



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #89-2

TO: ABC Distribution

SUBJECT: Liability for the Soft Drink Tax

REFERENCE: S.C. Code Ann. Section 12-21-1730 (Supp. 1987)
S.C. Code Ann. Section 12-21-2120 (Supp. 1987)
S.C. Code Ann. Section 12-21-1710(b) (Supp. 1987)

AUTHORITY: S.C. Code Ann. Section 12-3-170(1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Which party, the out-of-state distributor or the in-state retailer, is liable for the State soft drink tax?

Facts:

ABC Distribution has several distribution centers throughout the country, including Georgia. The location in Georgia supplies various retailers in South Carolina with soft drink products.

Discussion:

The issue concerns whether ABC, or each South Carolina retailer, is liable for the soft drink tax.

South Carolina imposes a license tax on finished soft drinks, syrups used to make soft drinks and powders and bases used to make soft drinks. South Carolina Code Section 12-21-1730 reads:

Every person doing domestic or intrastate business within this State and engaging in the business of selling, manufacturing, purchasing, consigning, using, shipping or distributing, for the purpose of sale within this State, bottled drinks of every kind, including but not limited to the following articles or things: soda water, ginger ale, coca-cola, lime-cola, pepsi-cola, any product having an alcohol content of less than one-half percent of weight or volume, fruit juices, vegetable juices, and all drinks and other

beverages and things commonly designated as "soft drinks" are, for the privilege of carrying on the business, subject to the payment of a license tax which is measured by and graduated in accordance with the sales of the person within the State, except as otherwise provided in this article.

Every person, firm, corporation, club, or association, or any organization or individual within the State of South Carolina, importing, receiving or acquiring from without the State, or from any other source, beverages commonly designated as soft drinks as contemplated by this article, for use or consumption within South Carolina is subject to payment of [the] license tax at the rates provided for the sale, offer for sale, or distribution of such soft drinks. (emphasis added)

Code Section 12-21-2120, which concerns an alternative method of paying the tax, reads:

Each manufacturer, wholesaler, distributor, or retailer first receiving untaxed bottled soft drinks, syrups, premixed soft drink, or powders and bases for sale or disposition in this State is subject to a tax at the rate of one dollar and twenty-two cents a gross for each one cent of face value in the case of bottled soft drinks and a tax at the rates prescribed in this article for syrups, premixed soft drink, or powders and bases. Each manufacturer, wholesaler, distributor, or retailer required to pay the tax shall make a report to the Commission, in the form as the Commission may prescribe, of all bottled soft drinks, syrups, premixed soft drink, powders and bases sold or disposed of in this State and pay the taxes due thereon not later than the twentieth day of the month next succeeding the month of the sale of disposition. (emphasis added)

In summary, a person doing domestic or intrastate business in South Carolina and distributing soft drinks, is subject to a license tax. In addition, anyone first receiving soft drinks, from outside of this State, is also subject to a license tax.

However, Code Section 12-21-1710(b) provides that:

Out-of-state distributors and wholesale dealers shall obtain appropriate distributors' or wholesale dealers' licenses upon compliance with provisions of this article and the regulations and administrative rules as may be issued by the Commission.

Subsection (c) of Code Section 12-21-1710 reads:

Distributors, wholesale, and retail dealers licensed under this section shall file the reports with the Commission as may be required not later than the twentieth day of each month showing transactions for the preceding month. Any person who fails to file the required reports must be penalized not less than twenty dollars nor more than one hundred dollars, to be assessed and collected in the same manner as other taxes are assessed and collected. The Commission may remit the penalty in whole or in part.

Therefore, the statute permits an out-of-state distributor or wholesaler to act as a collection agent for the soft drinks tax, but imposes no liability for the tax.

Furthermore, Code Section 12-21-3010 reads, in part:

The taxes and penalties imposed by this chapter shall be deemed a debt owing to the State by the person against whom they shall be charged and shall be a lien upon all property of such person.....(emphasis added).

The following quote is found in 68 Am.Jrs. 2d Sales and Use Tax, Section 14:

The intention of the legislature is to be gathered from a consideration not of a single clause, sentence or section in the act, but from a consideration of the statute as a whole, including amendments, and the courts must, if possible, give effect to every word the statute contains and reconcile the terms employed therein so as to render it consistent and harmonious.

In summary, a review of the "statute as a whole" indicates the legislature's intention to impose the liability for the tax on the person "first receiving" or manufacturing bottled soft drinks in South Carolina.

Conclusion:

The person, whether a manufacturer, wholesaler, distributor or retailer, first receiving or manufacturing soft drink in South Carolina is liable for the soft drink tax, found in Article 13, Chapter 21 of Title 12. However, an out-of-state distributor can be licensed with the State as a collection agent for the tax, thereby incurring a debt to the State for the tax required to be collected, but such agent is not liable for the tax.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
March 1, 1989