

Cite as Det No. 08-0214, 28 WTD 64 (2009)

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 of)	
)	No. 08-0214
)	
...)	Registration No. . . .
)	Doc. No. . . ./Audit No. . . .
)	Docket No. . . .
)	

Rule 185; RCW 82.26.020: OTHER TOBACCO PRODUCTS TAX – BLUNT WRAPS. Blunt wraps are a tobacco product defined in RCW 82.26.010 and Rule 185 and distribution of the same is thus subject to “Other Tobacco Products” tax.

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.

Moore, A.L.J., successor to A.L.J. Gray – Taxpayer protests assessment of other tobacco products (OTP) tax on products known as blunt wraps We hold that blunt wraps are a tobacco product and subject to OTP tax. We affirm the assessment. Petition denied.¹

ISSUES

1. Are products known as blunt wraps subject to the OTP tax under RCW 82.26.020?

...

FINDINGS OF FACT

Taxpayer is a wholesale distributor of various tobacco products and tobacco accessories to convenience stores . . . in the State of Washington. The Audit Division (Audit) of the Washington State Department of Revenue (DOR) examined the books and records of [Taxpayer] for the period of January 1, 2003, through December 31, 2006. As a result of the audit, the Department assessed OTP tax for the years 2003 and 2004 on a specific product identified as

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

blunt wraps. Audit also reclassified certain sales as retail, which the taxpayer reported as wholesale. The assessment was issued on July 6, 2007.

Taxpayer appeals the audit assessment. At hearing, Taxpayer indicated that the appeal is limited to the audit conclusions as they relate to the application of OTP tax on blunt wraps. . . .

. . . The basis of Taxpayer's argument is that [the] brand of blunt wraps purchased and resold by taxpayer are "tobacco papers," and fall outside of the statutory and regulatory definition of other tobacco products. Through their representative, Taxpayer asserts that [the blunt wraps] contain less than 50% tobacco and are imported as a "paper product" under US Customs tariff code 4813.90.

A review of the blunt wraps website . . . refers to the product at issue as [a tobacco wrap] . . . The product is used by smokers to roll their own "blunt" cigar. The blunt cigars, or "blunts," hold smoking material such as tobacco, but are also commonly used to hold marijuana.² [The blunt wrap vendor's website states that tobacco licenses are needed in some states and countries to distribute these products. It describes one variety as having a natural tobacco taste, and states that the blunt wraps are sealed in pouches and are guaranteed fresh. Several sample blunt wraps provided by taxpayer contain a warning about tobacco smoking being hazardous to health.]

An inspection of the product in [one package] reveals a plastic tube . . . Wrapped around the tube is a brown wrapper-like product that appears by sight and smell to be tobacco. . . . Further, . . . patent [numbers connected to these products] were filed for an item described as "a tobacco product." [Other advertising describes one of their blunt wraps as long-burning tobacco leaf].

Taxpayer did not provide any independent evidence of the composition of [the] blunts or to support the assertion regarding the tariff code and its applicability to the facts of this case.

Audit Assessment

Audit looked at Taxpayer's purchase invoices from all purchases made from [the out-of-state blunt wrap vendor] in calendar years 2003 and 2004. Audit cross referenced the invoices with taxpayer's general ledger and credit card receipts, and arrived at the total purchases [Taxpayer]. made from [the blunt wrap vendor] during the period at issue. . . . Audit determined that [the blunt wrap vendor] had not paid OTP tax on the products purchased by Taxpayer. The purchase amounts, and the absence of OTP tax on the purchases, are not disputed by Taxpayer. . . .

ANALYSIS

² "The popularity of blunts has been attributed to several factors, including the ease of using cigar wrappers to roll up marijuana, the greater size of the resultant blunt compared to joints (marijuana cigarettes rolled in cigarette papers) which allows them to be smoked over several sessions, and the fact that **cigar wrappers are made of tobacco, a natural product.**" [Emphasis added]. Stephen Soldz, Dana Joy Huyser & Elizabeth Dorsey, *The cigar as a drug delivery device: youth use of blunts*, *Addiction*, Volume 98, Issue 10, 1379-1386 (October, 2003).

The OTP tax is imposed upon the “sale, use, consumption, handling, or distribution of all tobacco products in this state.” RCW 82.26.020(1). The legislature declared their intention at RCW 82.26.030 which provides as follows:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. . . .

We must first determine whether the product at issue, blunt wraps, and the specific . . . brand [purchased by Taxpayer], are a tobacco product and thus taxable under RCW 82.26.020. The definition of “tobacco products” is found at RCW 82.26.010(1) which provides as follows:

1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and **other kinds and forms of tobacco**, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010. [Emphasis added].

Additionally, references to commercial terms should be given the meaning commonly used in the regulated industry, absent clear legislative intent to the contrary. *Restaurant Development, Inc. v. Cananwill, Inc.* 150 Wn.2d 674, 685, 80 P.3d 598 (2003).

The blunt wraps are composed of tobacco leaf and other materials and are a form of tobacco. [The blunt wrap vendor], and the patent applicant repeatedly refer to the blunt wraps as tobacco products. Thus, based on the physical evidence provided by the taxpayer in the form of exhibits; the patent information for the product; and the unambiguous references, indicative of the terms commonly used in the industry, located on the manufacturer’s website: we conclude that blunt wraps [purchased by Taxpayer] are a tobacco product under RCW 82.26.010(1).³

A distributor handling untaxed OTP in Washington must pay the tax. RCW 82.26.020(2)(d). A “distributor” is defined in RCW 82.26.010(3)(d) as “any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.” The term “person” is defined in RCW 82.26.010(12) and Rule 185(2)(1). It means any individual and virtually any entity, but excludes any person immune from state taxation, including any federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country. . . . The term “business” is

³ Taxpayer’s arguments that the product is neither chewed nor smoked, and that the rules of statutory construction preclude including this product in the definition of OTP have been duly considered and found to be without merit.

defined in RCW 82.26.010(6)⁴ and WAC 458-20-185 (Rule 185) as “any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.”

In order to determine whether [Taxpayer] is a distributor handling untaxed OTP in Washington, one looks to the statutory definition set forth above. It is undisputed that [Taxpayer] is an entity engaged in the business of selling tobacco products within this state. Neither [Taxpayer] nor . . . the out-of-state vendor listed in the assessment, paid tax on the OTP. In the case at hand, the taxpayer was engaged in the business of selling OTP upon which tax had not been paid. Accordingly, the taxpayer was liable for the OTP tax as a distributor. . . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 12th day of August 2008.

⁴ Prior to July 1, 2005, the statutory definition of the term “business” was identical, but was codified at RCW 82.26.010(8).