

Cite as 5 WTD 141 (1988)

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>
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For Prior Ruling of Tax Liability of)	No. 88-145
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. . .)	Registration No. . . .
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[1] **RULE 252 AND RCW 82.22.020:** HAZARDOUS SUBSTANCE TAX
-- CARBON DIOXIDE-- GASES USED AS FUEL -- EJUSDEM
GENERIS RULE. Under the ejusdem generis rule, the
only liquefied or liquefiable gases produced from
refining crude oil which are taxable hazardous
substances are those which are used or usable as
fuel. CO2
is not a taxable hazardous substance under chapter 82.22
RCW or Rule 252.

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.

This represents the Department's formal ruling, pursuant to
WAC 458-20-100(18) concerning the prospective taxability of
possessions of carbon dioxide (CO2
) in this state under the provisions of Chapter 82.22 RCW,
Hazardous Substance tax.

FACTS:

Faker, Sr. A.L.J. -- The issue before us derives from the
factual finding that CO2

is produced from the refining of crude oil and has a
wholesale market value, as evidenced by its sale to persons
for use in manufacturing carbonated beverages. These factual
representations which we have now independently verified, were

contained in your letter of February 22, 1988 which requested this ruling.

The facts are succinctly stated in your request letter as follows:

Carbon dioxide is a by-product of the crude oil refining process at our . . . refinery in Washington. Carbon dioxide is sold to a customer who uses it in the manufacture of carbonated beverages. Carbon dioxide is not a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a designated substance under WAC 173-340, or a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

ISSUE:

Is CO₂

a taxable hazardous substance under the Washington State hazardous substance tax law because it is a petroleum product?

PETITIONER'S POSITION:

Your ruling request letter contains the following explanations and arguments:

Under the provisions of New Section WAC 458-20-252 Hazardous Substance Tax, (the "Rules") carbon dioxide will be a hazardous substance if it is a petroleum product, a hazardous substance under CERCLA or FIFRA or any substance so designated under WAC 173-340. Since carbon dioxide is not a listed hazardous substance under CERCLA, FIFRA or WAC 173-340, it can only be a hazardous substance if it is a petroleum product.

The Rules at part (2)(d) define petroleum product to mean several listed substances not relevant here and "every other product derived from the refining of crude oil". "Derived from the refining of crude oil" is further defined at part (d)(i) to mean produced because of and during petroleum processing. However, the phrase, "derived from the refining of crude oil", is limited at part (d)(i) to exclude certain refined oil derivatives if they are further

manufactured to produce substances that are not considered hazardous by the Director of Ecology.

Furthermore, under the enabling legislation, it is clear in Section 1 that the intent of the act is to clean the environment by placing a burden on the possession of hazardous substances.

. . .

The common denominator that permeates the legislation and the Rules is the necessity to keep the Washington environment clean and if one possesses a hazardous substance in the state then one must pay for that privilege.

Carbon dioxide is not a hazardous substance and thus, its possession should not be subject to the tax. The fact that it is a by-product derived from the refining of crude oil should not change the conclusion. This is so since a product derived from the refining of crude oil must be produced, i.e. manufactured, and not simply be a waste or by-product of that process. The Rules further state that petroleum processing is an activity that produces a fuel from a by-product. This is the only reference in the petroleum product provisions of the Rules to by-products and it suggests that by-products made into fuels are subject to tax and by-products not converted to fuels are free of the tax. Support for this is also provided in the Rules with regard to refined oil derivatives that are further processed. If carbon dioxide were a refined oil derivative, it would not be taxed since it would not be a hazardous substance.

DISCUSSION:

[1] The definition of "petroleum products" in WAC 458-20-252 (Rule 252), in pertinent part relating to liquefied and liquefiable gases, is taken verbatim from RCW 82.22.020(2). That definition expressly includes, ". . . liquefied or liquefiable gases, such as butane, ethane, and propane, and every other product derived from refining crude oil," The statutory definition is not ambiguous. It clearly includes as "petroleum products," and therefor as "hazardous substances," only liquefied or liquefiable gases like butane,

ethane, and propane. These named gases are all used or usable as fuel.

Though CO₂

is a liquefiable gas which is sometimes produced by refining crude oil, it is not a fuel gas such as butane, ethane, or propane. Applying the ejusdem generis doctrine of statutory construction, the generic terms "liquefied or liquefiable gases" must be read in conjunction with "butane, ethane, and propane." The generic terms extend only to gases that are comparable to the gases used as fuel but are technically not one of the specific gases named. CO₂

is not a liquefiable gas such as or similar to the fuel gases. See John H. Sellen Construction v. Revenue, 87 Wn.2d 878 (1976).

Moreover, CO₂

is commonly produced by chemical and other methods of processing which are completely unrelated to the refining of crude oil. Obviously, it would be literally impossible for an importer of CO₂

or some other possessor of CO₂

down the chain of distribution to determine whether it was originally produced through oil refining processes or some other, unrelated process. Thus, application of the hazardous substance tax in this context would be impracticable.

This ruling is not intended and may not be taken to mean that the only petroleum products which are taxable hazardous substances are those which are fuels. Rather, it is limited to the finding and conclusion that CO₂

, produced by petroleum processing or any other method, is not a taxable hazardous substance unless and until it may be expressly so designated by a duly adopted rule of the Department of Ecology. We emphasize this caution because our ruling here is not predicated upon the arguments or reasoning set forth in your petition. We do not agree that Rule 252(2)(d)(i) suggests that by-products of oil refining which are not converted to fuels are free of the tax, as your petition states. Clearly, for example, asphalt base is an oil refining product or by-product which is further manufactured into asphalt paving which is not a fuel. Nonetheless, asphalt base is a taxable hazardous substance.

DECISION AND DISPOSITION:

Carbon dioxide produced from the refining of crude oil or any other means is not a taxable hazardous substance under RCW 82.22.020 or WAC 458-20-252.

DATED this 9th day of March 1988.