

M e m o r a n d u m**245.1483**

To: Anderson, Vic; Khabbaz, Leila

Date: August 13, 1998 1:39PM

From: Levine, David

Subject: hops and annotations 245.1420 and 245.1483

Hops is listed in this annotation as "Hops Flavoring Extracts 4/15/91".

There is also a separate annotation with the same date that says:

245.1483 **Hops Used in Brewing Beer.** Hops are exempt food products, e.g., flavoring extracts. 4/15/91.

These are both based on the same letter (actually there are three or four of that date because Waid sent out several that day to reverse what he had said previously). There's no reason to have this twice, and if we were going to leave one, we'd leave 245.1483 because it says a bit more. But, if we were going to leave that one in, we'd need to rewrite so that you don't have to read between the lines based on the heading and include the full explanation (as laid out in the backup). However, that is unnecessary. Annotation 280.0240 (9/26/69) already fully covers this point. It covers that hops are food, and that the use of food to make beer qualifies for exemption. Thus, please delete BOTH the reference to hops in 245.1420 AND 245.1483.

280.0240 should be either copied, or moved, to the 245 series. You could leave the just the first sentence in the 280 series and include only the rest, with an appropriate intro, in the 245 series, or you could just copy it into 245 as is.

M e m o r a n d u m**245.1483**

To: Mr. John G. Abbott
Senior Tax Counsel (Supervisor)

Date: April 15, 1991

From: John L. Waid
Tax Counsel

Subject: Revising Annotations

A. Annotation 245.0780

This annotation is misleading and should be changed. It now reads as follows:

“Non-Food Purposes. The sale of that which would ordinarily be food items exclusively for non-food purposes, would not be regarded as within the exemption.” 11/4/57.

The opinion letter supporting this annotation was written by Mr. E. H. Stetson and states, in pertinent part, as follows:

“We believe that the taxable status of sales of ordinary food items sold by food retailers should not be affected by the fact that some particular purchaser may intend to use the items for other than food for human consumption. On the other hand, if someone sold what would ordinarily be food items exclusively for non-food purposes, it would probably be in order to regard such sales as not within the exemption.

At the time the letter was written, Ruling 52(c) was in effect. It was replaced, without change, by Regulation 1602(c), which indicates that when it says “non-food purposes,” it limits that term to mean “not for human consumption.”

The interpretation of this regulation provided by the annotation, however, makes it appear that if the retailer is not a food retailer and the commodity sold goes into items that are defined by Regulation 1602 as not being food products, then sub-division (c) does not apply. The annotation indicates that the emphasis in sub-division (c) is on the nature of the retailer and also that the meaning of term “non-food purposes” is not limited to “not for human consumption.”

In view of the foregoing, I suggest that the annotation be revised to read as follows:

“The sale of that which would ordinarily be food items exclusively for a purpose that does not include-human consumption would not be regarded as within the exemption.”

P. Annotation 245.1440

This annotation lists brewer’s yeast, brewer’s yeast powder, and brewer’s yeast flakes, and malt extract as not being “food products” under Section 6359 and so subject to tax. The letters on the three brewer’s yeast products date from 1953 and 1951, and the one on malt extract, according to the annotation, dates from 1963. I cannot find the letters on malt extract and brewer’s yeast powder in the source files.

It was determined after long negotiations with the brewing industry that brewer’s yeast and brewer’s yeast products, unless sold in certain forms as dietary supplements or adjuncts, were food products, even when sold to make beer. Malt and malt extract were listed as “food products” in a subsequent revision to Regulation 1602 (a) (1). Hops were also determined to be flavoring extracts and so exempt from taxation under that regulation.

I suggest that the references to brewer’s yeast, brewer’s yeast products, and malt extract be removed from the annotation. A reference to hops should be inserted in Annotation 245.1420, or an annotation all its own should be created.

JLW:es