



SC REVENUE RULING #94-7

- SUBJECT:** Computation of Tobacco Tax
(Tobacco Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- REFERENCE:** S.C. Code Ann. Section 12-21-610 (1976)
S.C. Code Ann. Section 12-21-620 (Supp. 1993)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1
- SCOPE:** A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. What is the "established price" under Code Section 12-21-620 of snuff, chewing tobacco and smoking tobacco for purposes of calculating the tobacco tax on promotional packages; products received free of charge; and promotional allowances, as described in the facts?
2. Is a cash discount offered by a manufacturer to a wholesaler for early payment deductible from the measure of the tax (i.e. the "established price") under Code Section 12-21-620?

Conclusions:

1. The "established price" of snuff, chewing tobacco and smoking tobacco for purposes of calculating the tobacco tax on promotional packages; products received free of charge, and promotional allowances, as described in the facts, is as follows:
 - (a) Promotional Packaging - A product packaged for the consumer as part of a "buy one get one free" or similar promotion by the manufacturer is a packaged unit with an established price that is distinct and separate from the established price for the same product sold individually. Therefore, the established price is the recognized and accepted sum of money asked by the manufacturer for each packaged unit during the promotion.

- (b) Products Received Free of Charge - If a manufacturer offers a wholesaler, during a specified time period, the opportunity to receive one case of a product free of charge if he purchases one or more cases of the same product, the total price that the wholesaler pays is the "established price" for all the cases of the product received under the promotion.

For example, if the wholesaler purchases 10 cases for \$200 and receives 1 case free, the established price upon which the tax is calculated for all 11 cases is \$200. A transaction must be viewed based upon its substance rather than its form. As such, the taxpayer in the example has purchased 11 cases for \$200.

- (c) Promotional Allowance - If a manufacturer offers a promotion that merely reduces the price of the product, the established price is the recognized and accepted sum of money asked by the manufacturer for the product during the promotion.

For example, the product may normally sell for \$175 per case; however, the manufacturer is offering for a limited time the product for \$160 per case with the invoice showing a unit price of \$175 and a promotional allowance of \$15. As a result of the promotion, the established price is \$160.

2. The "established price" for the purpose of calculating the tobacco tax is the amount charged by the manufacturer to the wholesaler before any cash discounts for early payment are taken.

Facts:

Manufacturers of snuff, chewing tobacco and smoking tobacco generally offer various incentives for wholesalers and consumers to purchase their products.

Questions have arisen with respect to three such incentives and the computation of the tobacco tax. A question has also been raised with respect to the standard business practice of discounting the customer's bill for early payment.

The first incentive program involves promotional packaging. Under this type of program, the manufacturer will package a product for resale to the consumer as part of a "buy one get one free", "buy two get one free" or similar promotion. For example, two or three of the products, depending on the type of promotion, are packaged or combined together (i.e. with cellophane, a paper band, etc.) so they must be sold as a unit to the consumer. Of course as part of these promotions, the manufacturer sells such products to the wholesaler in the same manner, "buy one get one free", etc. The second incentive is one not necessarily passed on to the consumer by the wholesaler or retailer as with the one discussed above. Under this program, the manufacturer will offer to a wholesaler, during a specified time period, the opportunity to receive one case of a product free of charge if he purchases one or more cases of the same product. Unlike the "buy one get one free" and similar promotions, these free products are not packaged as a unit with the paid product.

The last incentive involves a promotion, offered during a specified time period, that merely reduces the price of the product. For example, the products may sell for \$175 per case; however, the manufacturer is offering the product for \$160 per case. The invoice will show a unit price of \$175 and a promotional allowance of \$15.

In addition, many of these manufacturers also allow wholesalers a cash discount for early payment.

