

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

In The Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment)
of) No. 89-116
)
 . . .) Registration No. . . .
) . . . /Audit No. . . .
)

RULE 243: LITTER TAX--FOOD FOR HUMAN CONSUMPTION--
FORM--INGREDIENTS. There is no requirement that
food be in ready-to-eat or retail-packaged form to
be subject to the litter tax. The tax is imposed on
all "food for human consumption."

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.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer describes itself as a
"distributor of ingredients to food processors." Taxpayer
sends its product, . . . , into Washington in rail tank cars,
stores it in liquid storage tanks, and delivers it to food
processors in liquid tank trucks. Taxpayer argues that no
containers are used, that it does not sell to the general
public, and that its product is not "food for human or pet
consumption."

DISCUSSION:

The litter tax is imposed by RCW 70.93.120 on the value of
products manufactured and/or sold within Washington. The
products upon which the tax is levied, as well as the
reasoning for the tax on such products, are listed in RCW
70.93.130, as follows:

Because it is the express purpose of this chapter to
accomplish effective litter control with the state
of Washington and because it is a further purpose of

this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, in arriving at the amount upon which the assessment is to be calculated only the value of products or the gross proceeds of sales of products falling into the following categories shall be included:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products.

WAC 458-20-243 (Rule 243), the Department of Revenue's duly authorized administrative rule implementing the tax, defines "food for human or pet consumption" in relevant part, as follows:

. . . any substance, except drugs, the chief general use of which is for human or pet nourishment, including candy, chewing gum, and condiments. . . .

Taxpayer argues that its product is not a food for human or pet consumption. The fact that the product is not sold by taxpayer in a "ready-to-eat" form is not controlling, since there is no statutory requirement that food be in a consumable form to be subject to the tax. There is also no requirement that the food be retail packaged. The fact that the litter tax is imposed on manufacturers and wholesalers, as well as retailers, disposes of such an argument. Many food products are not in their final consumable form at the manufacturing or wholesaling level. A distinction between the ready-to-eat and raw food product has been rejected by the Department of Revenue throughout the years of administration of this tax. For example, the Department has previously determined that the

DETERMINATION (Cont)
No. 89-116

3

Registration No. . . .

tax applies to malt used in producing beer, hops, and industrial chocolate.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 3rd day of March 1989.