Cite as Det. No. 00-124, 22 WTD 103 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON[1]

In the Matter of the Petition For Correction of Assessment and Refund of	)	D E T E R M I N A T I O N
	)	No. 00-124[2]
. . .	)	
	)	Registration No. . . .
	)	FY . . . /Audit No. . . .
	)	FY . . . /Audit No. . . .

[1] RULE 112; RCW 82.04.070, RCW 82.04.270: B&O TAX -- MEASURE OF TAX ON EXCHANGE AGREEMENTS -- GROSS PROCEEDS OF SALE. When a manufacturer exchanges similar products with a competitor by delivering product to the competitor at one location and receiving similar products from the competitor at a different location and the agreement does not specify a selling price for the quantities exchanged, then there is no stated gross proceeds of sale.

[2] RULE 112; RCW 82.04.070, RCW 82.04.270: B&O TAX -- MEASURE OF TAX ON EXCHANGE AGREEMENTS -- GROSS PROCEEDS OF SALE -- INVENTORY VALUE. When there is no stated gross proceeds of sale, the measure of the tax is determined by reference to comparable sales. The measure of tax is not determined by the taxpayer's internally calculated inventory cost.

[3] RULE 112; RCW 82.04.070, RCW 82.04.270: B&O TAX -- MEASURE OF TAX ON EXCHANGE AGREEMENTS -- GROSS PROCEEDS OF SALE -- COMPARABLE SALES. When there is no stated gross proceeds of sale and reference to comparable sales is necessary, comparable sales must be similar not only in volume and time, but also as to location.

[4] RULE 112; RCW 82.04.070, RCW 82.04.270: B&O TAX -- MEASURE OF TAX ON EXCHANGE AGREEMENTS -- GROSS PROCEEDS OF SALE -- COMPARABLE SALES. When a manufacturer exchanges products with another

[1] NON PRECEDENTIAL PORTIONS OF THIS DETERMINATION HAVE BEEN DELETED.
[2] The reconsideration determination, Det. No. 00-124ER, is published at 22 WTD 115 (2003).

manufacturer of similar products, the gross proceeds of sale is the value of the product actually received at the time, place, and in the quantity received, less any cash (differential) paid the exchange partner or plus any cash (differential) received by the seller.

[5] RULE 112, RULE 195; RCW 82.04.070, RCW 82.04.270; B&O TAX -- MEASURE OF TAX ON EXCHANGE AGREEMENTS -- GROSS PROCEEDS OF SALE -- COMPARABLE SALES -- PLATTS -- SUPERFUND TAXES. When determining the value of products received the Department uses Platts (an industry price reporting service) that includes in its published prices the Superfund Tax. The Superfund Tax is not deductible from the stated value.

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 refiner of petroleum products protests the partial denial of a refund request wherein the Audit Division and the taxpayer disagreed as to the measure of the business and occupation tax, petroleum products tax, and hazardous substance tax on products transferred to exchange partners.[3]

BACKGROUND:

Coffman, A.L.J. -- The taxpayer refined crude oil in the state of Washington. . . . The taxpayer entered into exchange agreements with other refiners (exchange partners) who do not have refineries in the state of Washington to deliver products to the exchange partners in exchange for similar products delivered by the exchange partner to the taxpayer at locations where the taxpayer does not maintain a refinery. The exchanges made under these agreements are sales subject to business and occupation (B&O) tax, petroleum products tax (PPT), and hazardous substance tax (HST).[4] The taxpayer does not dispute the taxability of these exchanges.

The taxpayer provided us copies of two sample exchange agreements.

Exchange Agreement No. 1. . . .

