

Cite as Det. No. 17-0083, 39 WTD 068 (2020)

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

In the Matter of the Petition for Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 17-0083
)	
...)	Registration No. . . .
)	

RCW 82.19.010; WAC 458-20-243; accord 18 WTD 313: LITTER TAX – HOUSEHOLD PAPER AND PAPER PRODUCTS - QUANTITY. Litter tax does not apply to paper products sold in quantities that exceed those that one would normally expect for products intended for household use.

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.

Stojak, T.R.O. – A manufacturer and wholesaler of bulk sanitary products petitions for correction of an assessment of litter tax contending that sales of bulk paper products to commercial customers do not fall within the ambit of the litter tax. We grant the petition.¹

ISSUE

Does the litter tax under RCW 82.19.010 apply to paper products designed for commercial or business use?

FINDINGS OF FACT

. . . (“Taxpayer”) manufactures and wholesales bulk sanitary products, including various forms of paper products, for industrial, commercial, or institutional use. Taxpayer markets its products to building service contractors, commercial real estate operators, educational institutions, healthcare facilities, the hospitality and lodging industry, industrial facilities, and the foodservice industry.² It sells its products in quantities that exceed those that one would normally expect for products intended for household use.³ Following are examples of the products it offers:

- Toilet Tissue – 72,000 sheets per case – 36 coreless rolls, each with 2,000 sheets
- Toilet Tissue – 44,000 sheets per case – 80 rolls, each with 550 sheets
- Roll Towels – 6,900 linear feet per case – 6 rolls, each 1,150 linear feet long

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

² See. . . .

³ Taxpayer’s corporate mission statement . . .

- Facial Tissue – 6,000 sheets per case – 48 boxes of 125 sheets per box
- Dispenser Napkins – case of 12 rolls of 500 napkins per roll
- Copy Paper – 5,000 sheets – 10 reams of 500 sheets

The Department of Revenue’s (“Department”) Audit Division (“Audit”) audited Taxpayer for the period of January 1, 2010, through September 30, 2014 (“audit period”). Audit reviewed Taxpayer’s business records and determined that it underreported its wholesaling Business and Occupation (“B&O) tax liability, use tax liability, and litter tax liability for the audit period. Accordingly, Audit issued an assessment against Taxpayer on June 23, 2016, for \$ The assessment included wholesaling B&O of \$. . . , use tax and/or deferred sales tax of \$. . . , litter tax of \$. . . , and interest of \$. . . , and a retailing credit of \$ Subsequent to the issuance of the assessment, Taxpayer attended a supervisor’s conference with Audit staff on August 25, 2016. At the conference, Taxpayer and Audit reached an agreement regarding the proper tax treatment of the majority of the products it sold for the audit period. However, disagreement remained regarding whether the litter tax applied to paper products sold by Taxpayer. Ultimately, Audit maintained the position that the litter tax applies to the paper products sold by Taxpayer during the audit period.

On September 20, 2016, Taxpayer petitioned for a review of the decision made at the supervisor’s conference regarding the litter tax. Taxpayer asserts that the paper products it sells fall outside the scope of the litter tax. Taxpayer argues that the plain language of RCW 82.19.020(8) and 458-20-243 limits application of the litter tax to paper products intended for household use. In addition, Taxpayer argues that the Department’s published determination, 18 WTD 313 (1999), supports its position that the litter tax does not apply to the paper products at issue in its case.

ANALYSIS

RCW 82.19.010 imposes a litter tax on “every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer” In the case of manufacturers, the tax equals “the value of the 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 wholesalers or retailers, the tax equals “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.”

RCW 82.19.020 states as follows:

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.

Accordingly, the litter tax applies to “*household* paper and paper products,” pursuant to RCW 82.19.020(8) (emphasis added).⁴ The statute does not define household paper and paper products. WAC 458-20-243 (“Rule 243) is the Department’s administrative rule regarding the litter tax. Rule 243(8) defines “household paper and paper products” as follows:

Household paper and paper products are materials or substances made into sheets or leaves from natural organic or synthetic fibrous material for home or other personal use. Household paper and paper products include products or articles made from such sheets or leaves *for home or other personal use*, such as toilet tissue, paper cups, plates, napkins, cards, wrapping paper, stationery, personal banking checks or deposit slips, computer printer or copier paper, and the like. (Emphasis added).

As correctly highlighted by Taxpayer, the Department issued a published determination, 18 WTD 313 (1999), addressing the application of RCW 82.19.020(8) and Rule 243(8) to paper products designed for business use. This determination involved a taxpayer that manufactured and wholesaled various forms of paper products. The taxpayer packaged the products in quantities in excess of what one would normally expect for products designed for household use. The taxpayer priced the products for wholesale sales and the Department noted, “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 Department concluded that the scope of the litter tax did not extend to the products manufactured and wholesaled by the Taxpayer.

RCW 82.19.020 imposes the litter tax on the value of products or the gross proceeds of sales from “household paper and paper products.” Rule 243(8) defines “household paper and paper products” to include products “for home or other personal use.” The canon of statutory construction, *expressio unius exclusio alterius*, instructs us that, “where a statute specifically designates the things or classes of things on which it operates – an inference arises in the law that the legislature intentionally omitted all things or classes of things omitted from it. *State v. Cawyer*, 182 Wn. App. 610, 623, 330 P.3d 219 (2014). As applicable here, the legislature’s insertion of the word “household” before “paper and paper products” in RCW 82.19.020 gives rise to the inference that it intentionally omitted paper and paper products not destined for household use from the ambit of the litter tax. Accordingly, we see no reason to depart from our determination in 18 WTD 313, and conclude that the litter tax does not apply to the paper products at issue in this case.

⁴ Audit does not assert Taxpayer’s products are cleaning agents and toiletries.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 24th day of March 2017.