



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
DELAWARE STATE BUILDING  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE  
TAX RULING 85-1

July 26, 1985

SUBJECT: Wholesaler's License and Gross Receipts Tax

This notice will advise Delaware wholesalers of a tax law change as it affects certain wholesaler licensees and of the Division of Revenue's interpretation of certain aspects of the wholesaler gross receipts tax law.

I. Law Change.

Chapter 184, Volume 65, Delaware Laws, signed by Governor Castle on July 12, 1985, provides for a new monthly deduction of \$10,000 to be applied, effective July 1, 1985, against the .4% (.004) tax on wholesale gross receipts. This will result in a decrease in gross receipts taxes paid by wholesalers.

Filing requirements for wholesalers are unaffected by this statutory amendment. Except as described below, gross receipts taxes and returns are due on the 20th of each month with respect to the aggregate gross receipts for the immediately preceding month. If, however, aggregate gross receipts for any month do not exceed \$2,000, the return and tax payment for that month is due on or before the 20th of the month following the close of that calendar quarter. Taxpayers should be aware that returns are due according to aggregate gross receipts, not gross receipts net of the monthly deduction.

Gross receipts returns reflecting this law change are expected to be mailed by July 31, 1985 to wholesalers whose gross receipts tax rate is .4% (.004). These returns are to be used for the return due August 20, 1985, for July, 1985 gross receipts.

II. Definition of "Physical Delivery" for Purposes of Gross Receipts Tax.

Section 2901 (2) (b), Title 30, Delaware Code, defines a wholesaler's "gross receipts," in pertinent part, as total consideration received from sales of tangible personal property physically delivered within this State to the purchaser or his agent, but shall not include (i) delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State, or (ii) State tobacco products taxes or State motor fuel taxes paid or payable.

Prior to January 1, 1985, the law had applied the gross receipts tax when title passed from the wholesaler to a purchaser within Delaware. Effective January 1, 1985, however, as described above,

the definition of "gross receipts" was changed to comprise those receipts derived from sales where the physical delivery of goods from the seller to the purchaser or his agent occurs within the State.

The law provides exceptions to the "physical delivery" test where goods are delivered to the United States mail or to a contract carrier (irrespective of F.O.B. or delivery terms) for delivery to a place outside the State. Questions have been raised whether the exceptions extend, under certain circumstances, to a non-resident purchaser's "pick up" of goods at a resident wholesaler's place of business. In general, under the following limited circumstances, such a transaction falls within the intent of the statutory exceptions.

Transfer of possession of goods from a wholesaler to a non-resident purchaser or his agent within Delaware is not a taxable event under §2901, Title 30, Delaware Code, if:

1. Transfer of possession of goods to the purchaser or his agent occurs within Delaware;

2. The purchaser's employees and vehicles (including ships and barges) "picking up" the goods in question are not headquartered or dispatched from within Delaware;

3. The goods in their entirety are for ultimate delivery outside Delaware and in no respect are inventoried, warehoused, or otherwise come to substantial rest within the State prior to ultimate delivery without Delaware; and

4. The wholesaler obtains, with or before the transfer of possession of the goods, a true and correct Exemption Certificate. The exemption certificate is required to be retained by the wholesaler for the period of three years after the close of the calendar year in which the transaction covered by the certificate occurred. Exemption certificates will be allowed to cover multiple transactions with the same purchaser. The instructions for the single and multiple transaction exemption certificate will be provided and a pre-printed set of certificate forms will be mailed to all wholesaler licensees prior to August 23, 1985. Transactions occurring between January 1, 1985, and August 31, 1985, meeting conditions (1), (2), and (3) above shall not be considered taxable for gross receipts purposes if the seller is able to provide substitute documentation in lieu of exemption certificates adequately supporting of the existence of those conditions.

Unless each of the foregoing four conditions is met, "pick ups" by the purchaser or his agent from the wholesaler generate taxable gross receipts under §2901, Title 30, Delaware Code.

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