The first exchange agreement provided for a "barter exchange." The terms of the exchange were identified in the exhibits to the agreement. Exhibit A provided that the taxpayer will deliver to the exchange partner . . . barrels per month of identified petroleum products plus amounts of other petroleum products "as agrd." The delivery point for all the products delivered to the exchange partner was the taxpayer's refinery. With one exception, all deliveries by the taxpayer

[3] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.
[4] Time Oil v. State of Washington, 79 Wn.2d 143, 483 P.2d 628 (1971).

were "into transport trucks." In all such cases, the taxpayer charged the exchange partner a handling fee of either $ . . . or $ . . . per barrel. The agreement also provided for an "as agrd." volume of product to be transferred "by book transfer." There was no handling charge for the "book transfer" deliveries.

Exhibit A also provided the taxpayer would receive . . . barrels of petroleum products per month plus amounts of other petroleum products "as agrd." The only situations requiring the taxpayer pay the exchange partner was when delivery was made "into pipeline" and "from pipeline to storage." In these cases, the taxpayer paid the exchange partner $0.267 per barrel as a location fee.

Exchange Agreement No. 2. . . .

Exchange Agreement No. 2 is also a "barter agreement." While Exchange Agreement No. 1 involved the delivery and receipt of product exclusively within Washington state, Exchange Agreement No. 2 involves the delivery by the taxpayer of products in Washington and the receipt of products both within and without the state of Washington. The number of products subject to the terms of Exchange Agreement No. 2 is extensive. The taxpayer's handling fee is $ . . . per barrel for products delivered into barges and $ . . . or $ . . . per barrel when delivered into transportation trucks. Additionally, the taxpayer pays $ . . . per barrel delivered into transportation trucks at one location in Hawaii.

Location fees vary significantly. When the taxpayer takes receipt of products from pipeline to storage or into the pipeline in Hawaii, the location fee it pays is $ . . . per barrel. When the taxpayer takes receipt of product into a barge in Hawaii, the location fee is either $ . . . or $ . . . per barrel. The location fee for delivery into transportation trucks in Hawaii varies from $ . . . to $ . . . per barrel. The taxpayer received a location fee (either $ . . . or $ . . . per barrel) for products it delivered at two points in Washington.

POSITIONS OF PARTIES:

The Audit Division found the taxpayer was entitled to a refund of the B&O tax paid because the taxpayer had valued the exchanges at the rack prices, not spot (bulk) prices per Platt's Oilgram (Platt's) or O.P.I.S. The Audit Division stated:

> Per the **BTA Docket No. 93-28**, it was recognized by the board of tax appeals that "rack" sales are not entirely comparable to a "bulk" sale of petroleum products. The term "bulk" is used for sale of large volumes and transported through pipeline or marine. The term "rack" is used for sales from distribution terminals in small volumes to the end users. There is a difference between "rack" price and a pipeline (bulk) price. In finding No. 48 on this same Docket the board states: "We find the average wholesale price overstates the value of exchanges. In order to be truly comparable, the department's

> value should be adjusted by the difference between "bulk" (pipeline or barge) and "rack" prices."
>
> Taxpayer has a similar situation to the above BTA case. Taxpayer used a "rack" sales price per OPIS publication in valuing the measure for B&O, [HST, and PPT] on their product exchanges and product transfers. To adjust the overpaid taxes for the period 1/1/90 through 12/31/93 Platt's Oilgram publication was used. This was done in agreement with taxpayer's representative . . . . The agreement was to use Platt's publication to value the major products such as Jet Fuel, Premium Gasoline, Regular Gasoline and Diesel #2. Based on a bulk sales price. The calculation to value the unit pricing was based on a **Seattle pipeline location** with the use of an **average** between the **high** and **low** prices on the **last day** of each month. A transportation differential was allowed on the price for tariff rates between . . . and . . . . A tariff rate of . . . per gallon was used for this adjustment. These rates were deducted from the average prices when calculating product transfers, [HST and PPT]. For product exchanges 72% [of (sic)] the above tariff rates was deducted. This transportation differential is **qualified to this post audit adjustment only.** In future this should not be deducted from the calculation of bulk pricing.

