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

SC PRIVATE REVENUE OPINION #02-1

SUBJECT: Liability for Beer Excise Tax
 (Beer Tax)

REFERENCES: S. C. Code Ann. Section 12-21-1010 (Supp. 2000)
 S. C. Code Ann. Section 12-21-1020 (Supp. 2000)
 S. C. Code Ann. Section 12-21-1030 (Supp. 2000)
 S. C. Code Ann. Section 12-21-1050 (Supp. 2000)
 S. C. Code Ann. Section 61-4-940 (Supp. 2000)
 S. C. Code Ann. Section 61-4-300 (Supp. 2000)
 S. C. Code Ann. Section 61-4-310(A) (Supp. 2000)
 S. C. Code Ann. Section 61-4-340 (Supp. 2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
 S. C. Code Ann. Section 1-23-10(4) (Supp. 2000)
 SC Revenue Procedure #99-4

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

With respect to the facts set forth below, is XYZ Incorporated liable for the beer excise tax imposed under Code Sections 12-21-1020 and 12-21-1030?

Conclusion:

With respect to the facts set forth below, XYZ Incorporated is not liable for the beer excise tax imposed under Code Sections 12-21-1020 and 12-21-1030.

Facts:

XYZ Incorporated (“XYZ”) is an importer of beer brewed and bottled in a foreign country. XYZ purchases the beer from its foreign parent, and takes title to the beer before it reaches the United States.

XYZ will store some of the beer it has purchased in a bonded warehouse. The warehouse is owned and operated by an unrelated third party. The third party also owns and operates a truck fleet. After XYZ procures a sale of beer to a wholesaler, it arranges for shipment from the warehouse to the wholesaler by a truck operated by the owner of the warehouse. Most of these wholesalers are located outside of the State, although a few are located within the State.

Discussion:

Code Section 12-21-1020 imposes the excise tax on beer offered for sale in containers of one gallon or more, and reads:

There shall be levied and collected on all beer offered for sale in containers of one gallon or more in this State a license tax of six-tenths cent per ounce and on all wines offered for sale in this State a license tax of ninety cents per gallon or fractional quantity thereof.

Code Section 12-21-1030 imposes the excise tax on beer offered for sale in containers of less than one gallon, and reads:

If beer be offered for sale in bottles or cans, there shall be levied and collected a tax of six-tenths cents per ounce or fractional quantity thereof, and on wines offered for sale in quantities of less than one gallon there shall be levied and collected a tax of six cents for each eight ounces or fractional quantity thereof, and wine offered for sale in metric sizes a tax at the rate of twenty-five and thirty-five one hundredths cents per liter.

Code Section 12-21-1050 concerns the payment of the beer tax, and reads:

The tax prescribed in this article must be paid by requiring each wholesaler to make a report to the department, in the form the department prescribes, of all beer and wine sold or disposed of within this State by the wholesaler and to pay the tax due thereon not later than the twentieth of the month following the sale of beer or wine. Any wholesaler who fails to file the report or to pay the tax as prescribed in

this section must pay a penalty of one quarter of one percent of the amount of the tax due and unpaid or unreported for each day the tax remains unpaid or unreported. The penalty must be assessed and collected by the department in the manner as other taxes are assessed and collected. The department may grant any wholesaler extensions of time for filing the reports and paying the taxes prescribed in this article and no penalties may be assessed or collected to the extent that the extensions of time are granted. (Emphasis added.)

Code Section 12-21-1010 defines as follows the terms “producer,” “wholesaler” and “retailer:”

(1) The word "wholesaler" shall mean any person who makes the first sale within this State or who sells or distributes any quantity of beer or wine to any other person for resale, but the term shall not include any person who produces wine in the State from fruits grown within the State by or for the manufacturer;

(2) The word "retailer" shall mean any person who sells or distributes any quantity of beer or wine to a consumer;

* * * *

(6) The word "producer" shall mean a brewery or winery or a manufacturer or bottler or an importer into the United States of beer or wine, or both.

Title 61 of the South Carolina Code of Laws regulates the production, importation and sale of alcoholic beverages. Code Section 61-4-940 concerns the three tier law for beer and states in part:

(D) A manufacturer, brewer, and importer of beer are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier. ... (Emphasis added.)

Code Section 61-4-300 provides the same definition for the term “producer” as Code Section 12-21-1010, and reads:

"Producer" as used in this article means a brewery or winery or a manufacturer, bottler, or importer of beer or wine into the United States.

Code Section 61-4-310(A) concerns the certificate of registration, and states:

A producer must apply to the department on forms the department prescribes for a certificate of registration, which must be approved and issued before the shipment of beer or wine by the producer to a point within the State. A producer, at the same time application is made for a certificate of registration, must remit to the department a fee of two hundred dollars. (Emphasis added.)

Code Section 61-4-340 concerns the importation of beer, and states:

No person other than a registered producer may ship, move, or cause to be shipped or moved, beer, ale, porter, malt beverage, or wine from outside the State to a point in the State, and only in accordance with the provisions of this chapter. No brand may be registered by the producer unless the person registering the brand is either the American producer or the primary American source of supply in the United States of the brand as herein defined, and it is unlawful for a wholesaler in this State to order, purchase, or receive beer, ale, porter, malt beverage, or wine from a producer who is not the primary American source of supply for the brand ordered, purchased, or received. The term primary American source of supply means the manufacturer, distiller, vintner, brewer, producer, winery, or owner of vinous or spirituous beverages at the time they become a marketable product, or bottler, or the exclusive agent of these persons, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. The provisions of this section do not apply to a person who produces beer, ale, porter, malt beverage, or wine solely in this State and who subsequently ships or sells this beer, ale, porter, malt beverage, or wine solely in this State.

The statutory rule of construction found in 73 Am.Jur.2D Statutes Section 191 provides guidance and states in part:

The different parts of a statute reflect light upon each other, and statutory provisions are regarded as in *pari materia* where they are parts of the same act. Hence, a statute should be construed in its entirety, and as a whole.

All parts of the act should be considered, and construed together. It is not permissible to rest a construction upon any one part alone, or upon isolated words, phrases, clauses, or sentences, or to give undue effect thereto. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, is not to be defeated by the use of particular terms.

Based on the above, XYZ is an importer and would not be liable for the excise tax on beer imposed under Chapter 21 of Title 12 of the South Carolina Code of Laws. The wholesaler is liable for the beer excise tax.

In addition, XYZ, as an importer, falls within the definition of a “producer” as defined in Code Sections 12-21-1010(6) and 61-4-300 and must meet and comply with all the statutory and regulatory requirements for a producer set forth in Title 12 and Title 61 of the South Carolina Code of Laws.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

February 25 _____, 2002
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.