

Cite as Det. No. 96-095, 16 WTD 95 (1996)

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

| | | |
|---------------------------------|---|----------------------------------|
| In the Matter of the Petition |) | <u>D E T E R M I N A T I O N</u> |
| For Correction of Assessment of |) | |
| |) | No. 96-095 |
| |) | |
| . . . |) | Registration No. . . . |
| |) | Notice of Balance Due |
| |) | |
| |) | |

RULE 243: RCW 82.19.020 -- LITTER TAX -- EXEMPTION -- CLEANING AGENTS. If a product sold or manufactured fits one of the thirteen categories subject to litter tax, it will not be exempted from the tax for the reason that it is sold in recyclable containers.

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:

Protest of litter tax assessment.¹

FACTS:

Dressel, A.L.J. -- Taxpayer, among other business activities, sells cleaning agents to dairies in large, recyclable containers. The Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) sent a Notice of Balance Due to Taxpayer for litter tax for the period January 1, 1990 through December 31, 1993. Taxpayer appeals.

Taxpayer sells cleaning agents to dairy farmers in large, recyclable containers. After the farmers have emptied them, Taxpayer picks them up and recycles them.² He contends that he should not be subject to litter tax because no litter is generated by the sale of these cleaning agents.

ISSUE:

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² It is not clear if Taxpayer turns the containers in to a third party for recycling or, if by "recycle", Taxpayer means that he reuses the containers.

Does the litter tax apply to a business which sells cleaning agents to dairies in large, recyclable containers?

DISCUSSION:

[1] RCW 82.19.020³ specifies which products are subject to the litter tax. It reads:

To accomplish effective litter control within the state and to allocate a portion of the cost of administering this chapter to those industries whose products, including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, the tax imposed in this chapter shall only apply to the value of products or the gross proceeds of sales of products falling into the following categories:

Food for human or pet consumption.
Groceries.
Cigarettes and tobacco products.
Soft drinks and carbonated waters.
Beer and other malt beverages.
Wine.
Newspapers and magazines.
Household paper and paper products.
Glass containers.
Metal containers.
Plastic or fiber containers made of synthetic material.
Cleaning agents and toiletries.
Nondrug drugstore sundry products.

(Underlining ours.) WAC 458-20-243 (Rule 243) defines "cleaning agents" as "all soaps, detergents, solvents, or other cleansing substances used for cleaning buildings, places, persons, animals, or other things." Indeed, in Det. No. 89-120, 7 WTD 221 (1989), we held that the litter tax applies to cleaning agents.

In that case, however, there was no controversy over the containers which bore the cleaning agents. There was such a controversy in another published determination, although the subject matter was beans, rather than cleaning agents. In Det. No. 88-386, 6 WTD 459 (1988), we held that litter tax was properly applied to bulk beans, which had no containers.⁴ We said, at 461:

[1] The fact that the taxpayer's products are sold in bulk is not controlling. Even though they are apparently sold in unpackaged form, the litter tax applies because the law specifies that the sale of products in certain categories "shall" be subject to the tax. Food is one of those categories, and the taxpayer's products, with two exceptions, are deemed to fit in that particular category. . . .

Whether the remaining food products are packaged or not is actually unimportant as, indeed, the pertinent statutes, RCW 70.93.120 and RCW 70.93.130 impose no requirement that the categorized products be packaged in any sort of container. Together, they simply say that the manufacture or sale of certain products, period, is subject to the tax.

While we acknowledge that in the cited case it was presumed that the bulk beans were eventually packaged, we do not believe that fact makes any difference. Nothing in Chapter 82.19 RCW or Rule 243 requires packaging as a prerequisite for application of the litter tax. Further, the exemptions to the litter tax are statutorily inscribed at RCW 82.19.050 and make no mention of uncontained or unpackaged products.

Notwithstanding Taxpayer's logical argument, neither the statutes nor the rule give us the authority to strike down the litter tax because the item is unpackaged or the container in which it comes is recycled. The legislature, in enacting the litter tax, presumably, made a judgment that certain products, somewhere in the chain of their sale and/or usage, were going to create litter. See RCW 82.19.020. Cleaning agents are one of those products.

DECISION AND DISPOSITION:

³ In 1992 the litter tax was recodified from Chapter 70.93 RCW to Chapter 82.19 RCW. See annotation to RCW 82.19.010.

⁴ See also Det. No. 89-116, 7 WTD 219 (1989), and Det. No. 89-116A, 9 WTD 301 (1990).

Taxpayer's petition is denied.

DATED this 24th day of June, 1996.