

1975 S.C. Op. Atty. Gen. 147 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4069, 1975 WL 22366

Office of the Attorney General

State of South Carolina

Opinion No. 4069

August 1, 1975

***1 Canned iced tea is a 'bottled soft drink' as defined in Section 65-763.**

Director

License Tax Division

South Carolina Tax Commission

Iced tea has recently been canned and is being sold as ready to drink. In addition to instant tea, the can contains water, sugar, citric acid (provides tartness), potassium sorbate and sodium benzoate (preserves freshness), artificial color and natural lemon flavor. Section 65-751 imposes the liability for the soft drinks tax contained in Article 6, Chapter 11, Title 65 of the Code. The liability is imposed with respect to 'bottled drinks of every kind whatsoever, including but not limited to' a heterogeneous list of bottled and canned drinks. Section 65-762 provides the base of the tax by requiring 'bottled soft drinks' to be stamped at a rate of one cent for each twelve ounces or fractional part thereof. Section 65-763 defines bottled soft drinks as follows:

'Bottled soft drinks,' as the term is used in this chapter, shall be defined as being any complete finished ready to use, nonalcoholic drink, whether carbonated or not, such as * * * (a list of drinks follows).'

The list supplied, with two additions, is substantially identical to that contained in Section 65-751, heterogeneous in nature. In addition to listing drinks commonly referred to as 'soft drinks', the section lists drinks such as soda water, cider, carbonated water, fruit juices and vegetable juices which are not commonly referred to as soft drinks. The listing is, therefore, not one subject to the rule of *ejusdem generis*. This rule limits general language to a specifically mentioned class. For this to apply, the enumerated items must form a certain limited class. See [*Cooper River Bridge v. South Carolina Tax Commission*](#), 182 S. C. 72, 188 S. E. 508.

It therefore appears that the general quoted language above used in the definition contained in Section 65-763 is broad enough to include tea when sold in a can as a 'complete finished ready to use nonalcoholic drink'. Strengthening this opinion is the fact that tea sold in this manner is a product in direct competition with many of those specifically enumerated in Sections 65-751 and 65-763 and therefore should, where possible, be taxed similarly. See [*Ryder Truck Lines, Inc. v. South Carolina Tax Commission*](#), 248 S. C. 148, 149 S. E. 2d 435. Section 65-765 is the exemption statute. It exempts natural fruit or vegetable juice, however, even if tea could be considered as a vegetable juice, which is doubtful, the canned tea in question would not qualify because of the coloring, artificial flavoring and preservatives which have been added.

Canned tea sold ready to drink is a soft drink as defined in Section 65-763 of the Code and is taxable under the provisions of Section 65-751 and Section 65-762 of the Code.

John C. von Lehe

Assistant Attorney General

1975 S.C. Op. Atty. Gen. 147 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4069, 1975 WL 22366

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.