(Emphasis in original. Bracketed material added.) Auditors Detail of Differences and Instructions to Taxpayers, Credit Assessment FY . . . , pages 1-2.[5]

The taxpayer cites RCW 82.04.070 and .090 for the proposition that:

> [F]or the purposes of the tax measure for exchanges, the proper measure is "the value proceeding or accruing" actually received or accrued from the sale of the finished product. The taxpayer contends that the value proceeding or accruing is the inventory value. The parties exchange the inventory at cost, providing for no mark-up. Using any measure other than inventory cost results in the imputation of income that is not supported in reality. This, the Department cannot do. *Weyerhaeuser Co. v. Department of Revenue*, 106 Wn.2d 557, 723 P.2d 1141 (1986). Thus, the refund should be adjusted to reflect the actual value proceeding or accruing from the sale and not an artificial value determined by using comparable values through OPIS or Platt's, which reflect mark-ups.

Taxpayer's Petition for Refund and Correction of Future Reporting Instructions, May 21, 1999, pages 4-5.

Alternatively, the taxpayer argues that if comparable prices are to be used the Department's singular reliance on OPIS and Platt's Seattle prices is incorrect. The taxpayer argues several points concerning the Audit Division's methodology. First, Platt's and OPIS Seattle prices do

[5] The same language was used in the Auditors Detail of Differences and Instructions to Taxpayers accompanying Credit Assessment FY . . . with the exception of the next to last sentence where the term "post audit adjustment" was replaced with the term "partial audit."

not include large volume exchanges such as occur in California. Second, Platt's and OPIS do not report exchange transactions and the discounts based on quantity, long term contracts, and the strength of the exchange partners. Third, Platt's and OPIS do not reflect similar purchasers. Their purchasers include brokers and non-refinery buyers. Fourth, if Platt's and OPIS are used, the average high and low price in Seattle is not the proper value; rather it should be the lowest spot price on the West Coast. Fourth, the taxpayer contends the point of valuation is not Seattle, but where the taxpayer receives product from its exchange partners. Fifth, the taxpayer contends the destination adjustment to the price should not be limited to the audit periods. Finally, the taxpayer argues the Platt's and OPIS prices must be reduced by the amount of the superfund tax.

In a supplemental submission, the taxpayer argues the Department must value the exchanges based on inventory costs. The taxpayer bases this theory on its claim that the reason for the exchange agreements is to obtain inventory in an area so the taxpayer can compete on an even playing field with its exchange partner (supplier). Further, the taxpayer claims the inventory cost can be determined by reference to the taxpayer's internal inter-divisional accounting system. The taxpayer claims the Department should accept the taxpayer's internal accounting records and reduce the inter-divisional price by the margin (assumed profit).

The taxpayer provided extensive documentation showing the amount of the refund if we accept this calculation method. Letter from Taxpayer's Representative dated November 22, 1999. The taxpayer's calculation of the margin included in the inter-divisional price is based on the following data:[6]

Total Revenues from Refinery Profit and Loss Statements:
Less "Cost" from Refinery Profit and Loss Statements including:
- Domestic Crude input
- Foreign Crude input
- Unfinished input
- Intermediates
- Direct Costs[7]
- Inventory Impacts[8]
- Supply Adjustments[9]

Equals Gross Margin Amounts
Less "Expenses Before Income Taxes from Refinery Profit and Loss Statements including:
- Utilities

Equals the Net Margin Amounts.

[6] See the "Monthly Net Margin Calculations" and Schedules A and B attached to the November 22, 1999 letter.
[7] Direct Costs include: Inspection Fees, Duties, Marine Freight, Demurrage, Through-put charges, and Oil spill response team fees.
[8] Inventory Impacts include: LIFO adjustments, Holding gains and losses on inventory, and change in inventory for each product in realm of refinery.
[9] Supply Adjustments include: Mostly Marine Freight, Amounts moved between marketing and refining, and Over-the-road terminal freight.

