

Cite as Det. No. 15-0186, 35 WTD 24 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of ) D E T E R M I N A T I O N  
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  )  
  No. 15-0186  
  )  
  )  
  Registration No. . . .  
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RCW 82.19.020(1); WAC 458-20-243(4)(a): LITTER TAX – WHOLESALE SALES – FOOD -- MEAT – FOR CONSUMPTION –ORIGINAL PACKAGING. Even though meat purchased by a wholesaler remains in the same packaging when resold, thus creating no litter, the litter tax nonetheless applies to “food for human consumption.”

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.

Bauer, A.L.J. – A wholesaler of meat objects to the assessment of litter tax because it does not create any litter . . . We uphold the assessment.<sup>1</sup>

#### ISSUES

1. Under RCW 82.19.020, is the wholesale sale of meat subject to litter tax even though the wholesaler does not repackage the meat or create any litter?

2. . . .

#### FINDINGS OF FACT

[Taxpayer] is a wholesaler of meat that sells raw beef, chicken, and pork to restaurants. Taxpayer receives the meat in corrugated boxes. The meat is sold and leaves Taxpayer's premises in the same cardboard boxes. Taxpayer never opens the boxes. The weight of each individual box is from 40 to 80 pounds. Taxpayer does not generate packaging or produce litter.

The Taxpayer Account Administration Division (TAA) of the Department of Revenue (Department) reviewed Taxpayer's Annual 2010 return and, on December 15, 2014, issued a Notice of Balance Due requiring the payment of \$ . . . in litter tax, plus interest, for a total of \$ . . . Taxpayer satisfied this liability on January 15, 2015 and requests its refund.

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

## ANALYSIS

Statewide litter and recycling programs outlined in Chapter 70.93 RCW are funded by the Waste Reduction, Recycling, and Litter Control Account.<sup>2</sup> Originally passed by the Washington State Legislature in 1971 as the Model Litter Control Act, the law was the first of its kind anywhere.<sup>3</sup> Voters ratified the law in the 1972 general election as an alternative to beverage container deposits.<sup>4</sup> Funds in the account come from a litter tax on those industries that sell, manufacture, or distribute products and packaging that tend to generate litter.<sup>5</sup> The tax is unique because it was businesses and industries who originally proposed to tax themselves. The tax rate, which has not changed since 1971, is relatively small at .015 percent, which equates to \$150 per \$1 million of gross proceeds.<sup>6</sup> Because tax is broad-based, it does not create any noticeable effect on consumer prices.<sup>7</sup> In the late 1990's, the tax was generating between \$5 and \$7 million per year.<sup>8</sup>

The litter tax was originally codified in chapter 70.93 RCW (Waste Reduction, Recycling, and Model Litter Control Act). In 1992, the litter tax provisions were moved to chapter 82.19 RCW (The Revenue Act). RCW 82.19.010 imposes the litter tax as follows:

In addition to any other taxes, there is hereby levied and there shall be collected by the department of revenue from every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer, a litter tax equal to the value of products listed in RCW 82.19.020, including by-products, manufactured within this state, multiplied by fifteen one-thousandths of one percent in the case of manufacturers, and equal to the gross proceeds of sales of the products listed in RCW 82.19.020 that are sold within this state multiplied by fifteen one-thousandths of one percent in the case of wholesalers and retailers.

(Emphasis added.) In order for the litter tax to apply to the desired broad base of taxpayers and products that might ultimately contribute to the state's litter problem, RCW 82.19.020 provides:

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:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.

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<sup>2</sup> The law has also been known as the Model Litter Control and Recycling Act.

<sup>3</sup> Six other states have similar laws: Nebraska, New Jersey, Ohio, Rhode Island, Tennessee, and Virginia.

<sup>4</sup> See *Litter Laws & Litter Tax*, Department of Ecology, Litter, <http://www.litter.wa.gov/laws.html#a1> (last visited Jul. 10, 2015.)

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

- (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.

(Emphasis added.) Taxpayer's product – meat – falls under category (1) as “food for human . . . consumption.”

WAC 458-20-243 (Rule 243) also explains, in relevant part:

(4) **What products are subject to litter tax?** Litter tax applies to the manufacture or sale of products in the product categories in this subsection, unless a specific exemption applies. Litter tax applies whether these products are sold packaged, unpackaged, or in recyclable containers. . . .

(a) **Food for human or pet consumption.** Food for human or pet consumption is any substance, except drugs, where the chief general use is for human or pet nourishment, regardless of whether the substance is sold in a consumable form. Food for human or pet consumption includes candy, chewing gum, condiments, packaged or unpackaged meat, bulk foods, shellfish, and ingredients used in processing food for human or pet consumption such as industrial chocolate, grain, barley, or hops.

Taxpayer disagrees that [it] should have to pay the litter tax, arguing that the meat [it] purchases arrives and leaves [its] premises in its original packaging, and that not a shred of meat or packaging is left behind in the way of litter. The litter tax, however, was enacted to be broadly-based in order to spread its impact on any product that might, at some point, add to the state's litter problem. Because Taxpayer is selling, at wholesale, meat for human consumption listed under the category of “food” in RCW 82.19.020(1), Taxpayer is subject to the litter tax. This is so even [though] Taxpayer may not generate any litter.

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#### DECISION AND DISPOSITION

Taxpayer's petition for refund is denied.

Dated this 16th day of July, 2015.