

Cite as Det. No. 92-209, 12 WTD 399 (1992).

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. 92-209
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. . .	)	Registration No. . . .
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[1] RCW 82.04.190(1)(c) and WAC 458-20-113 -- INGREDIENT EXEMPTION. A biocide qualifies as an ingredient that is exempt from use tax when it is introduced into the paper manufacturing process to inhibit the growth of spores in the finished product.

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.

DATE OF TELEPHONE CONFERENCE: . . .

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

A corporate taxpayer protests the assessment of use tax on biocides used in the manufacturing of paper.

FACTS AND ISSUES:

Gray, A.L.J. -- The taxpayer is a corporation that manufactures paper. The paper is produced in large rolls or bales that is sold to others who manufacture paper products, typically food containers. The material used to manufacture the paper comes from two sources: (1) timber, and (2) recycled paper. One of the consequences of using recycled paper as a source is that spores are more likely to grow in the paper than from using timber. Spore growth may affect production of the paper, in the

form of "blowouts," which result in expensive downtime on the production line, but more importantly, spore growth will affect the quality of the product, particularly if the product is food containers.

In order to control spore growth, the taxpayer introduces biocides into the manufacturing process. A biocide, according to Webster's New Universal Unabridged Dictionary, is "a poisonous chemical substance that can kill living organisms." The taxpayer explained that the reason biocides are used in the manufacturing process is to inhibit the growth of bacterial spores and to kill later growth. Spore growth in food containers would affect the quality of the food. The taxpayer said that Food and Drug Administration regulations require the use of biocides. Spore growth also diminishes the visual appearance of the paper product.

The taxpayer also said that the use of biocides reduces "blowouts." The paper is manufactured in a process that appears visually to be similar to that of a newspaper printing press; i.e., sheets of raw paper moving quickly between large rollers. If the paper is not in a "consistent state," it ruptures in a "blowout." The remedy is to shut down the production line, and requires employee time to remove the contaminated paper, which must be reprocessed, and to rethread the uncontaminated paper through the various rollers and drums in order to restart the production line.<sup>1</sup> Downtime is very expensive, and even with the use of biocides, a blowout occurs on the average of 2 or 3 times per week.

The taxpayer intentionally introduces the biocides into the manufacturing process to inhibit spore growth during both the manufacturing process and to inhibit later spore growth in the final paper product. The biocides have a lifetime of at least six months after they are introduced into the paper.

The Department audited the taxpayer for the periods January 1, 1987 through May 31, 1987, and June 1, 1987 through September 30, 1990. The only issue appealed by the taxpayer is the assessment of use tax on the biocides used in the manufacturing process. The taxpayer argues that the biocides should be exempt under RCW 82.04.190(1)(c) and WAC 458-20-113, and under the authority of Van Dyk v. Department of Rev., 41 Wn. App. 71, 702 P.2d 472 (1985). The issue, then, is whether the taxpayer is liable for

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<sup>1</sup>The taxpayer also explained that most paper mills operated continuously for economic reasons. It is cheaper to operate continuously than to have to reheat water to the desired temperature, and to have to warm up the manufacturing equipment.

use tax on the value of the biocides used in the manufacture of paper.

#### DISCUSSION:

RCW 82.04.190(1)(c) says, in pertinent part:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose . . . (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or . . . .

Van Dyk v. Department of Rev., 41 Wn. App. 71, 702 P.2d 472 (1985) construed RCW 82.04.190(1)(c) to create two exemptions, one for ingredients and one for chemicals used in processing. Van Dyk, 41 Wn. App. at 73. In Van Dyk, the Court said that primary purpose test applied only to the processing exemption, not to the ingredient exemption. Van Dyk, 41 Wn. App. at 76. "The important fact for application of the ingredient exemption is that a necessary ingredient is supplied, not that the quantity is small." Van Dyk, 41 Wn. App. at 77.

The biocides remain in the paper to a sufficient extent that spore growth is retarded or outright prevented for a period of time after the paper is manufactured. The biocides serve a crucial purpose in paper products used for food purposes, since clean food containers are essential for health purposes and for aesthetic purposes. We conclude that the use tax assessment on the biocides in this particular instance should be cancelled.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 31st day of July, 1992.