The taxpayer did not deduct from the total revenue amounts identified as:

> Other Controllable (Total rentals, Total travel and personal, Total advertising and sales promotion, Subtotal transfers to fixed assets, Total intra (taxpayer) redistributed expenses, Total commissions, bonuses and service fees, Loaned equipment expenses, Communications, Postage, printing and stationary, Identification items, Worthless accounts and bad debts, Memberships and subscriptions, Total miscellaneous expenses, and Corporate contributions and memberships.)
> Redistributed (Total redistributed research, Redistributed accounting expenses, Total redistributed ITD expenses, Redistributed corporate services, and Total direct services charges.)
> Non-Controllable (Taxes other than income and payroll, Insurance, Canal tolls and port charges, Casualty losses, and other non-controllable.)

The Audit Division disagrees with the taxpayer's valuation methodology (inventory cost) in several respects. The Audit Division claims the proper measure of the taxes is the wholesale value. In the case of exchange agreements, this value should be computed utilizing an independent valuation publication (Platt's or O.P.I.S.) or actual sales. The Audit Division objects to the taxpayer's methodology for six reasons:

> If some other valuation method for exchange deliveries were appropriate, the details of the calculations would always be subject to verification. Complete financial and actual cost records would need to be available. On the surface, we disagree with the methodology [the taxpayer] is proposing. For example: 1) [the taxpayer] re-values transfers. We do not agree except in the case of exchange deliveries of product transferred to Oregon. 2) Total Revenues From Refinery P&L Statements (Note 1)[10] are based upon "interdivisional transfer prices". We do not know what's included or excluded in these prices. 3) [The taxpayer] applies a constant Margin Percentage to all products in a certain month, we disagree with this across the board percentage applied to all products. 4) The cost analysis omits certain costs. We disagree with the omission of these costs without verification or analysis. 5. The exchange agreement differentials on amounts received or paid do not appear to be accounted for in this methodology. 6. The Shell BTA case disallowed this method of using cost valuation when the "cost" price per gallon was significantly below Market Value (Platt's bulk price). The BTA also disallowed an across the board percentage deduction to arrive at cost, as demonstrated in [the taxpayer's] Appeal Schedules.

(Emphasis in original, footnote added.)

The taxpayer agrees with the Audit Division's analysis of the effect of Paccar, Inc. v. State of Washington, Dept. of Rev., 135 Wn.2d 301, 957 P.2d 669 (1998), which limits the amount of the

[10] Note 1 to taxpayer's calculations attached to its November 22, 1999 letter.

refund available to the taxpayer for any tax year to the amount paid for that year during the current and previous four years. Because the Audit Division already granted the maximum refund under Paccar for 1989, 1990, and 1991, this determination will only address the period January 1, 1992 through December 31, 1996.

ISSUE:

What is the proper measure of the B&O tax, HST, and PPT when a manufacturer delivers product to a competitor in Washington in exchange for similar products delivered to the taxpayer at locations primarily outside the state of Washington and the transaction is subject to price adjustments based on handling, location, grade differential, and other factors?

DISCUSSION:

1. **Similarity of the Measure of the Manufacturing B&O, Wholesaling B&O, Petroleum Products, and Hazardous Substance Taxes.**

All sales in dispute in this appeal were made at wholesale. The measure of the wholesaling business and occupation (B&O) tax is the "gross proceeds of sales" of wholesale sales. RCW 82.04.270. The measure of the manufacturing B&O tax is the "value of the products" manufactured. RCW 82.04.240. The taxpayer manufactured in Washington the products it delivers to its exchange partners. The taxpayer is entitled to a credit against its wholesaling B&O tax for the amount of the manufacturing B&O tax it pays on the products sold at wholesale. RCW 82.04.440. The B&O tax rate for both the wholesaling B&O tax and manufacturing B&O tax is identical. Therefore, if the measure of the taxes is the same, the taxpayer will only pay the manufacturing B&O tax.

