

Cite as Det. No. 92-035, 12 WTD 85 (1993).

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. 92-035
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

[1] RULE 250: REFUSE COLLECTION TAX -- SLUDGE -- RECYCLING OF. Sludge is the material left over following the wastewater/sewage treatment process. Its utilization as a fertilizer is considered recycling rather than disposal. Sludge collected for recycling is not subject to the refuse collection tax. PARTIAL ACCORD: Det. No. 89-435, 8 WTD 167 (1989).

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: . . .

[CITY] REPRESENTED BY: . . . <sup>1</sup>

DATE OF HEARING: . . .

NATURE OF ACTION:

Protest of the refuse collection tax on sludge used for soil improvement purposes.

FACTS AND ISSUES:

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<sup>1</sup>The . . . ([City]) participated in this case with the explicit permission of the taxpayer. [City]'s interests coincided with those of the taxpayer in that it was one of the taxpayer's major customers and, as such, had potential liability for the refuse collection tax as a user of the taxpayer's alleged refuse collection services. See WAC 458-20-250 (Rule 250).

Dressel, A.L.J. -- . . . (taxpayer) "manages" organic waste. Its books and records were examined by the Department of Revenue (Department) for the period [February 1985] through [December 1987]. As a result a tax assessment, identified by the above-captioned numbers, was issued for \$ . . . . In this action the taxpayer appeals the major component of the assessment, the refuse collection tax.

In its petition for correction of assessment, the taxpayer writes, in part:

[Taxpayer] applies sludge to lands as a fertilizer and soil amendment on many different sites including sod farms, pasture and hay lands, reclaimed mine lands, and Christmas tree plantations. The material is applied to the land at rates tailored to the nitrogen requirements of the crop or the soil. None of the sludge that we manage is taken to landfills for disposal.

As a matter of fact, at the hearing of this matter, the taxpayer stated that all of the sludge it handles is applied to various land tracts as a fertilizer or soil nutrient.

"Sludge" is defined by the taxpayer as "municipal and industrial organic waste". Literature provided by [City] answers the question, "What is sludge?", with the following. "Sludge is a combination of water, sand and other materials left over from [City]'s wastewater treatment process. Treated sludge contains many nutrients such as nitrogen that can be used as a fertilizer." The American Heritage Dictionary, Second College Edition, defines "sludge"<sup>2</sup> as "Slushy matter or sediment such as that precipitated by the treatment of sewage or collected in a boiler". It is our understanding that the sludge with which we are dealing here is that which emerges from the sewage treatment process of [City] and other municipalities.

The taxpayer argues that sludge is a useful substance and, thus, ought not be categorized as "refuse" and subjected to the refuse collection tax. Along with [City], it presented substantial literature and even a video tape illustrating the various beneficial uses of sludge. Following are a few examples.

Sludge applied to trees in a forest causes the trees to grow twice as fast as they would normally. Sludge enhances the growth of grass. Sludge may be combined with sawdust to make a fertilizer which is effective in growing grass, flowers and trees

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<sup>2</sup>It also has two other definitions, not pertinent here.

for yards, parks and office buildings. Sludge may be applied to a variety of crops such as grains, animal feeds, and sod, among others. Sludge can aid in the reclamation efforts of surface mine spoils, mine tailings, borrow pits, quarries, cleared forests, dredge spoils, fly ash, completed landfills, and construction sites. Sludge application can correct a number of damaging environmental effects, including uncontrolled water runoff, erosion, low nutrient levels, and acid runoff in mine areas.

The sludge processed at [City]'s treatment plant<sup>3</sup> is digested to kill disease-causing viruses called pathogens. The sludge is placed in three heated tanks, called digesters, for about 20 days. [City] then uses a machine called a centrifuge to remove some of the water from the sludge, so it is easier to transport to recycling sites. Certain sludge from other sources does contain some pathogens as do more conventional fertilizers. With safe and appropriate management, however, sludge products have been used with proven success and cause little, if any, environmental degradation. Further, the application of sludge to land requires a permit from a regulatory environmental agency which is not likely to give one if appreciable environmental damage is likely to occur.

In terms of legal argument, the taxpayer states that the refuse collection tax is to be collected for the transfer, storage, or disposal of waste materials. The taxpayer's activity, however, does not involve waste materials because the material, sludge, is salvaged or recycled. If it is salvaged or recycled, it is not "disposed" either. Further, the taxpayer does not transfer or store the material. The taxpayer also suggests that the refuse collection tax was imposed because of growing burdens on landfills because of increasingly stringent state disposal regulations such as those found in Chapter 70.95 RCW. None of the taxpayer's sludge is dumped into landfills, so it should not be subject to the tax.

