

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 Refund of)	
)	No. 89-120
)	
. . .)	Registration No. . . .
)	. . . /Audit No. . . .
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RULE 243: LITTER TAX -- CLEANING AGENTS/SOLVENTS.
Any cleaning agent that is used to clean persons, places, buildings, animals, or other things is subject to the litter tax.

RULE 243 AND MISCELLANEOUS: RCW 82.32.070 -- LITTER TAX -- RECORDS -- CLEANING AGENTS/SOLVENTS -- INGREDIENTS. The litter tax is imposed on all cleaning agents. Once it has been determined that an item sold is a cleaning agent, the burden is on the taxpayer to provide the records to show that an incorrect determination has been made.

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 is a large corporation making retail and wholesale sales of various chemicals. Some of the chemicals are cleaning agents and/or solvents. Taxpayer's records were audited for the period January 1, 1984 through September 30, 1987. It objects to that part of the assessment asserting litter tax on retail sales of cleaning agents and solvents. The auditor stated that the retail sales were used as the measure of the tax for the audit as it seemed to be "the only available measure which most reasonably describes

your sales of `cleaning agents'." In making post-audit adjustments, the audit supervisor stated that

[the auditor] did not feel that your proposed use of D.O.T. classification names to identify your "cleaning product" sales was a reasonably accurate accounting of your total sales of product actually "used for cleaning buildings, places, persons, animals, or other things" as described in Washington Administrative Code (WAC) 458-20-243 (Rule 243). It is presumed that your retail solvent sales are used as cleaning agents and don't become an ingredient of your customer's paint, adhesive, or printing ink products.

The taxpayer's petition stated that

. . . we still take exception to the assessment by your Field Auditor of all of our sales of material subject to sales tax. We do sell some items which could be classified as cleaning agents. These items are readily identifiable as being shipped under a classification of cleaning compound liquid. This was pointed out to the Field Auditor, however, he felt his interpretation of the law would be all chemicals which we sold subject to sales tax. Many of the chemicals which we sell which are subject to sales tax are used internally by our customers as mold release agents, epoxies, etc. And as such are consumed by the customer and subject to tax. (sic) However, they certainly do not fall under the classification of a cleaning agent.

DISCUSSION:

Litter is defined by RCW 70.93.030(4):

(4) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;

The litter tax is imposed by RCW 70.93.120 on the value of products manufactured and/or sold at wholesale or retail 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.

Rule 243, the Department of Revenue's duly adopted administrative rule implementing the tax, defines "cleaning agents" as "all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things." The tax is limited to sales within Washington, but is measured by the gross proceeds of sales of items subject to the tax. The tax is specifically imposed on both retail and wholesale sales of items specified. Apparently, taxpayer's cleaning agents are sold in the form of solvents, which can be mixed with other compounds for uses other than cleaning. Taxpayer's solvents fit the definition of "cleaning agents" supplied in the rule. Thus, all taxpayer's sales of solvents used for cleaning are properly subject to the litter tax.

RCW 82.32.070 requires taxpayers to

keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable. . . Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

The taxpayer objects to the assessment of litter tax on all retail sales of solvents. The auditor made the assessment of those sales after determining that most of the wholesale sales were made to persons who used the solvents as ingredients in other compounds. Lacking the records to make a more accurate decision on which retail sales should be subject to the tax, the auditor assessed tax on all of them. If the taxpayer believes that such assessment is incorrect, it is up to it to provide records showing which sales became ingredients of other items, and are therefore not subject to the tax. The tax is properly assessed on all sales of cleaning agents or solvents used to clean buildings, persons, animals, places, or other things within Washington.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 8th Day of March, 1989.