

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (2) M
Alcohol Beverage Tax
December 12, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M861003A

On October 3, 1986, a Petition for Advisory Opinion was received from Joseph E. Seagram & Sons, Inc., 375 Park Avenue, New York, New York 10152.

The issue raised is whether a non-alcoholic wine sold by Petitioner constitutes a taxable alcoholic beverage for purposes of Article 18 of the Tax Law.

Petitioner produces and sells "St. Regis Wine Without the Alcohol" products which are de-alcoholized bottled beverages for consumers who desire the taste of wine without the effects of alcohol. St. Regis products contain trace amounts of alcohol (in all cases less than one-half of one percent alcohol by volume) because of the virtual impossibility of completely eliminating alcohol from any fruit-based beverage product. These products consist of a fermented grape raw material which has been transformed by use of a "Centrifugal Molecular Film Evaporator" into a non-alcoholic beverage.

St. Regis products are marketed in food stores as non-alcoholic beverages. Their labels emphasize the non-alcoholic nature of the product.

Article 18 of the Tax Law imposes excise taxes on distributors and noncommercial importers of alcoholic beverages at various rates of tax for beer, wine, cider and liquor.

Section 420(6) of Article 18 of the Tax Law provides as follows:

6. "Wines" mean and include wine (both still and sparkling and when fortified by the addition of alcohol or spirits), fruit juice containing one-half of one per centum or more of alcohol by volume and all other beverages containing alcohol manufactured or produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, providing the foregoing contain not more than twenty-four per centum of alcohol by volume, but shall not mean or include cider containing three and two-tenths per centum, or less, of alcohol by volume.

In its petition, Petitioner argues that its St. Regis products do not come within the definition of wines as provided in section 420(6) of the Tax Law. However, inasmuch as Petitioner's St. Regis products clearly are beverages containing alcohol produced by the fermentation of the natural sugar of grapes, these arguments are not persuasive.

Petitioner also asserts that there is no legislative intent to tax St. Regis products inasmuch as there is no New York "control" interest in discouraging or limiting consumption of de-alcoholized wine with trace amounts of alcohol. Additionally, Petitioner asserts that its St. Regis products should not be considered alcoholic beverages for New York State purposes since they are not considered alcoholic beverages for federal purposes.

Petitioner points out that a number of beverages usually considered to be non-alcoholic in nature contain small amounts of alcohol (e.g. vanilla milk shakes - .48%; apple juice - .16% and ginger ale - .08%).

It has been the policy of the U.S. Department of the Treasury since at least 1908 to exempt from the federal taxes on alcoholic beverages any beverage containing not more than one-half of one percent of alcohol by volume. In that year, the Commissioner of Internal Revenue held that:

...the practical administration of the law necessitates the fixing of a point below which the alcoholic content is too inconsiderable to class the beverage as either of the liquors enumerated above, or similar thereto or to bring same within the consideration of the internal - revenue laws. The practice and rulings of this office have already fixed this point as one-half of 1 percent in the case of sales of beverages of this character, and I see no sufficient reason for making a distinction between the manufacturer and dealer in this class of beverages. It is therefore held that beverages containing not more than one-half of 1 percent of alcohol by volume do not come within the consideration of the internal-revenue laws either as to manufacture or sale. T.D. Ruling 1307, February 5, 1908.

Although Treasury Department Ruling 1307 pertains to fermented malt beverages, it has also been applied to wine with an alcoholic content of one-half of one percent or less.

Similarly, the New York State Department of Taxation and Finance has held beer with an alcohol content of one-half of one percent or less to be exempt from the tax imposed under Article 18 of the Tax Law. In 1956, the State Legislature confirmed the correctness of the Tax Department's holding by amending section 420(5) of the Tax Law to "remove any doubt that beer containing 1/2 of 1% or less alcohol by volume is not subject to the State tax." 1956 Legislative Annual p. 329.

There is no apparent reason to treat non-alcoholic wine differently from non-alcoholic beer.

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Accordingly, it is concluded that it was never the purpose of Article 18 of the Tax Law to tax beverages with an alcoholic content of one-half of one percent by volume inasmuch as their alcoholic content is too inconsiderable to classify such beverages as alcoholic beverages. Therefore, Petitioner's St. Regis Wine Without the Alcohol products are not subject to the tax imposed by Article 18 of the Tax Law.

DATED: December 12, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.