

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #94-04**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

T.C.A. Section 67-1-109(c) - Request for Letter Ruling - Bottler's tax.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER AND SUBSIDIARIES] are [SIZE] providers of inventory to convenience stores. [TAXPAYER] provides a variety of products to its Tennessee customers. One of the products provided to convenience stores in Tennessee is [BRAND] soft drink syrup. The syrup which is delivered to customers in Tennessee is not potable. The syrup must

be mixed with carbonated water by the convenience store before being sold to the ultimate consumer.

ISSUE

Whether the sale of the soft drink syrup, as described above, is subject to the tax imposed by T.C.A. Section 67-4-402?

RULING

The sale of the soft drink syrup to convenience stores for resale, under the conditions set out above, is not subject to tax pursuant to T.C.A. Section 67-4-402.

ANALYSIS

T.C.A. Section 67-4-402 provides for a tax on the gross receipts derived from producing or importing and selling within Tennessee bottled soft drinks. The phrase "bottled soft drinks" is generally defined by the statute as any and all nonalcoholic beverages which are sold in a closed or sealed container. The word "beverage" is generally defined as a potable liquid. See The American Heritage Dictionary 128 (1st ed. 1978). Since the syrup sold is not potable, the receipts from the sale would not be subject to tax. Also, after the syrup is mixed with carbonated water by the convenience store, receipts from the sale of the resulting mixture would not be subject to tax as long as the beverage was not sold in sealed containers.

Howard E. Herndon, Jr. Staff Attorney

APPROVED: Joe Huddleston, Commissioner

DATE: 3-22-94