Discussion:

Code Section 12-21-610 imposes the tax and reads:

Every person doing business within this State and engaging in the business of selling such articles or commodities as are named in this article shall, for the privilege of carrying on such business, and every person, firm, corporation, club, or association within the State importing, receiving or acquiring from without the State or from any source any such articles for use or consumption within the State shall for the privilege of so doing be subject to the payment of a license tax which shall be measured by and graduated in accordance with the volume of sales or acquisitions of such person within the State.

Code Section 12-21-620 provides the tax rates on tobacco products and states, in part:

There shall be levied, assessed, collected and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

* * * *

- (6) Snuff and Chewing tobacco. - Upon snuff and chewing tobacco, five percent of the manufacturer's price;
- (7) Smoking tobacco. - Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, thirty-six percent of the manufacturer's price.

Manufacturer's price as used in items (6) and (7) shall be the established price at which a manufacturer sells to a wholesaler. (Emphasis added.)

Therefore, the measure of the tax for calculating the tax on snuff, chewing tobacco and smoking tobacco is the "established price at which a manufacturer sells to a wholesaler." We must now determine what is meant by the "established price".

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. *Hughes v. Edwards*, 265 SC 529, 229 SE2d 231 (1975); *Investors Premium Corp. v. South Carolina Tax Commission*, 260 SC 13, 193 SE2d 642 (1973).

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see *Hay v. South Carolina Tax Commission*, 273 SC 269, 255 SE2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 SC 43, 103 SE2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 SC 484, 60 SE2d 682 (1950).

The Second College Edition of *The American Heritage Dictionary* provides the following definitions:

Establish - To cause to be recognized and accepted.

Price - The sum of money or goods asked or given for something.

Substituting these definitions for the terms found in the final sentence of Code Section 12-21-620 the meaning becomes - Manufacturer's price as used in items (6) and (7) of Code Section 12-21-620 shall be the recognized and accepted sum of money asked for something which a manufacturer sells to a wholesaler.

Based on the above, the manufacturer's "established price" depends on the facts and circumstances. For example, the manufacturer's established price for a wholesaler who purchases 100 cases of a product is not the same as the established price for a wholesaler who purchases 5,000 cases of the same product from the same manufacturer. The established price may also change from month to month.

With respect to the issues addressed above, the "established price" is:

Promotional Packaging A product packaged for the consumer as part of a "buy one get one free" promotion by the manufacturer is a packaged unit with an established price that is distinct and separate from the established price for the same product sold individually. Therefore, the established price is the recognized and accepted sum of money asked by the manufacturer for each packaged unit during the promotion.

Products Received Free of Charge - For the incentive program in which the manufacturer will offer a wholesaler, during a specified time period, the opportunity to receive one case of a product free of charge if he purchases one or more cases of the same product, the total price that the wholesaler pays is the "established price" for the all the cases received under the promotion. For example, if the wholesaler purchases 10 cases for \$200 and receives 1 case free, the established price upon which the tax is calculated for all 11 cases is \$200. A transaction must be viewed based upon its substance rather than its form. As such, the taxpayer in the example has purchased 11 cases for \$200.

Promotional Allowance - For the incentive program in which a manufacture offers for a limited time a promotion that merely reduces the price of the product, the established price is the recognized and accepted sum of money asked by the manufacturer for the product during the promotion. For example, the product may sell for \$175 per case; however, the manufacturer is offering the product during a specified time period for \$160 per case with the invoice showing a unit price of \$175 and a promotional allowance of \$15.

Cash Discounts - The established price is the amount charged by the manufacturer to the wholesaler before any cash discounts for early payment are allowed and taken.

With respect to cash discounts, the above represents longstanding policy of the Department of Revenue. Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 309 SE2d 781 (1983). When the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines Inc. v. South Carolina Tax Commission*, 248 SC 148, 149 SE2d 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 SC 354, 60 SE2d 682 (1950).

SOUTH CAROLINA DEPARTMENT OF REVENUE

Columbia, South Carolina
March 23, 1994

For questions concerning tobacco taxes, contact the Office Services Division at (803) 737-4743 or John McCormack at (803) 737-4438.