

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

TSB-A-88(26)C  
Corporation Tax  
December 8, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880915A

On September 15, 1988, a Petition for Advisory Opinion was received from Charles Snyder Beverages, Inc., 50 Yellowstone Avenue, White Plains, New York 10607.

The issue raised is whether, for purposes of the franchise tax under Article 9-A, New York State will accept the terms and conditions that the Internal Revenue Service may require in granting a change in the method of accounting for deposits on nonrefillable containers resulting from the application of Rev. Rul. 78-273.

Since its inception on April 19, 1960, Petitioner has conducted a wholesale beer distributorship in White Plains, New York. The vast majority of its income has been attributable to the wholesale distribution of bottled and canned beer. It presently reports its income on the accrual basis of accounting for purposes of preparing both its financial statements and its income tax returns.

Petitioner was informed by its accountants that though the reserve method of accounting for deposits on nonrefillable containers is in accordance with generally accepted accounting principles (GAAP), it does not clearly reflect income for tax purposes. Internal Revenue Service Rev. Rul. 78-273 provides that the use of the cash receipts and disbursement method of accounting is required when accounting for deposits on nonrefillable containers. The service has adopted similar positions that represent departures from "GAAP", i.e. Treasury Regulation 1.61-8(b) states that "[g]ross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer."

Petitioner has requested, for federal income tax purposes, permission to change from its present reserve (accrual) method of accounting for deposits on nonrefillable containers to the cash method of accounting for such deposits, which is the method mandated by Rev. Rul. 78-273. Petitioner states that New York State conforms to the Internal Revenue Code, regulations and rulings as the starting point of New York taxable income and any changes in the method of accounting for federal income tax purposes would apply to New York as well. Petitioner contends that if it did not change from its present method of accounting for deposits on nonrefillable containers for federal purposes, it might have to make such change for New York purposes. For simplicity of tax return preparation, Petitioner desires to apply Rev. Rul. 78-273 for both federal and New York state income tax purposes.

In Rev. Rul. 78-273, the taxpayer is engaged in the wholesale beverage distributing business. The deposit paid by the retailer on each beverage container sold is to be refunded to the retailer by the distributor upon return of the empty beverage container. Until an empty container is returned, a

distributor has no more than a contingent liability to refund the deposit. It was held that the taxpayer's reserve method of accounting does not clearly reflect the taxpayer's income and may not be used to account for refundable deposits on nonrefillable containers for federal income tax purposes. Further, deposits received on nonrefillable containers are includible in the taxpayer's gross income in the taxable year in which received. Refundable deposits on nonrefillable containers are not deductible by the taxpayer until the empty containers are returned.

Section 2-2.1(a) of the Business Corporation Franchise Tax Regulations (hereinafter "Regulations") provides that "[t]he accounting method or basis on which entire net income is to be computed must be the same as the taxpayer's method of accounting for Federal income tax purposes."

Section 2-2.2 of the Regulations provides that:

(a) If a taxpayer's method of accounting for Federal income tax purposes is changed, the accounting method employed in determining entire net income for purposes of article 9-A of the Tax Law must be changed at the same time to the method approved for Federal income tax purposes. When a change of accounting method occurs, any adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted must be taken into account to the extent they are required to be taken into account in determining the taxpayer's Federal taxable income.

(b) A taxpayer whose method of accounting is changed must submit, with its first report in which the new accounting method is used, a copy of the consent of the Commissioner of Internal Revenue, together with complete details of any adjustments with respect to items of income or deduction.

Accordingly, when computing entire net income for any taxable year or period under Article 9-A of the Tax Law, Petitioner must use the same method of accounting that is used for federal income tax purposes. This includes both the overall method of accounting and the treatment of any individual item. If the method of accounting is changed for federal income tax purposes, it must be changed for purposes of Article 9-A.

Therefore, if Petitioner's request to change the method of accounting for deposits on nonrefillable containers, to reflect the provisions of Rev. Rul. 78-273, is approved for federal income tax purposes, Petitioner must use such method for purposes of computing entire net income under Article 9-A. Petitioner must use such new method for the taxable years for which the new method is approved for federal income tax purposes. Petitioner must submit, with the first franchise tax report using the new method, a copy of the consent of the Commissioner of Internal Revenue, together with complete details of any adjustments with respect to items of income or deduction.

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It should be noted that regardless of the method of accounting used by Petitioner, section 208.9(d) of the Tax Law and section 2-2.1(a) of the Regulations provide that when the Commissioner of Taxation and Finance deems it necessary in order to properly reflect the entire net income of the taxpayer, he may determine the taxable year or period in which any item of income or deduction must be included.

DATED: December 9, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services

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