

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

TSB-A-98(77)S
Sales Tax
November 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980615A

On June 15, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Swedish Hill Vineyard, Inc., 4565 Route 414, Romulus, New York, 14541.

The issue raised by Petitioner, Swedish Hill Vineyard, Inc., is whether wine and wine products produced by Petitioner and used in wine tastings were exempt from sales and use tax prior to December 1, 1997.

Applicable Law

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(33) Wine or wine product furnished by the official agent of a farm winery, winery, wholesaler, or importer at a wine tasting held in accordance with section eighty of the alcoholic beverage control law to a customer or prospective customer who consumes such wine at such wine tasting.

Section 1115(a)(33) of the Tax Law was enacted by Section 99 of Part A of Chapter 389 of the Laws of 1997. Section 219(16) of Part A of Chapter 389, the effective date provision of Section 99, provides:

(16) sections ninety-six, ninety-seven, ninety-eight and ninety-nine of this act shall take effect December 1, 1997, and shall apply to sales made, services rendered and uses occurring on or after such date, although made, rendered or occurring under a prior contract;

Opinion

In essence, the issue raised by Petitioner is whether the exemption from sales tax as provided in Section 1115(a)(33) of Article 28 of the Tax Law, and as enacted by Chapter 389 of the Laws of 1997, has retroactive application. Generally, statutes are construed as prospective, unless the language of the statute, either expressly or by necessary implication, requires that it be given retroactive construction. Statutes are generally presumed to operate prospectively and not retroactively. Generally, the question of whether a statute should be construed as prospective or retrospective is to be determined

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by ascertaining the legislative intent. See McKinney's Statutes §§ 51.b, 51.c and 51.d.

The effective date language of Section 219(16) of Part A of Chapter 389 of the Laws of 1997, as it applies to the amendment which added Section 1115(a)(33) of the Tax Law, sets forth that the exemption contained in Section 1115(a)(33) shall apply to sales made, and uses occurring, on or after December 1, 1997. There is no language in the relevant sections of Chapter 389 that indicates the amendment is to have retroactive application. Therefore, in accordance with Sections 51.b, 51.c and 51.d of McKinney's Statutes, the exemption provided in Section 1115(a)(33) of the Tax Law applies only to sales or uses of wine or wine product that occur on or after December 1, 1997.

DATED: November 6, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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