

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

In the Matter of the Petition for) D E T E R M I N A T I O
N
Determination of Tax Liability of)
) No. 89-366
)
. . .) Unregistered
)
)

[1] RCW 82.08.0293 and RULE 244: Certain products, although they may be "food products" in a general sense, may still not qualify for the deduction provided in the referenced statute and rule. Minerals suspended in water and sold in that condition in a bottle, are subject to the retail sales tax as provided in Rule 244.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer, after several communications with this Department's Taxpayer Information and Education section, petitions to this section, in a letter dated September 29, 1987, for a determination of the tax nature of sales of its product, called ". . .".

FACTS AND ISSUES:

Dressel, A.L.J. -- In correspondence dating back to at least August 18, 1986, the taxpayer has asked that this state consider its product as a sales tax exempt food. The product is sold under the label " . . ." , and consists of a variety

of minerals extracted from "humus shale ore", and suspended in a solid state in pure, or purified, water.

In its petition to this section, the taxpayer has forwarded a number of chemical laboratory tests of its products, which are presented to indicate the nature of the product. Included in the taxpayer's petition is the comment, " . . . is a very pure food".

DISCUSSION:

The history of the communication between the taxpayer and the Department includes a variety of descriptions of the product, ". . ." . The taxpayer's promotional material describes the product in a variety of terms, such as

. . . is a prime nutritive food source, rich in mineral content, relatively new, yet of ancient origin. It may be described as an aqueous suspension of pure colloidal minerals in the balanced proportions as they occur in nature. It contains sixty minerals found in the human body.

. . . requires minimal digestion as it contains only pure natural plant source colloidal minerals and purified filtered water.

. . . is a liquid concentrate of pure natural minerals in their unaltered colloidal form. It contains 7 major minerals and between 43 and 53 trace minerals that come from a natural deposit phenomenon of prehistoric vegetable and plant matter.

There is actually only one issue to be determined. Is this product, even if promoted as a food product, entitled to the exemption from retail sales tax for food products, as set forth in RCW 82.08.0293 and WAC 458-20-244? We find that it is not.

The exemption, which had its genesis in an initiative of the people, is codified in RCW 82.08.0293 which states in pertinent part:

"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated

beverages, whether liquid or frozen. (Emphasis supplied.)

Rule 244, which as an administrative publication has the force and effect of law, states:

Tax exempt food products do not include any of the following non-food products:

. . .

Ice, bottled water (mineral or otherwise)

. . .

Tonics

. . .

[1] Virtually all the terms used by the taxpayer in describing its product stress that the only components are minerals and water. Thus, it is, in fact mineral water, an article specifically denied the exemption by the statute. Alternatively, we find that "tonic" is defined as "anything that invigorates or stimulates, specifically, a drug, medicine, or other agent for restoring or increasing body tone". Webster's New World Dictionary, 2d College Edition. The tone of taxpayer's promotional material suggests this is the desired effect of ingesting the product.

Given either term, mineral water or tonic, the product is specifically excluded from the exemption.

Having so found, it is unnecessary to determine if the product is in fact a food product. Under the terms of the statute, all food items are not exempt of the tax. While the taxpayer may find inconsistencies in this, the fact remains that such were the terms of the initiative proposed and adopted by the people, and this Department, as an administrative agency, is not empowered to either expand or narrow the clear language of the law.

DECISION AND DISPOSITION:

The taxpayer's petition for a determination that its product, ". . ." is a food product exempt of retail sales tax is denied. Sales in this state to consumers will be subject to the retail sales tax.

In completing this review, we find that there appears to be no business registration for However, it may be that the taxpayer's business structure is such that registration is not required. Accordingly, we are attaching to this Determination a Washington Business Activities questionnaire, and ask that the taxpayer complete it and return it to the Washington State Department of Revenue, Out-of-State Unit, MS: AX-02, Olympia, Wa. 98504.

DATED this 14th day of July 1989.