

M e m o r a n d u m**280.0791**

To: Out-of-State – Auditing

January 16, 1973

From: R. Nunes

Subject: B--- & W--- T--- Corp.

SS --- XX XXXXXX

Your letter of November 9 to tax counsel concerning the application of sales tax to premiums issued by B--- & W--- T--- Corporation has been referred to me for response.

The premium plan employed by B & W is not specifically covered in either Regulation 1670 or 1671. An analogy can be made with either Plan (B)(1) of Regulation 1671 or part (c) of Regulation 1670. If we were to treat the plan as we do under (B)(1) of Regulation 1671, it would follow that the retailer of the cigarettes would be entitled to a cash discount on that portion of the total purchase price of the cigarettes and premium which is fairly allocable to his purchase of the premium. The difficulty of the retailer ascertaining this amount and keeping records to substantiate the deduction is fairly obvious. Likewise, such a procedure places a substantial burden on our audit staff to verify such a deduction.

As a practical matter the State has received tax measured by the total consideration paid by the customer who purchased the cigarettes and the premium. Since tax has been paid on the total consideration, I do not believe that it is advisable to assert tax on the redemption of the premiums and allow the retailer a cash discount.

In this particular case, I believe that it would be best for all concerned to treat the transaction as most closely analogous to part (c) of Regulation 1670. There may be other factual considerations in other cases which would require a modification of this view and therefore I would recommend that you not use this opinion as precedent but rather as a practical solution to this particular problem. For example, if the premium was delivered with a non-taxable item or delivered with both taxable and non-taxable items, a different solution would be necessary. Our prime concern should be one of a procedure that is as simple as possible and yet results in the State receiving the proper amount of tax on these transactions.

If you have any questions regarding this matter, please let me know.

RNunes

R. Nunes

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cc: Mr. G. L. Rigby
MR. D. J. Hennessy

Memorandum

280.0791

To: Mr. Glenn Bystrom

Date: May 29, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Robert Nunes' memorandum of January 16, 1973 to Out-of-State Auditing.

We are in agreement with his conclusion, as follows:

Premiums. A cigarette manufacturer included coupons redeemable for merchandise in the cigarette packages. The premiums were available only from the manufacturer.

In this situation, the premiums are regarded as being sold with the cigarettes. There is no additional tax due on the purchase of premiums by the manufacturer on the redemption of the premiums by the consumer. 1/16/73.

Gary Jugum