"Gross proceeds of sales" is defined as "the value proceeding or accruing from the sale of tangible personal property." RCW 82.04.070. "Value proceeding or accruing" is defined as "the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued." RCW 82.04.090. The value of products is "determined by the gross proceeds derived from the sale" of the manufactured products. RCW 82.04.450. For the purposes of this determination the measures of the manufacturing B&O tax and the wholesaling B&O tax are the same.

Petroleum products are considered hazardous substances for the purposes of the HST. RCW 82.21.020(1)(b). The HST is imposed by RCW 82.21.030(1), which states:

> A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax shall be seven-tenths of one percent multiplied by the wholesale value of the substance.

(Emphasis added.)

The term "petroleum product" is defined as products derived from refining crude oil, but does not include crude oil. RCW 82.23A010(1). The PPT is imposed by RCW 82.23A.020(1), which states:

> A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be fifty one-hundredths of one percent multiplied by the wholesale value of the petroleum product.

(Emphasis added.)

Because all the exchanges are at wholesale, we find the measures of the HST and the PPT are the same as the measure of the wholesaling and manufacturing B&O taxes.[11] However, the method of calculating the measure of these taxes is the core issue in this appeal. The taxpayer does not sell the products to its exchange partners for cash. Rather, it sells the products for similar quantities of similar products at different locations, subject to certain price adjustments based on handling costs, location, grade differential, and other agreed to factors.

2. **Measure of Tax.**

The Audit Division allowed the taxpayer a refund of taxes. The taxpayer paid its taxes by valuing the exchanges using "rack" prices stated in OPIS. The Audit Division recalculated the measure of the taxes using bulk prices because the bulk prices represent sales of similar quantities. Specifically, the Audit Division used the Seattle Pipeline location price stated in Platt's. The Audit Division averaged the high and low prices shown for the last day of the month to determine the value.

2.1 **Inventory Value.**

The taxpayer objects to the Audit Division's method of calculating the measure of the tax, claiming that it is merely exchanging inventory. Therefore, it should be able to measure the tax based on its inventory costs. The taxpayer makes several arguments against the use of Platt's or OPIS. Primarily, the arguments state that the prices listed in these publications include a profit/margin that should not be considered in determining the measure of the tax.

[1] RCW 82.04.090 attempts to address this problem by including in the definition of "proceeds or accrues" the phrase "other property expressed in terms of money." The Department has published two determinations directly on point to this appeal. Det. No. 91-341, 12 WTD 327 (1991); and Det. No. 93-118, 13 WTD 262 (1994). Both determinations involved exchange agreements between oil refiners similar to those involved in this appeal.

[11] Both the HST and PPT apply only to the first possessor in this state. The taxpayer is the first possessor, therefore, we do not need to evaluate the exemption of successive possessions.

In Det. No. 91-341,[12] the taxpayer claimed the proper measure of the B&O was inventory value. We cited the history of the discussions between the oil industry and the Department in trying to develop a mechanism for reporting the measure of the B&O on exchanges. The Department and an oil industry association agreed in 1964 to use Platt's Oilgram to determine the measure of the B&O tax. We responded to the taxpayer's claim--that inventory value should be used--by stating:

> The taxpayer requests that it be permitted to use inventory values. We presume these are the figures shown as inventory on the taxpayer's books. These are derived from the taxpayer's costs in producing or acquiring products. They do not necessarily reflect arms-length transactions, nor do they include indirect overhead costs as required under WAC 458-20-112 (Rule 112).
>
> We are not convinced that accurate cost figures are available, nor do we believe that they would accurately reflect the value of the products exchanged. In the oil industry it is not uncommon for products to be obtained from international affiliates. We cannot accept those transactions as reflecting arms-length fair market value. Estimates offered by other divisions of the company itself are also suspect. Indirect overhead costs of these conglomerates would be extremely difficult to determine. In light of these problems, absent actual sales, the Department will accept values prepared by organizations independent of the oil industry (such as Platt's or OPIS) before considering any cost figures offered by an interested taxpayer.
>
> While the Platt's or OPIS figures represent producer to distributor wholesale prices rather than producer to producer wholesale prices, we believe that they more accurately reflect the value of the products exchanged than any cost figures. It would seem that no producer would take delivery of a product that it did not produce unless it was likely to sell it readily to a distributor. That price to the distributor is the price reflected in Platt's. Unless the taxpayer can prove the differential between the producers and the distributors, the Platt's value corresponds as nearly as possible to the value of the products exchanged and is therefore, the proper measure of the tax.

