

Cite as 9 WTD 301 (1990)

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)		<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
For Refund of)		<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>)		
)		No. 89-116A
. . .)		Registration No. . . .
)		
)		

[1] RULE 243: LITTER TAX -- INGREDIENT USED IN FOOD PROCESSING -- MANNER OF DELIVERY OF INGREDIENT NOT CONTROLLING. Litter tax applies to sales of ingredients used in processing food for human consumption, even though the ingredients are delivered to the food processors by bulk rail car or bulk tank truck.

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.

DEPARTMENT OF REVENUE REPRESENTED BY DIRECTOR'S DESIGNEE:
Anne Roys, Sr. Administrative Law Judge

TAXPAYER REPRESENTED BY: . . .

TELEPHONE CONFERENCE DATE: . . .

NATURE OF ACTION:

In its letter of . . . , the taxpayer appeals to the Director for a reversal of Determination 89-116 which sustained an assessment of litter tax on its sales of liquid . . . products.

FACTS AND ISSUES:

Roys, Sr. A.L.J. -- The taxpayer sells liquid [products] and specialty products. The liquid [products] are delivered to

customers by rail car or tank trucks which are reused for successive sales. The specialty products consist of 25, 50 and 100 pound paper bags of [solid products].

The taxpayer agrees to the applicability of the litter tax on its sales of specialty products. It protests the assessment of litter tax on its sales of liquid [products]. The taxpayer relies on the language in RCW 70-93.140 which states products subject to the litter tax must be "reasonably related to the litter problem in this state." It contends its sales of liquid . . . are not related to the litter problem as no packaged products are received, used, or resold as part of the sales.

DISCUSSION:

Determination 89-116 concluded that the fact a product is not sold in "ready-to-eat" form is not controlling as to whether the litter tax is applicable. We agree with that decision. One of the categories of taxable products is food for human or pet consumption. RCW 70.93.130(1). The litter tax is not limited to food products which are retail packaged or in their final consumable form. RCW 70.93.150 clearly states the tax is intended to apply to wholesalers and manufacturers of the listed products.

Determination 89-116 states that the Department has previously determined the litter tax applies to malt used in producing beer, hops, and industrial chocolate. The Department also has upheld the tax on sales of hops. In those cases the Department rejected the argument that the products were not sold in ready-to-eat form and were transported in rail cars or in other reusable containers.

The liquid [products], like hops and malt, are eventually used in food products which are reasonably related to the litter problem in this state. Imposition of the litter tax on those products is consistent with the opinion expressed by the Board of Tax Appeals in Bonanza Packing Co. v. Department of Rev., Docket 77-56 (1978). In that case the taxpayer made wholesale sales of meat. The taxpayer protested the assessment of litter tax on its sales of unwrapped meat to retailers. The Board upheld the tax, stating:

. . . While raw meat, in and of itself, may not pose a litter problem, meat and all food products are eventually wrapped or boxed, and these materials may become litter. Thus, the appellant puts into the

stream of commerce a product that will need to be wrapped and may cause litter. The clear purpose of the act is that everyone in such a chain--the manufacturer, wholesaler, and retailer--of such products should help pay for the administration [of the Model Litter Control Act].

RCW 70.93.170 provides an exemption from the litter tax to persons who only grow or raise animals, birds, or insects. This provision would not have been necessary if the legislature had intended the litter tax only to apply to retailers of the ultimate product consumed.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 13th day of September, 1990.