

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

In the Matter of the Petition) D E T E R M I N A T I O N
For Correction of Assessment)
of) No. 88-386
)
) Registration No. . . .
) Document No. . . .
)

[1] **RULE 243:** RCW 70.93.120, RCW 70.93.130, AND RCW
70.93.140 -- LITTER TAX -- EXEMPTION -- BULK
AGRICULTURAL PRODUCTS. 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 or
transferred in unpackaged, bulk form.

[2] **RULE 243:** RCW 70.93.120, RCW 70.93.130, and RCW
70.93.140 -- LITTER TAX -- EXEMPTION -- SEEDS --
FERTILIZER. Seeds sold for direct ingestion by pets
or humans are subject to litter tax. Seeds sold for
growing purposes are exempt unless they qualify as
groceries or nondrug drugstore sundry products.
Fertilizer is exempt unless it qualifies as
groceries or nondrug drugstore sundry products.

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:

Petition for cancellation of litter tax assessment.

FACTS AND ISSUES:

Dressel, A.L.J. -- . . . (taxpayer) is a wholesale distributor of dried agricultural products. On March 11, 1987 the Department of Revenue (Department) issued the above-captioned tax assessment against the taxpayer in the total amount, including interest, of \$ The assessment was for litter tax for the period January 1, 1983 through December 31, 1986. The taxpayer appeals.

In so doing the taxpayer argues that the "law intended to exclude bulk agricultural product from the litter tax." It further states: Our sales in Washington consist of bulk dry beans, seeds, peas, and fertilizers and in no way could contribute to any litter whatsoever." Whether such sales are exempt of the litter tax is the issue to be decided.

DISCUSSION:

The statutory authority for the litter tax is RCW 70.93.120 which reads:

70.93.120 Litter assessment--Imposed--Amount--Collection. There is hereby levied and there *shall* be collected by the department of revenue from every person engaging within this state in business as a manufacturer and/or making sales at wholesale and/or making sales at retail, an annual litter assessment equal to the value of products manufactured and sold within this state, including by-products, multiplied by one and one-half hundredths of one percent in the case of manufacturers, and equal to the gross proceeds of the sales of the business within this state multiplied by one and one-half of one percent in the case of sales at wholesale and/or at retail. (Italics ours.)

The statute following specifies to which products the tax applies. RCW 70.93.130 states:

70.93.130 Litter assessment--Application to certain products. Because it is the express purpose of this chapter to accomplish effective litter control within the state of Washington and *because it is a further purpose of this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings, and containers thereof, are reasonably related to the litter problem,* in arriving at the amount upon which the assessment is to be calculated

only the value of products or the gross proceeds of sales of products falling into the following categories shall be included:

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

RCW 70.93.140 states further the purpose of the litter tax:

70.93.140 Litter assessment--Powers and duties of department of revenue--Guidelines. The department of revenue by rule and regulation made pursuant to chapter 34.04 RCW may, if such is required, define the categories (1) through (13) as set forth in RCW 70.93.130. In making any such definitions, the department of revenue shall be guided by the following standards.

(1) It is the purpose of this chapter to accomplish effective control of litter within this state;

(2) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state.

[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. Fertilizers, obviously, are not food and are not otherwise subject to the litter tax, except in the limited situation noted in the summary section below. The same goes for seeds if they are used for growing agricultural crops rather than for direct ingestion by humans, e.g. sunflower seeds.

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.

Furthermore, it cannot be seriously disputed that beans and peas are "reasonably related" to the litter problem which the tax is designed to combat. RCW's 70.93.130 and 70.93.140, read together, provide that one purpose of the tax is to spread the cost of administration of the act between manufacturers, wholesalers, and retailers. It may be true that bulk peas and beans directly pose only minimal potential for litter. However, they are eventually packaged in cans, boxes, cartons, or other containers which may reasonably be considered to create litter. Thus, the taxpayer has introduced into the stream of commerce products which evolve into a taxable litter-causing product. Such introduction serves to "reasonably relate" peas and beans to the litter problem, making them subject to the tax. The imposition of the tax is also consistent with the obvious statutory intent to spread responsibility for the litter tax among more than just the retailer who makes the final dispensation of the product.