In Det. No. 93-118, supra, we stated:

> The taxpayer argues that a cost method of valuation should be used to value its products in the exchange transactions as well as other instances where tax was imposed. It objects to the use of Platt's Oilgram or other reports as comparable sales for the following reasons[13]:
>
> 1. It believes that the cost basis has always been the preferred pricing mechanism by the Department of Revenue.

[12] Det. No. 91-341 involved an "undisclosed taxpayer." It our current policy not to directly issue decisions on undisclosed taxpayer petitions.

[13] Det. No. 93-118 lists 5 reasons. The fifth reason is prior audit instructions and is irrelevant to this appeal. Therefore, we omitted it.

> 2. The wholesale prices include profit margins and do not account for overhead and transportation costs.
>
> 3. The product is not sold in large quantities for Platt's purposes.
>
> 4. Platt's numbers are not available until 60-90 days until after the monthly return is due. …
>
> None of these points are supported by fact or law. First, Rule 112 expresses a preference for the comparable sales method of valuation over the cost method. Only in the absence of sales of similar products may the value be determined under the cost method.
>
> . . . .
>
> Second, the comparable sales method compares sales prices to determine the value of the products. Costs, profits, or losses are irrelevant under this method. We are only trying to determine the value of similar products. The taxpayer is in business to make a profit, and we presume that its business dealings including these exchanges are entered into for that purpose. If the locations of the comparable sales are different from the products exchanged, an adjustment will be made for transportation.
>
> Third, Platt's does include large quantity pipeline and barge sales. These are comparable in quantity to the taxpayer's exchanges.
>
> Fourth, Platt's figures for the first day of the month are available within a week. Tax returns are not due until the 25th day of the following month.

[2] The taxpayer's arguments for the use of inventory cost are fully addressed by Det. Nos. 91-341 and 93-118, supra. We find the reasoning of these determinations to be precedential and there is no reason to overrule them. Therefore, we reject the taxpayer's claim that inventory value is the proper measure of the taxes.[14]

2.2. **Lowest West Coast Price.**

[3] However, this does not completely resolve this appeal. The taxpayer argues that it should be able to use the lowest published price on the West Coast during a month to measure the taxes. However, the use of published prices is to determine comparable sales. If we were to accept the

[14] Even if we were to accept the taxpayer's contention that inventory value is the proper measure of the tax, we find the taxpayer's calculation of the inventory price to be suspect. Specifically, we note the inventory price calculation used by the taxpayer is the inter-divisional transfer price less margin. The taxpayer claims the margin is calculated by deducting from the inter-divisional price various items. These items omit taxes on the possession of the products (i.e., superfund taxes per 26 U.S.C. 4611), personnel costs, depreciation, general overhead, and other costs relating to the production of the petroleum products. These are nondeductible costs. RCW 82.04.070.

taxpayer's theory, then an exchange where the taxpayer receives products in Oregon could be valued by the price of products in Los Angeles. This would overlook the fact that comparable sales not only include volume and timing considerations, but also include location considerations. The value of a product in Los Angeles is not the same as it is in Washington or Oregon. Therefore, we reject the taxpayer's alternative of using the lowest West Coast price.

