

1975 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3942, 1975 WL 22240

Office of the Attorney General

State of South Carolina

Opinion No. 3942

January 23, 1975

***1 Re: Rock Hill Coca Cola Bottling Company Soft Drink Crowns**

SYLLABUS: Section 65–775 of the Code of Laws providing the rate for soft drink bottle crowns is a tax imposition section and amounts paid under a mistake of fact in excess of the rates provided therein are refundable under the provisions of Section 65–2684 of the Code of Laws.

Honorable Robert C. Wasson
Chairman
South Carolina Tax Commission
Post Office Box 125
Columbia, South Carolina 29214

Dear Mr. Wasson:

An opinion is requested concerning the Commission's authority to refund soft drink taxes under the following circumstances. Rock Hill Coca Cola Bottling Company, during the fiscal year 1972–73, purchased soft drink crowns for use on soft drinks which it manufactured. In making its application to purchase the crowns during this year the company did not indicate that 3,490 gross of crowns were acquired at the discounted rate of \$1.05 per gross and consequently paid \$1.22 per gross. A refund for the difference, which amounts to \$593.30, is requested.

Section 65–775 of the South Carolina Code of Laws provides for the sale of said crowns. It states:

“The Commission shall charge one dollar and twenty-two cents per gross for each one cent of face value for soft drink license tax crowns or lids; provided, however, that the first fifteen thousand gross of one-cent units of face value of crowns or lids, or both, purchased by any one person in any one fiscal year, regardless of whether the crowns or lids constituting such first fifteen thousand gross are of the same or different face values, shall be exempt from any tax, and the second fifteen thousand gross shall be sold by the Commission at one dollar and five cents per gross.”

Section 65–2684 of the Code is authority for the Commission to refund any tax that is “erroneously and improperly or illegally assessed, collected or otherwise paid over to the Commission” and this section is the only authority under which the Commission may consider the company's claim for refund.

Section 65–775, under which the crowns were purchased, expressly provides that the second fifteen thousand gross of crowns purchased by a bottler “shall” be sold by the Commission at the rate of \$1.05 per gross. It is generally held that the word “shall” is imperative or mandatory. Black's Law Dictionary; [State v. Huffstetler](#), 213 S.C. 319, 49 S.E.2d 585; [Carolina Music Co. v. Query](#), 192 S.C. 308, 6 S.E.2d 473; [Massey v. Glenn](#), 106 S.C. 53, 90 S.E. 321. Section 65–775 is not an exemption statute and the rule that exemptions or deductions must be timely claimed is therefore not applicable. It is instead an imposition statute and the rates provided therein must be applied. We therefore find no legal support in this section of law for the Commission to retain the amounts here in issue.

It is a firmly established rule that money paid under the influence of a mistake of fact may be recovered provided that the payment has not caused such a change in the position of the payee that it would be unjust to require the payee to

make a refund. A mistake of fact will be found where money was paid under the belief that the money was due to payee. See 40 Am.Jur., Payment, Sections 187 and 189. The mistake here apparently resulted in accounting for the total crowns purchased and this mistake under the circumstances cannot be the basis to refuse the refund under the provisions of Section 65–2684.

*2 It is the conclusion of this office therefore, that the Commission has authority to grant the refund which has been requested.

Yours very truly,

G. Lewis Argoe, Jr.
Assistant Attorney General

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