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BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition) D E T E R M I N A T I O N
For Ruling of Tax Liability of)
) No. 89-543
)
. . .) Registration No. . . .
)

RULE 255: CARBONATED BEVERAGE TAX -- TAX SEPARATELY STATED AT WHOLESALE -- TREATMENT AS RETAILER. Rule 255 requires that wholesale sellers of carbonated beverages and syrups separately state the amount of the carbonated beverage tax on invoices or receipts. Where a wholesaler/retailer makes sales of such beverages out of a warehouse, and no distinction is made between the receipts of wholesale and retail customers, the seller may be treated as a retailer of those beverages for the purpose of Rule 255, so long as certain conditions are met.

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.

NATURE OF ACTION:

Taxpayer has requested that the Department of Revenue issue a determination which rules that . . . is a retailer for purposes of WAC 458-20-255 (Rule 255).

FACTS AND ISSUES:

Hesselholt, A.L.J. -- Taxpayer explains as follows:

. . . operates membership cash and carry warehouse stores which sell merchandise at low prices to its members. Members may be businesses which purchase goods for either resale or their own use as in the case of our individual members.

In the cash and carry membership warehouse industry, no distinction is made between wholesale or retail customers until the customer reaches the cash register. At that point, and only in states which assess a sales tax, the wholesale customer may submit a resale certificate, and sales tax would not be charged. The same price, access to goods, and hours are offered to both types of customers. There are no discounts for wholesale sale, no credit terms offered, no phone or catalog ordering, and no delivery or loading services are provided. The facility stores all of its merchandise in a manner that goods are immediately available for sale and which allow the customer to have access to the entire stock. All functions of the facility remain an integral part of the retail sales facility. . . .

To be required to show the tax separately on the cash register receipt would cause us technical difficulties in adjusting our cash register system. It also would raise unnecessary question and concerns from all our members, business or non-business, on the reasons for this "additional tax" charge on their receipt.

The state will not suffer any risk of untaxed beverage sales by . . . Our business customers would have a receipt showing the beverages were purchased at a Washington location. The customer, clearly, would not be the first possessor of these beverages in Washington. It is obvious . . . is an instate seller of taxable beverages. . . .

This legislation exempts retailers from the requirement to separately state the tax on the invoice. We feel our operation closer resembles a retail operation than a wholesale one. . . . , approximately 92% of our sales in Washington are true retail sales. The only thing that distinguishes the remaining 8% of sales is that we accept a resale certificate and the items are purchased tax free.

DISCUSSION:

Rule 255 provides, in relevant part, as follows:

(1)(a). . . The incidence or privilege which incurs tax liability is simply the possession of the carbonated beverages or syrup and is imposed upon any possession of carbonated beverages or syrup in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any carbonated beverage or syrup the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

* * *

(4) EXEMPTIONS. The following are exempt from the tax:

(a) Any successive possession of a previously taxed carbonated beverage or syrup.

(i) In order to verify the payment of the tax, all persons selling or otherwise transferring possession of taxed beverages or syrup, except retailers, shall separately itemize [the] amount of the tax on the invoice, bill of lading, or other delivery document....

* * *

(iii) A subsequent possessor of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.

The purpose of requiring that the tax be separately itemized is so that subsequent possessors can show that the tax has been paid. The risk involved in not separately itemizing the tax is not directly on . . . , but is instead to its customers. Thus, while the department may collect tax from any person with possession, if the tax has not otherwise been paid, the first possessor in Washington remains liable for the tax, and becomes liable to the subsequent possessor who actually paid the tax. In this case, where all purchases are made from a Washington location, and the receipt has the

location from which the purchase was made, the liability would then shift to . . . to show that it was not the first in-state possessor of the beverages. We find that allowing . . . to be treated as a retailer in this case for this rule will adequately protect the state and comply with the intent of the statute, under the following conditions:

All receipts issued by . . . must have the location of the warehouse from which the purchase was made, so that the Department of Revenue can distinguish between Washington and out-of-state . . . purchases and there is no distinction between retail and wholesale receipts.

. . . must both (1) post notices in prominent places in each Washington warehouse and (2) make some attempt, whether by newsletter, mailing, or handout, informing its wholesale customers of the necessity to keep the receipts for the carbonated beverage purchases.

RULING:

. . . may be considered a retailer of carbonated beverages and syrups from the purposes of WAC 458-20-255, if: (1) there is no distinction between wholesale and retail receipts; (2) all receipts show the location of the warehouse; (3) . . . both (a) posts notices in prominent places in each Washington warehouse and (b) make some attempt, whether by newsletter, mailing, or handout, informing its wholesale customers of the necessity to keep the receipts for the carbonated beverage purchases.

DATED this 18th day of December 1989.