

Cite as Det. No. 98-222, 18 WTD 313 (1999)

BEFORE THE APPEALS 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>
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)	No. 98-222
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RULE 243 AND RCW 82.19.020: LITTER TAX – BUSINESS PAPER PRODUCTS. Paper products manufactured for use in a business environment, and which are not household paper products intended for use in the home, are not subject to the litter tax.

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:

An out-of-state corporation seeks a refund of litter tax because its products are not within the scope of products subject to the litter tax.¹

FACTS:

Gray, A.L.J. -- The taxpayer is an out-of-state corporation that manufactures and wholesales paper products intended for use by businesses. Its products include computer paper, engineering rolls, and various forms. Some of those products are, for example, continuous rolls of paper for processing through various computers and business machines. The taxpayer manufactures some cut paper (8 ½ x 11) that it sells to office supply stores. The office supply stores box the paper products and resell the paper under their own business names. The taxpayer typically prices its products for wholesale sales. In other words, a household consumer would not buy the taxpayer's paper products in the quantities that are needed in order to get the wholesale price. The taxpayer seeks a refund in the amount of \$. . . , plus interest.

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

ISSUES:

Whether the taxpayer's paper products are within the scope of products subject to the litter tax (chapter 82.19 RCW)?

DISCUSSION:

RCW 82.19.010 imposes a litter tax of .0015 percent. The tax is paid by manufacturers, wholesalers, and retailers of products listed in RCW 82.19.020.

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.
- (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.

RCW 82.19.020(8) is "household paper and paper products." The statute does not define household paper and paper products. WAC 458-20-243 ("Rule 243") is the Department of Revenue's ("Department") administrative rule regarding the litter tax. Rule 243(8) provides a definition:

Household paper and paper products means materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. It includes also products or articles made from such sheets or leaves for home or other personal use.

There are no published determinations that decide this issue. However, it seems plain from the language of both the statute and the rule that the litter tax is intended to apply only to household paper and paper products, not to paper products intended for business use. We recognize the possibility that some paper products intended for business use could also be used within a household, and that consequently, some paper products could escape the litter tax. Nonetheless,

the litter tax imposed in RCW 82.19.010 is measured against the value (for manufacturers) or the gross proceeds of sales (for wholesalers and retailers) of the products listed in RCW 82.19.020, and the latter statute not only expressly mentions household paper and paper products, it also says nothing about paper products for businesses. “Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded.” Bour v. Johnson, 122 Wash. 2d 829; 864 P.2d 380 (1993).

The petition for refund is granted.

DECISION AND DISPOSITION:

The petition for a refund of the litter tax, plus interest, is granted.

Dated this 24th day of December, 1998.