

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. 89-87
	)	
	)	Registration No. . . .
. . .	)	NOTICE OF BALANCE DUE -
	)	. . .
	)	

[1] **RULE 243:** RCW 70.93.130 -- LITTER TAX -- PERIODICALS -- BOOKS. The legislature, in enacting the Model Litter Control Act, specifically considered the question of the application of the litter tax to reading materials. Such tax is imposed on "newspapers and magazines", which are periodical publications. A book is not a periodical, and therefore not subject to the tax.

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. -- The taxpayer prints and sells a 359 page bound book. A Notice of Balance Due was sent to the taxpayer for the "failure to pay litter tax." The taxpayer appeals.

DISCUSSION:

Under the legislative findings and declaration of purpose of the Model Litter Control and Recycling Act, under which the litter tax is imposed, the following statements are made:

**70.93./010 Legislative findings.** Recognizing the rapid population growth of the state of Washington

and the ever increasing mobility of its people, as well as the fundamental need for a healthful, clean and beautiful environment; and further recognizing that the proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard; and further recognizing the need to conserve energy and natural resources; and further recognizing that there is an imperative need to anticipate, plan for, and accomplish effective litter control and recover and recycle waste materials related to litter with the subsequent conservation of resources and energy, there is hereby enacted this "Model Litter Control and Recycling Act".

**70.93.020 Declaration of purpose.** The purpose of this chapter is to accomplish litter control and stimulate private recycling programs throughout this state by delegating to the department of ecology the authority to: (1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible; (2) recover and recycle waste materials related to litter and littering; (3) foster private recycling; and (4) increase public awareness of the need for recycling and litter control. . . .

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 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.

[1] The tax appears to have been assessed under (7) of the statute. WAC 458-30-243 (Rule 243) defines the categories of products listed in the statute. Under Rule 243, "newspapers and magazines" are defined as "all daily and periodical publications." The term periodical is not defined. Words not defined in an administrative rule are given their common, ordinary meaning. Herring Magic v. U.S., 258 F.2d 197 (C.A. Wash., 1958), Garrison v. Washington State Nursing Board, 87 Wn.2d 803 (1976).

In a New York case, the Court of Appeals discussed the issue as it related to tax liability at length. Matter of Business Statistics Organization, Inc., v. Joseph 299 N.Y. 443 (1949). In that case, the issue was whether or not the publications at issue could be classified as periodicals and therefore exempt from a tax on the receipts of tangible personal property sold at retail. The state had determined that sales of the publications were subject to tax as sales of tangible personal property, and not exempt as periodicals. The taxpayer published two publications, one of which was published weekly and consisted of four pages of printed matter, and the other, which consisted of three parts, two of which were issued monthly and contained ten pages each, and one of which was issued weekly and consisted on four pages. In deciding that the publications were periodicals, the court relied on

Houghton v. Payne, 194 U.S. 88 (1904). The courts quoted Houghton as follows:

A periodical, as ordinarily understood, is a publication appearing at stated intervals, each number of which contains a variety of original articles by different authors, devoted either to general literature of some special branch of learning or to a special class of subjects. Ordinarily each number is incomplete in itself, and indicates a relation with prior or subsequent numbers of the same series. It implies a continuity of literary character, a connection between the different numbers of the series in the nature of the articles appearing in them, whether they be successive chapters of the same story or novel or essays upon subjects pertaining to general literature. . .

Matter of Business Statistics Organization, 450, 451. The court went on to state that "the word 'literature' in this context means 'no more than productions which convey ideas by words, pictures, or drawings.'" (citations omitted) Id., at 451. A magazine is considered to be a periodical. Application of Wings Publishing Co., 148 F.2d 214,215 (1945).

The Supreme Court, in Houghton, went on to state that

a book is readily distinguishable from a periodical, not only because it usually has a more substantial binding (although this is by no means essential), but in the fact that it ordinarily contains a story, essay or poem, or a collection of such, by the same author, although even this is by no means universal, as books frequently contain articles by different authors. Books are not often issued periodically, and, if so, their periodicity is not an element of their character. . . It is sufficient to observe that, in our opinion, the fact that a publication is issued at stated intervals, under a collective name, does not necessarily make it a periodical.

194 U.S. at 97-98.

A later Supreme Court case once again considered the question of what was a book

. . . The word 'book' also, of course has its ambiguities, and may have different meanings according to the connection in which it is used. . . Without attempting a definition, we may say that generally a printed publication is a book when its contents are complete in themselves, deal with a single subject, betray no need of continuation, and, perhaps, have an appreciable size. There may be exceptions, as there are other instances of books. It hardly would be an exception if, where the object is information and the subject-matter is a changing one, a publication periodically issued, giving information for the time, should be held to fall into the [category of books].

. . .

Smith v. Hitchcock, 226 U.S. 53, at 59 (1912).

From these cases it can be determined that a book, although it may be many different things, it has several generally occurring characteristics: (1) it has some sort of binding, (2) it is complete in and of itself, (3) if it is issued serially, the periodicity of the publication is not a feature of the book itself, and, (3) generally deals either with a single subject or works by a single individual. Periodicals are publications that are published: (1) at stated intervals, (2) contain a variety of articles by different authors, with some connection between the issues, and (3) have some viewpoint or purpose for which the publication is issued. The difference between a book and a periodical, then, is that the periodic nature of a periodical is a feature of such publication, while a book can (and does) stand alone.

The legislature of the state of Washington specifically considered the question of imposing litter tax on reading materials when it decided that the tax was applicable to newspapers and magazines, but not books. When a statute "specifically designates the things or classes of things upon which it operates, it can be inferred that the legislature intended to exclude any omitted matters. . ." State v. Williams, 94 Wn.2d 531, 537 (1980). Thus, by specifying the two types of reading material to be taxed, the legislature must have intended that books not be included in the tax base. Further, the Department of Revenue cannot administratively expand the reach of a tax statute. Coast Pacific Trading Inc. v. Department of Revenue, 105 Wn.2d 912, 917 (1986). Thus, the Department cannot make the litter tax apply to more items than those specified by the legislature. Since books are not

among the items listed by the legislature, and are in fact excluded from the list, the Department cannot not make such items subject to the tax.

DECISION AND DISPOSITION:

Taxpayer's petition is granted. The notice of balance due will be cancelled.

DATED this 17th day of February 1989.