It is immaterial that the actual litter-causing event (distribution to a consumer) may only occur at the retailing level. The legislature has equitably decided that the cost of ridding the countryside of such things as bottles, boxes and other litter should be borne in part by all businesses, at whatever level, which contribute to the production and sale of such articles.

Imposition of the litter tax on manufacturers and wholesalers, as well as on retailers, is consistent with the opinion expressed by the Washington State Board of Tax Appeals in *Bonanza Packing Company v. Department of Revenue*, Docket 77-56 (May 25, 1978), affirmed in Spokane County Superior Court Cause No. 247257 (1983), wherein the board stated:

. . . 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 act] . . . (Brackets supplied.)

Manufacture and wholesale sale is the original source of the litter problem which usually results after a series of product transfers or sales. The legislature recognized this fact and enacted a tax that tends to pyramid from manufacturer to wholesaler, wholesaler to retailer, and retailer to consumer in the same manner as the business and occupation tax. Thus, the law does not limit the litter tax to the persons who first sell a taxable product boxed, wrapped, bagged, canned, or bottled with litter-producing materials. Rather, the tax is imposed upon the manufacture and subsequent sale of the product or significant ingredients. If the legislature had intended that the litter tax was to be extended only to retailers of the ultimate product consumed, it would have phrased the statute(s) accordingly.

As to peas and beans, the taxpayer's petition, therefore, is denied.

Seeds, however, may be another matter. The Department has promulgated an administrative rule, WAC 458-20-243 (Rule 243) to help implement the provisions of the litter tax law, RCW 70.93. In it the thirteen categories of litter-taxable products are explained more fully. Of those, only three have any conceivable application to seeds. As set forth in the rule, they are:

1. **Food for human or pet consumption** means any substance, except drugs, the chief general use of which is for human or pet nourishment, including candy, chewing gum, and condiments. It includes sales of meals, snacks, lunches, or other food by restaurants, drive-ins, snack bars, concessions, and taverns. Drugs means substances or products appearing in the latest listing of United States pharmacopoeia or national formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

2. **Groceries** means all products, except drugs, sold by persons in a place of business selling food for off premises consumption, but excluding building materials, clothing, furniture, and appliances.

. . . .

13. **Nondrug drugstore sundry products** means all products, goods, or articles, except drugs, sold by persons in a place of business selling drugs, but excluding building materials, clothing, furniture, and appliances.

[2] As briefly stated earlier, we do not believe that seeds planted for the purpose of growing fruit, vegetables, or any other agricultural crop or botanical item qualify under category number one, food for human or pet consumption. The chief general use of such seeds is for growing those articles. The chief general use of these seeds is not for the nourishment of humans or pets. It is quite possible the vegetable products into which the seeds grow will be ingested by humans or pets as food. At the seed stage, however, the items are not yet food, so are not subject to litter tax. If, however, the seeds are ingested directly by pets or humans, they do qualify as food, and their sale is subject to litter tax. Examples of such taxable seeds include sunflower and bird seeds.

The second litter tax category quoted above is groceries. Sunflower and bird seeds fit this one as well, but so do packaged seeds for growing sold in grocery stores. If some reasonably ascertainable portion of the taxpayer's seeds are later sold by grocery stores, that portion of taxpayer sales is subject to litter tax. If the taxpayer has no knowledge of such grocery store sales or no reasonable way of obtaining a breakdown as to what percentage of seeds it sells are later sold by grocery stores, we will not require litter tax be paid. An assessment on that basis would be too speculative in addition to being impractical.

The same logic applies as to category number thirteen, nondrug drugstore sundry products. Seeds sold by the taxpayer to drug stores for resale are subject to litter tax on the same basis as those sales to grocery stores as described in the immediately preceding paragraph.

SUMMARY:

The taxpayer's sales of peas and beans are subject to litter tax. Its sales of fertilizer are not unless they qualify under the grocery or nondrug drugstore sundry products categories on the same basis that seeds may, as outlined in the two immediately preceding paragraphs. The taxpayer's sales of seeds are not litter taxable unless directly ingested or unless they qualify as groceries or nondrug drugstore sundry products as discussed in the two immediately preceding paragraphs.

It is not known whether the sales subjected to tax include exempt fertilizer or seed as adjudged in the above discussion. If they do, the taxpayer is advised to contact John Judkins of the Department's Audit Procedures & Review section for an adjustment in accordance with the principles outlined in this determination.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 18th day of October 1988.