

Cite as 11 WTD 143 (1991).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment )	
of )	No. 91-105
)	
. . . )	Registration No. . . .
)	Balance Dues . . .
)	
)	

[1] RULE 252: HAZARDOUS SUBSTANCE TAX -- CREDIT FOR CALIFORNIA ECONOMIC POISON ASSESSMENT. The California Economic Poison Assessment cannot be credited against hazardous substances because it is not a tax substantially similar to Washington's Hazardous Substance Tax.

[2] RULE 252: HAZARDOUS SUBSTANCE TAX -- CREDIT -- TIMING. In order to claim a credit for hazardous substance taxes paid to other states, the taxes must be paid before the substances are possessed in Washington.

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: March 25, 1991

NATURE OF ACTION:

The taxpayer petitions for the correction of assessment of Hazardous Substance Tax. Specifically, the taxpayer requests credit for the Economic Poisons Assessment paid to the State of California. The credits were claimed on the taxpayer's returns and not allowed by Taxpayer Accounts Administration.

Notices of Balance Due (FORM REV 42 2439A) were sent to the taxpayer, and the taxpayer appeals.

#### FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer manufactures pesticides in the State of Washington. The parties agree that the pesticides are hazardous substances, subject to the Hazardous Substance Tax in Washington. Some of the pesticides are sold in California. The taxpayer paid the California Economic Poison Assessment to the State of California, and claimed a credit for Hazardous Substance Taxes against its Washington Hazardous Substance Tax liability.

Taxpayer Accounts Administration did not allow the credit indicating that the California tax was not similar to the Washington Hazardous Substance Tax because it was "on the sales or use of such substances in California, while Washington's tax is on the possession of such substance within Washington." The taxpayer contends that the taxes are similar and that it should be entitled to the credit.

#### DISCUSSION:

RCW 82.21.030 imposes a tax on the privilege of possessing hazardous substances in this state. The intent is to impose the tax only once for each hazardous substance possessed in the state.<sup>1</sup> It is imposed on possession. No transaction is required. However, if a prior owner paid the tax on the substance in question, an exemption is granted regarding successive possessions.<sup>2</sup>

RCW 82.21.050(2) allows a credit against the Hazardous Substance Tax for any Hazardous Substance Tax paid to another state with respect to the same hazardous substance not exceeding the tax liability arising with respect to that hazardous substance. That section includes the following requirements regarding the tax for which the credit is claimed be one:

[a](i) Which is imposed on the act or privilege of possessing hazardous substances, and which is not

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<sup>1</sup> RCW 82.21.020.

<sup>2</sup> RCW 82.21.040(1).

generally imposed on other activities or privileges;  
and

(ii) Which is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

These requirements are restated and expanded upon in WAC 458-20-252 (Rule 252) which provides in part (5)(c):

A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction. (emphasis added)

[1] The California "tax" in question is not specifically referred to as a tax, but an "assessment" in Section 12841 of the Food and Agricultural Code of California which provides in Part:

Each registrant shall pay to the director an assessment not to exceed nine mills (\$.009) per dollar of sales of his or her registered and labeled economic poisons for use in this state [California]. From July 1, 1990 to June 30, 1992, inclusive, each registrant shall pay an additional assessment of nine mills (\$.009) per dollar of sales of his or her registered and labeled economic poisons for use in this state. A registrant is not required to pay

an assessment on his or her products registered and labeled only for use in further manufacturing or formulating of economic poisons. The director may reduce the assessment if he or she determines that a lesser assessment rate, together with other available funds, will provide adequate revenue to administer and enforce Division 6 (commencing with section 11401), this chapter, Chapter 3 (commencing with section 14001), and Chapter 3.5 (commencing with section 14101). Revenue received pursuant to this subdivision shall be credited to the fiscal year in which the sales occur on which the assessment is based.

While the statute does not specify the incidence of the assessment, it would appear to be on sales of poisons. A person who brings the substance into California or produces it, does not appear to be subject to the tax unless it is sold. The California regulators who administer the tax indicate that it is imposed only once for each product on those registrants who sell the poisons for use in California. Therefore, a poison which is resold by a wholesaler is not taxed again since the tax was paid by the registrant. If a product is manufactured in California, the tax is not necessarily paid then either. It is only paid if the substance is to be used in California. Under the California scheme, therefore, the assessment is only incurred once and only substance used in California.

The taxpayer points out that the definition of "possession" includes control of a hazardous substance which means the power to sell or use it.<sup>3</sup> Under the Washington Hazardous Substance Tax, a taxpayer is not required to exercise the power to sell to have the tax imposed, while a sale appears essential to the incidence of the California Economic Poison Assessment. The first requirement of the credit statute<sup>4</sup> is that the tax be imposed on possession, and not some other act or privilege. The California tax is not on possession, but sale for use in California.

We also note that there is no discretion by a Director to lower the Washington Hazardous Substance Tax as is provided

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<sup>3</sup> RCW 82.21.020(3).

<sup>4</sup> RCW 82.21.050(2)(a)(i).

regarding the California assessment. There is no credit mechanism for taxes paid by prior owners in the California scheme for taxes paid to other states. We find that the California Economic Poison Assessment is not similar for the purpose of the Hazardous Substance Tax Credit. Therefore, taxpayers may not credit California Economic Poisons assessments against the Hazardous Substance Tax.

[2] Even if those California assessments did qualify as a similar tax, we do not believe the taxpayer is entitled to the credit in this case since the assessment was not paid to California before the tax was incurred in Washington.<sup>5</sup> The taxpayer contends that this requirement was beyond the authority of The Department of Revenue to impose by rule. We disagree. The legislature explicitly granted such authority to the department.<sup>6</sup>

The taxpayer also argues that the credit statute use of the word "paid" in the past tense similar to that in RCW 82.04.440 regarding any gross receipts taxes paid to another state. While the tense used in the statute does not necessarily control, the Department's interpretation in Rule 252 is reasonable. For the credit to apply, the substance must be possessed in another jurisdiction, and the tax paid there, before the tax is incurred in Washington.

The pesticide was manufactured in Washington by the taxpayer. Therefore, the taxpayer possessed it here, before it was sold for use in California incurring the California tax to be paid later by the taxpayer.

#### DECISION AND DISPOSITION:

The taxpayer's petition is denied. The taxpayer is not entitled to credit for the Economic Poison assessment paid to the State of California.

DATED this 29th day of April 1991

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<sup>5</sup> See WAC 458-20-252(5)(c)(ii), supra.

<sup>6</sup> RCW 82.21.050(1) provides that the credit shall be allowed, " . . . in accordance with the rules of the department . . . ."