
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

PRIVATE LETTER RULING 95-01 (TAX)

TO: XYZ, Inc.

SUBJECT: Soft Drink Exemption
(Soft Drink Tax)

DATE: January 3, 1995

REFERENCE: SC Code Ann. Section 12-21-1850 (Supp. 1993)
SC Code Ann. Section 12-21-1880
SC Code Ann. Section 12-21-1890

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure 94-1

SCOPE: A Private Letter Ruling is an official advisory opinion issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

Does "XYZ Plus Vitamins", as described in the Facts, meet the requirements under Code Section 12-21-1880 for exemption from the soft drink tax?

Conclusion:

"XYZ Plus Vitamins", as described in the Facts, meets the requirements under Code Section 12-21-1880 for exemption from the soft drink tax.

Facts:

XYZ, Inc. ("XYZ"), manufactures a vitamin enhanced orange juice called XYZ Plus Vitamins. This orange juice is manufactured from an orange juice concentrate to which water and vitamins are added.

XYZ is required by the Nutrition Labeling Education Act to disclose the amount of certain nutrients if present in significant amounts in the manufactured juice. Vitamin A is one of the nutrients required to be disclosed. Vitamin A is important in sight development, among other

functions, and, as an antioxidant vitamin, is being tested for its anticancer properties. The best source of Vitamin A is B-carotene (beta-carotene). Hence, in order to enhance the amount of Vitamin A in its product, XYZ adds B-carotene to XYZ Plus Vitamins.

Besides its nutritional benefits, B-carotene is sometimes added to foods to provide coloring. In the production of its juice, XYZ only uses USDA Grade A orange concentrate. The addition of B-carotene affects the color of XYZ Plus Vitamins but is not needed to meet federal requirements and does not enhance the appearance of the juice.

Discussion:

SC Code Section 12-21-1850 imposes a tax on bottled soft drinks and states:

Any person offering soft drinks for sale in a sealed container shall pay the license tax at the rate of one cent for each twelve ounces or fractional part thereof.

Code Section 12-21-1880 allows an exemption for natural fruit or vegetable juice and provides in part:

All bottled soft drinks containing thirty per cent or more natural fruit or natural vegetable juice as hereinafter defined . . . shall be exempt from the tax imposed by this article. Provided, that this exemption shall not apply to any fruit, or vegetable juice drink, to which is added any one or more of the following: Any coloring, artificial flavoring or preservative. Sugar or salt or vitamins shall not be construed as an artificial flavor or preservative.

Code Section 12-21-1890 defines natural fruit juice in the following manner:

The terms "natural fruit juice" and "natural vegetable juice", as used in Sections 12-21-1880 to 12-21-1930, shall mean the original resultant liquid resulting from the pressing of sound ripe fruit or vegetables or the liquid resulting from the reconstitution of natural fruit or natural vegetable juice concentrate, to wit: The restoration of water to dehydrated natural fruit or natural vegetable juices.

Code Section 12-21-1900 provides how the exemption under Section 12-21-1880 is claimed, and states, in part:

Any bottled soft drink for which exemption is claimed under Section 12-21-1880 must be registered with the Commission. No such bottled soft drinks shall be entitled to the exemption contained in that section until such registration has been accomplished. Registration shall be accomplished by the filing of an application for exemption on forms to be prescribed by the Commission, and such forms shall include an affidavit setting forth the complete and itemized formulas by volume of the drinks herein referred to . . .

Hence, if a bottled soft drink is a "natural fruit juice" as defined in Section 12-21-1890 and has registered as provided in Section 12-21-1900, it is exempt from tax. Thus, the question which must

be resolved is whether XYZ's product meets these requirements.

First, we must consider if the addition of B-carotene disqualifies the juice from exemption. As stated above, B-carotene is added to the juice to supplement the amount of Vitamin A the juice provides. Code Section 12-21-1880 provides that the addition of vitamins is not construed as an artificial flavor or preservative. The fact that the addition of B-carotene may change the color of the juice does not categorize B-carotene as coloring. The purpose of adding B-carotene is not for coloring but for the Vitamin A which B-carotene adds to the juice. Hence, the addition of B-carotene to XYZ Plus Vitamins does not disqualify the product from being a "natural fruit juice".

The other factor which must be considered is whether the addition of water to the orange juice concentrate removes the product from the definition of "natural fruit juice". Code Section 12-21-1880 requires that soft drinks must contain 30% or more natural fruit juice to be exempt from tax. Code Section 12-21-1890 provides that the restoration of water to dehydrated natural fruit juice does not disqualify the product from meeting the definition of "natural fruit juice". Hence, the addition of water to the orange juice concentrate does not disqualify XYZ Plus Vitamins from meeting the requirements for exemption from the soft drink tax.

Note: This private letter ruling applies only to the product in question. As a general rule, the addition of B-carotene to a product will be considered a coloring and the exemption from the soft drink tax will be denied. The burden of proof is on each taxpayer to show that the addition of B-carotene is for nutritional purposes and not for coloring.

For questions concerning soft drink tax exemption, contact Gary Heuer at (803) 737-4744 or Jean Croft at (803) 737-5007.