

Cite as Det. No. 18-0231, 39 WTD 051 (2020)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 18-0231
)	
...)	Registration No. ...
)	

WAC 458-20-185; RCW 82.26.020: OTHER TOBACCO PRODUCTS TAX – BLUNT WRAPS. Cigar (or blunt) wraps are a tobacco product under RCW 82.26.010(21) and are subject to OTP tax under RCW 82.26.020.

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.

Casselman, T.R.O. – A retailer of marijuana and marijuana-related products (Taxpayer) disputes the Department of Revenue’s (Department) estimated assessment of other tobacco products (OTP) tax on products referred to as cigar wraps or blunts. Taxpayer asserts that the products . . . do not contain tobacco. We find that the . . . cigar wraps contain tobacco and are subject to OTP tax. We deny Taxpayer’s petition.¹

ISSUE

Whether cigar wraps are subject to the OTP tax under RCW 82.26.020.

FINDINGS OF FACT

. . . (Taxpayer) is a Washington Limited Liability Company located in [Washington]. Taxpayer sells marijuana and marijuana related products.

On March 6, 2017, the Washington State Liquor and Cannabis Board (LCB) investigated Taxpayer’s store inventory. LCB discovered OTP . . . that Taxpayer purchased from unlicensed tobacco distributors. LCB prepared an OTP inventory sheet itemizing Taxpayer’s unlicensed tobacco product purchases and the associated wholesale price of the products. LCB’s OTP inventory sheet included Zig Zag flavored wraps, Royal Blunts XXL flavored wraps and one package of Shine Woven Blunts. [LCB confiscated the OTP.]

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

LCB referred Taxpayer's case to the Department for assessment of tax on the unlicensed purchases. On December 6, 2017, the Department's Taxpayer Account . . . Administration Division (TAA) issued an assessment for October 1, 2015, to March 31, 2017, (audit period) against Taxpayer [in the amount of] \$. . .² TAA estimated the tax assessment based on the LCB inventory sheet.

Taxpayer appeals the Department's assessment. Taxpayer's sole contention in the petition is that the cigar wraps confiscated by LCB do not contain tobacco and thus are not subject to OTP tax. Taxpayer provided no further argument or support for its claim that the confiscated products do not contain tobacco and Taxpayer did not appear at the scheduled hearing.

An online review of how the industry uses the terms cigar wraps or blunts reveals they are typically made of tobacco or paper made from tobacco pulp.³ One of the distributors that Taxpayer purchased wraps from describes on its website [that] "[a] blunt wrap is like tobacco rolling paper but made with tobacco in a variety of flavors."⁴ This distributor [also] identifies top blunt wrap brands that include Royal Blunts and Zig Zag Blunt Wraps.⁵ The confiscated cigar wraps contain a surgeon general's warning but are not labeled with an ingredient list. Wraps that do not contain tobacco (such as herbal or hemp wraps) [typically] are marketed as tobacco and nicotine free.⁶ A national manufacturer of blunt wraps states on its website that its product is "a packaged cigar tube for holding an end user's tobacco fill material comprising a sheet of material made of tobacco

² The assessment includes \$. . . in tobacco products/cigar tax (only cigars that cost less than \$. . . per cigar) and interest of \$. . .

³ Leaf Only, an online wholesaler and retailer of tobacco leaves and tobacco leaf accessories provides a history of blunt wraps, (also referred to as flat wraps, and cigar wrappers) on its website:

A Blunt, or Flat Wrap, is a cigar wrapper, which is wider than a cigarillo and not quite as wide as full size cigar. These cigar wraps typically consist of two main parts; the inner leaf, which is similar to tobacco rolling paper and a thicker outer leaf which is rolled around the inner leaf. In most commercially available blunts, the "leaves" are not actual tobacco leaves but rather paper made from tobacco pulp.

Flat / Blunts Wraps originally got their name from their 'broad or rounded tip', and received the name around the 1800s to differentiate them from other cigars.

