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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. 89-511
)
 . . .) Registration No. . . .
) . . . /Audit No. . . .
)

RULE 243: LITTER TAX--CONTAINERS--SALE WITH PRODUCT OR SALE FOR REPEATED USE. The litter tax does not apply to the sale of containers for repeated household use. The litter tax applies to the sale of containers that are sold with products otherwise subject to the litter tax and/or containers not sold for repeated use.

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.

NATURE OF ACTION:

Taxpayer petitions for correction of the assessment of litter tax on sales made of plastic, glass and metal containers.

FACTS AND ISSUES:

Hesselholt, A.L.J.--Taxpayer is a . . . corporation doing business in both . . . and Washington. It has several retail stores in Washington. Its records were examined for the period January 1, 1985 through December 31, 1988. Taxpayer objects to that portion of the assessment imposing litter tax on its sales of plastic, glass and metal containers in its . . . and . . . stores.

Taxpayer sells wire basket systems, wire wall grids, shelving, lamps, laminated cube furniture, glassware, plastic storage containers and other storage and organizational merchandise.

It appears from the audit report that the litter tax was assessed on all sales of merchandise from its Washington stores.

Taxpayer objected to the assessment of litter tax on its merchandise, arguing that the litter tax should not be applied to sales of "our type of retail merchandise, which is not meant to be discarded."

DISCUSSION:

RCW 70.93.130 provides as follows:

Because it is the express purpose of this chapter to accomplish effective litter control within 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) is the Department's duly authorized administrative rule implementing the above statute. It defines the categories in the statute, in relevant part, as follows:

9. **Glass containers** means articles made wholly or in substantial part of processed silicates which can

be, or are, used to hold other things within themselves.

10. **Metal containers** means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver and any alloys thereof and which can be, or are, used to hold other things within themselves.

11. **Plastic or fiber containers made of synthetic material** means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials. It includes containers made of paper, pasteboard, or cardboard in which the container materials consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement.

In this case, the auditor believed that the taxpayer's sales of containers fell into these three categories. While a literal reading of the rule and statute lead one to that conclusion, we believe that such a conclusion is in error.

The legislature, in imposing the tax, stated that it was meant to apply to "those industries whose products including the packages, wrappings, and containers thereof" caused the litter problem. We believe that the "packages, wrappings, and containers thereof" refer to packages when paired with the products, and not simply all plastic, metal or glass containers. Thus, the litter tax applies to packages that are sold with other products subject to the litter tax, and/or packages that are manufactured so that they can later be sold with the products otherwise subject to the litter tax. The plastic container that is sold with the microwave dinner or food mix is fundamentally different than a container that is sold for repeated household use. The fact that a container may later be reused does not make the container exempt from the litter tax. Containers that are sold as disposable items are subject to the litter tax. Containers that are made to be sold at retail as empty reusable containers, such as plastic storage crates, plastic food containers, or glass containers,

that are meant to be used by the purchaser for many years, are not subject to the litter tax.

DECISION AND DISPOSITION:

Taxpayer's petition is granted. The balance of the assessment, representing \$. . . in litter tax and associated interest, will be dismissed.

DATED this 14th day of November 1989.