

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 85-61-170

June 14, 1985

SUBJECT: Taxation and Revenue - Tax Rate on Near Beer.

SYLLABUS: Near beer without an alcoholic content is to be taxed as a soft drink and that with an alcoholic content is to be taxed as beer.

TO: Mr. C. C. McCrary, Director
Sales and License Division

FROM: Joe L. Allen, Jr. *[Signature]*
Chief Deputy Attorney General

QUESTION: Is near beer taxed as a soft drink or as beer?

APPLICABLE LAW: §§ 12-21-1860, 12-21-1010 and 61-9-10,
South Carolina Code of Laws, 1976.

DISCUSSION:

The General Assembly in Act 826, Acts of 1960, defined a bottled soft drink as:

" * * * being any complete finished ready to use, nonalcoholic drink, whether carbonated or not, such as soda water, ginger-ale, nu-grape, coca-cola, lime cola, pepsi-cola, budwine, near beer, fruit juice, vegetable juice, milk drinks when any flavoring or syrup is added, cider, cordials, bottled carbonated water and all bottled preparations commonly referred to as soft drinks of whatever kind or description." (Now codified as § 12-21-1860.) (Emphasis added)

Near beer, when nonalcoholic, is thus a soft drink. Beer, however, is defined for tax purposes by § 12-21-1010 to mean:

" * * * all beers, ales, porter and other similar malt or fermented beverages containing not more than five per cent of alcohol by weight; * * *."

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Such products are also declared to be nonalcoholic and nonintoxicating by § 61-9-10. Near beer is a nonintoxicating malt liquor resembling beer in color, odor and taste, and intended to substitute therefor. 45 Am.Jur.2d, Intoxicating Liquors, § 11, p. 494. It is thus seen that near beer also falls within the definition of beer. It is the apparent conflict between the definitions that generates the question of the tax to be imposed upon near beer.

Under settled rules of construction, this conflict is to be reconciled and effect given each statutory provision if such is reasonable and logically possible.

"It is the duty of the Supreme Court to give all parts and provisions of a legislative enactment effect and reconcile conflicts if reasonable and logically possible." Adams v. Clarendon County School District No. 2, 270 S.C. 266, 241 S.E.2d 897. (For other cases, see 17 S.C.D., Statutes, Key 207.)

The last expression of the General Assembly was the inclusion within the definition of a soft drink the condition that it be nonalcoholic. (Act 826, Acts of 1960.) The prefix "non" is a negative term and as used in the definition of a soft drink, means an absence or lack of alcohol. (See Words & Phrases and Webster's New Collegiate Dictionary.)

The statutory definition of beer, however, acknowledges the existence of an alcoholic content. If such were not the case, there would have been no need to legislatively declare the same to be nonalcoholic and nonintoxicating. The General Assembly has thus distinguished between near beer without an alcoholic content and near beer with an alcoholic content. Some near beer marketed within the State has an alcoholic content while others do not contain alcohol. Near beer without an alcoholic content is defined as a soft drink and is to be taxed as such. Near beer with an alcoholic content is defined, however, as beer and is to be so taxed.

CONCLUSION:

Near beer without an alcoholic content is to be taxed as a soft drink and that with an alcoholic content is to be taxed as beer.

JLAJr:wcg