2.3 **Price at location received.**

[4] The taxpayer proposes, as an alternative, to measure the value of the products actually "proceeding or accruing" at the location where it receives product from its exchange partner. For example, if the taxpayer delivers to its exchange partner 1,000 barrels of aviation jet fuel into the pipeline in Anacortes, Washington and the exchange partner delivers to the taxpayer a like quantity in Los Angeles, California. The value that the taxpayer receives is the value of the aviation fuel in Los Angeles. Whether the value is higher or lower than the value in Anacortes is irrelevant, the aviation fuel in Los Angeles is what is actually received. For the reasons stated above in rejecting inventory costs as a measure of the tax, we will accept the published bulk value for aviation fuel in Los Angeles as the measure of the tax.[15]

If the taxpayer pays a location or grade differential to its exchange partner, then the amount "proceeding or accruing" from the sale of the aviation fuel would be the published bulk price less the location or grade differential. Likewise, if the exchange partner pays the taxpayer a location or grade differential, the measure of the tax is the published bulk price plus the location or grade differential received by the taxpayer.

To accurately reflect the amount received by the taxpayer, the value of the products received should be determined by the published price at the place of receipt on the date of receipt. However, we are aware of the administrative difficulties this methodology may cause. For example, if there is no published price for the product at the location of the taxpayer's receipt, then a substitute valuation will need to be found. We find it reasonable to assume that the value of the product delivered to the exchange partner is approximately equal to the value of the product received.[16] The value of the product delivered by the taxpayer is accurately reflected in the published Platt's and OPIS values for western Washington.

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[15] See also Det. No. 93-118, supra, where we said:

> In the alternative, if a Platt's measure is unavailable or not similar for the product the taxpayer gives up, but the product received by the taxpayer can be readily valued using Platt's or OPIS, the measure of tax used is the value proceeding and accruing to the taxpayer as the gross proceeds of the sale. For instance, if the taxpayer were to enter an arm's length exchange of partially refined crude oil in Washington for a pipeline quantity of unleaded 87 in Los Angeles, we can look to the Platt's value of the unleaded 87 it received Los Angeles to determine the value or the gross proceeds of sale for the partially refined crude in Washington.

[16] Rule 112 provides additional support for the use of in-state values. The measure of the manufacturing tax "shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of similar products . . . ." (Emphasis added.) Rule 112.

In light of these administrative difficulties, if the taxpayer and the Audit Division agree, a substitute methodology may be used. For example, the average of the high and low prices on the last day of the month; average price for the month; or other methodology could be used. However, any substitute methodology must be independently verifiable. Therefore, the use of the taxpayer's internally calculated inventory value is not acceptable.

. . .

2.5 **Superfund Taxes.**

[5] The taxpayer argued that Platt's adjusts the reported prices upward to include the Superfund taxes. The taxpayer states it "does not pass this tax on to its exchange partners. Therefore, the Platt's prices should be readjusted to remove this tax." Taxpayer's Petition, page 6. The measure of tax is value proceeding or accruing from the transaction without deduction for "delivery costs, taxes, or any other expense whatsoever." RCW 82.04.070. WAC 458-20-195 (Rule 195) addresses the question of deductibility of taxes. Rule 195 specifically addresses the Superfund tax and states it is not deductible. Rule 195(5). This is true whether the taxpayer formally passes the Superfund tax on to its exchange partner or not.

The Platt's value, after the inclusion of the Superfund tax, reflects the value of the products sold.[17] Therefore, we will not allow the taxpayer to deduct the nondeductible Superfund tax.

. . .

DECISION AND DISPOSITION:

The taxpayer's petition is denied as to the use of inventory value. The file is remanded to the Audit Division for the purpose of recalculating the refund in a manner consistent with this determination.

Dated this 30th day of June, 2000.

[17] The Superfund tax is imposed on "the operator of the United States refinery." 26 U.S.C. § 4611(d)(1). It is reasonably assumed that the price charged for products sold includes the recovery of taxes imposed on the seller. Therefore, if Platt's had to add the Superfund tax to the price, it is logical to accept this addition as a portion of the value of the products.