[City] stated that it generates over 100,000 tons of sludge annually at its various treatment plants around . . . . Prior to 1972, [City] disposed of the sludge by dumping it . . . . At that time [City] recognized that sludge was a recyclable resource and began a "Sludge Management Program". In terms of the utility of sludge, [City] states that sludge is a more valuable additive to soil than chemical fertilizers. It adds 16 essential nutrients to soil, while fertilizers add only four. Further, [City]'s efforts to recycle sludge, instead of discharging it . . . , have been nationally recognized.

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<sup>3</sup>Presumably, treatment at the sewage plants of other municipalities is similar to that of the [City's] plant.

In addition to the taxpayer and [City], the Washington State Department of Ecology has submitted its viewpoint in this matter. Its letter of September 28, 1988 reads in part:

Ecology has a policy of encouraging beneficial sludge recycling and utilization rather than disposal of sludge in a landfill. To be consistent with Ecology's regulations, guidelines, and policies, public and private entities which utilize sludge (e.g., application to forests, soil reclamation, composting, application to pasture, soil cover for landfills) should not be subject to the refuse collection tax. They are using sludge in a way which provides an economic benefit (increased tree or crop growth). Entities which dispose of their sludge into a landfill should be subject to tax. In this latter case, the sludge has no economic benefit and in fact adds to the cost of landfill operation.

The position of the Department's auditor in this case is that "the waste water sludge is discarded as worthless" and, since the taxpayer is paid to dispose of the sludge, the taxpayer should be taxed as a refuse collection business.

The issue is whether one who receives sludge and distributes it over land as a soil amendment is disposing of refuse and responsible for collecting the refuse collection tax.

#### DISCUSSION:

"There is imposed on each person using the services of a refuse collection business a refuse collection tax equal to three and six-tenths percent of the consideration charged for the services." RCW 82.18.020.<sup>4</sup> "Refuse collection business" and "waste", during the audit period, were defined in RCW 82.18.010<sup>5</sup> as follows:

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<sup>4</sup>This is how RCW 82.18.010 read during the audit period. Further, this statute and, indeed, the refuse collection tax itself was not enacted until 1986 so was not applicable to the entire audit period. All taxes appealed were assessed for the latter part of the audit period, after the effective date of the enacting legislation. Chapter 82.18 RCW was amended in 1989 to, among other changes, replace the phrase "refuse collection business" in RCW 82.18.010 (1) with "solid waste collection business".

<sup>5</sup>See also Rule 250.

- (1) "Refuse collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

. . .

- (3) "Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(Emphasis supplied.)

[1] Sludge in this case is collected primarily for recycling or salvage. If it was "discarded as worthless", it would be dumped at a landfill<sup>6</sup> or [elsewhere], as it was formerly. As stated previously all of the taxpayer's sludge is distributed over land as a soil amendment or fertilizer. Moreover, we are convinced, based on the considerable information contributed by the taxpayer and other participants in this matter, that sludge has significant utility as a soil fertilizer. This information unequivocally suggests that trees, grass, or most any kind of plant life will flourish on a diet of this nutrient-packed substance. Additionally, sludge is valuable in reducing the effects of erosion.

Consequently, we conclude that sludge is "economically viable for further use". Therefore, under ¶ (3), id., it is not "waste". It is also not waste because it is recycled in that it is put to a beneficial use.<sup>7</sup> Because the taxpayer is not collecting waste and because it is "recycling" the disputed material, it is not a

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<sup>6</sup>Sludge used for landfill reclamation, however, is not considered disposed. RCW 70.95.255.

<sup>7</sup>Yard waste put to further use and not delivered to a landfill or other disposal site was collected primarily for recycling. Determination 89-435, 8 WTD 167, 169 (1988).

refuse collection business<sup>8</sup> so is not responsible for collecting the refuse collection tax.<sup>9</sup>

Such conclusion is not only dictated from an analysis of the refuse collection statutes, but also is in harmony with the statutes and regulations administered by the Department of Ecology. As pointed out by [City]'s counsel, if possible, statutes pertaining to the same subject matter must be harmonized. PUD of Lewis County v. WPPSS, 104 Wn.2d 353, 369, 705 P.2d 1195 (1985). Imposing the refuse collection tax on this taxpayer and its customers when they are attempting to recycle a material which would otherwise add to the ever-expanding volume of our landfills would be contrary to the state's declared intention as expressed in RCW 70.95.010 and elsewhere in Chapter 70.95 RCW, which is wholly devoted to solid waste management, recovery, and recycling.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The Audit Division will issue an amended assessment in which the refuse collection tax will be deleted along with any interest attributable to it.

DATED this 20th day of February 1992.

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<sup>8</sup>See id ¶ (1).

<sup>9</sup>Any refuse collection business which fails to collect the refuse collection tax from customers who owe it is, itself, personally liable to the state for the amount of the tax. RCW 82.18.030.