALE OF DIVISION -- INVENTORY. That portion of the sales price attributable to taxpayer's business inventory is not exempt from B&O taxes as a "casual or isolated" sale even though it is included as part of the bulk sale of the taxpayer's entire division. Accord: 90-83, 9 WTD 149 (1990); 88-169, 5 WTD 257 (1988).

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 the imposition of additional taxes and interest assessed in an audit report.

FACTS:

Okimoto, A.L.J. -- [Taxpayer] is engaged in the wood products industry and maintains its corporate headquarters in . . . , Oregon. Taxpayer's books and records were examined by a Department of Revenue (Department) auditor for the period . . . , 1986 through . . . , 1989. The audit resulted in additional taxes and interest owing of \$. . . and Document No. . . . was issued in that amount on . . . , 1990. The taxpayer has paid the unprotested portion of the assessment and the balance remains due.

During the audit period, the taxpayer owned and operated two separate lines of business within the state of Washington. Both lines, however, operated as a division of the parent company and were not separately incorporated entities. The taxpayer describes these businesses in its petition as follows:

1. A sawmill and plywood plant in [A], Washington including 35,000 +/- acres of [B] timberland associated with the operation of the mill.
2. Ownership and management of 200,000 +/- acres of [C] timberland mainly located . . . and in . . . and . . . Counties. Management includes harvesting, maintaining and reforestation. All this work is performed by subcontractors with supervision by [taxpayer] employees. The timber is sold in the form of logs or transferred to [the taxpayer]'s . . . sawmill in Oregon. Logs from these forests were never delivered to [A].

On December . . . , 1988 taxpayer sold the assets of its entire [A] operation which included the sawmill, the plywood plant, the accompanying acreage, all assets including inventory valued at \$ The taxpayer explained that only \$. . . of inventory sold consisted of finished product, with the remainder being comprised of raw logs, veneer, and lumber in various states of production.

SCHEDULE IV: WHOLESALING TAX ON SALE OF INVENTORY

In this schedule the auditor asserted Wholesaling B&O taxes on the value of inventory included in the sales price of the entire [A] operation. The auditor reasoned that because the taxpayer was engaged in business within the state of Washington at its [C] operations even after the sale of its [A] operation, then the sale of the [A] operation's inventory was merely part of a continuing business operation.

Although the taxpayer concedes that it continued to do business within the state of Washington after the sale of its [A] operation, it nevertheless contends that the sale of its [A] inventory is a casual or isolated sale and therefore exempt from B&O taxes under Rule 106. The taxpayer makes the following arguments.

First, the taxpayer argues that the sale of a complete division is not a part of the ordinary and normal business

operations of any company and that therefore it should be considered casual or isolated.

Second, that the taxpayer's [C] operation should be dissociated from its [A] operation because it is an entirely distinct operation that has no direct operating connection with the [A] operation.

Finally, the taxpayer states that it previously received oral advice from the Department's Taxpayer Information and Education Section (TI&E) that the bulk sale of an entire division was a casual or isolated sale and therefore exempt from B&O taxes. The taxpayer states that it relied to its detriment on that advice.

ISSUES:

1. Is that portion of the sales price allocated to finished and unfinished inventory exempt from B&O taxes as a "casual or isolated sale" when included as part of the bulk sale of the taxpayer's entire division?

DISCUSSION:

[1] WAC 458-20-106 states in part:

A casual or isolated sale is defined by RCW 82.04.040 as a sale made by a person who is not engaged in the business of selling the type of property involved. Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales are not made frequently.

In addition the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by him is not a casual or isolated sale, even though he may make but one such retail sale.

BUSINESS AND OCCUPATION TAX

The business and occupation tax does not apply to casual or isolated sales.

The statute from which this rule is derived is RCW 82.04.040. It states in part:

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

After examining this statute, it is clear on its face that in order for a sale to be "casual or isolated", it must meet two requirements. The first requirement, which simply comes from the title of the exemption, is that the sale must be casual or isolated. The second requirement, which comes directly from the statutory definition of the exemption is that the taxpayer can not be in the business of selling the type of property involved. Although we would agree that the taxpayer's sale of its entire [A] division would be considered a casual or isolated sale for purposes of the first requirement, to the extent that the taxpayer is in the business of selling the type of property sold in the bulk sale, the bulk sale fails to meet the second requirement. Because the taxpayer is engaged in the business of selling the type of property involved (plywood and wood products), its sale of inventory fails to fall within the statutorily defined "casual or isolated" sale exemption and therefore was properly subjected to tax.

Nor do we find the taxpayer's attempt to distinguish between finished inventory, unfinished inventory and raw materials persuasive. We note that the statute broadly excludes from the exemption all sales of the "type of property" in which the taxpayer is in the business of selling. The usual and ordinary definition of "type" is:

A group of persons or things sharing common traits or characteristics that distinguish them as an identifiable group or class;

The American Heritage Dictionary, Second College Edition (1982)

In applying the above definition to the taxpayer's products, it is clear that the common characteristics that distinguish them as an identifiable group is that they are "wood products." To this extent it does not matter whether they are finished plywood, veneer, or raw logs. They all remain the "type" of product that the taxpayer is in the business of selling.

Although we sympathize with the fact that the taxpayer may have received incorrect oral instructions from TI&E as to the tax consequences of its bulk sale of the [A] division, the Department is not bound by incorrect oral instructions allegedly given by Departmental employees. The reasoning for this policy is well stated in ETB 419.32.99. (. . .)

Accordingly, we must deny the taxpayer's petition.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 17th day of December 1990.