Individually packaged Blunt Wraps leaves have been available for many years. These are tobacco leaves that, because of their nature and appearance, are used to roll a cigar in one continuous sheet (thus the name Blunt is used).

The United States Tobacco Taxation Board has classified all individual cigar wrappers as "Blunts" and taxes them as roll-your-own tobacco. Many US States classify Blunt Wraps as tobacco and a license is required to sell them and collect tax. The use of these single continuous sheets is closer to the original Blunts of the 1800s since it is not a spiral wrap.

A "blunt" may also refer to a marijuana cigar where the wrapping is a tobacco product. The spiral wrapped cigar is cut open and emptied of tobacco and the resulting shell is then filled with marijuana and resealed. . . .

<https://www.leafonly.com/blunt-wrap-history.php>, site last visited August 16, 2018.

⁴ [https://www.\[distributor\].com/pages/blunt-wrap-brands](https://www.[distributor].com/pages/blunt-wrap-brands), site last visited August 16, 2018.

⁵ [https://www.\[distributor\].com/pages/blunt-wrap-brands](https://www.[distributor].com/pages/blunt-wrap-brands), site last visited August 16, 2018.

⁶ Jungle Blunts for example, are marketed as Tobacco free and are made from fruit tree leaves like guava and banana. <https://www.jungleblunts.com/tobacco-free-blunt-wraps/>, last visited August 16, 2018.

leaves and/or homogenized tobacco paper.”⁷ One of the confiscated products is described as a tobacco product made from natural reconstituted tobacco.⁸

ANALYSIS

The OTP tax is imposed upon the “sale, handling, or distribution of all tobacco products in this state” RCW 82.26.020(1). In RCW 82.26.030, the Legislature stated its intent by providing:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW...

RCW 82.26.030 (emphasis added).

While the intent of the Legislature [is] to collect the tax from the distributor, RCW 82.26.200 provides that a retailer who obtains tobacco [products] from an unlicensed distributor is liable for the tax. *See* RCW 82.26.200(1). Additionally, when an unlicensed retailer is in possession of tobacco products, those products are subject to seizure and forfeiture. RCW 82.26.230(1).

Although the confiscated wraps do not have an ingredient list, they are all labeled with a surgeon general’s warning as required by the United States Federal Food, Drug, and Cosmetic (FD&C) Act for covered tobacco products.⁹ Products that do not contain tobacco or nicotine and are not made or derived from tobacco do not require warning statements under the FD&C Act.¹⁰

Whether the products seized by the LCB agents in this case are a tobacco product subject to OTP tax depends on whether cigar wraps fall within the definition of “tobacco products” in RCW 82.26.010(21) which provides:

“Tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and *other kinds and forms of tobacco*, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

RCW 82.26.010(21) (emphasis added).

⁷ <http://www.bluntwrap.com/product.html>, site last visited August 16, 2018.

⁸ Shine Woven Blunt, <https://shinerollingpapers.com/products/shine-woven-blunt>, site last visited August 16, 2018.

⁹ 21 C.F.R. § 1143.3(a)(1).

¹⁰ See, FDA publication, Retailers: Chart of Required Warning Statements on Tobacco Product Packaging and Advertising,

<https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm616134.htm>, site last visited August 16, 2018.

The . . . cigar wraps [the LCB confiscated from the Taxpayer's inventory] are a form of tobacco suitable for filling with loose-leaf tobacco or marijuana and smoking. The fact that the cigar wraps are designed to be combined with [other] smoking material does not change the fact that the tobacco in the cigar wrap itself [is suitable for] smoking. Additionally, the definition above does not require the product to be capable of being smoked on its own. Based on the available information, we conclude that the cigar wraps purchased by Taxpayers and confiscated by LCB are a tobacco product under RCW 82.26.010(1). *See* 28 WTD 64 (2009). Accordingly, because Taxpayer purchased the cigar wraps from an unlicensed distributor the wraps are subject to OTP tax, and Taxpayer is liable for the tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied

Dated this 30th day of August 2018.