

Rev. Rul. 59-155, 1959-1 C.B. 292

The retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, and luggage, handbags, etc., by an organization which is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, although such articles are received and sold on a consignment basis.

Revenue Ruling 56-331, C.B. 1956-2, 786, amplified.

Advice has been requested whether an organization, which is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is liable for reporting and paying retailers excise taxes on its sales of taxable articles, where such articles are received and sold on a consignment basis.

An organization which is exempt from Federal income tax under section 501(c)(3) of the Code for the reason that it is organized and operated exclusively for educational purposes sells various types of articles at its yearly bazaar. The articles include items of jewelry, furs, toilet preparations, luggage, handbags, etc. It receives such articles on a consignment basis from local merchants. The organization controls and determines the prices for which the articles are sold.

Sections 4001, 4011, 4021, and 4031 of the Code impose a tax on the sale at retail of articles of jewelry and related items, furs, toilet preparations, and luggage, handbags, etc., respectively.

Section 320.4(d) of Regulations 51, made applicable to the 1954 Code by Treasury Decision 6091, C.B. 1954-2, 47, provides that where an article is consigned to any person for sale at retail and the consignor maintains control over the terms and prices for which the article may be sold by the consignee, the consignor is considered to be the 'person who sells at retail' when the consignee sells the taxable article.

Section 320.4(e) of the regulations provides that where an article is consigned to any person for sale at retail and the consignor maintains no control over the terms and prices for which the article may be sold at retail by the consignee, such consignee is considered the 'person who sells at retail' when such article is sold by him.

Revenue Ruling 56-331, C.B. 1956-2, 786, holds that the retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, or luggage, etc., by a charitable organization which is exempt from Federal income tax under section 501(c)(3) of the Code. As stated in that Revenue Ruling, there is no provision of law which exempts from the tax sales at retail of articles merely because such sales are made by an organization operated exclusively for charitable purposes.

While that Revenue Ruling relates primarily to sales of articles by an organization which has title to the articles which it sells, the conclusion expressed therein is not affected by the fact that the articles sold by the organization are on consignment, provided, of course, the circumstances are such as will bring the case within the ambit of section 320.4(e) of the regulations.

Accordingly, the retailers excise tax applies to the sale at retail of items of jewelry, furs, toilet preparations, luggage, handbags, etc., by an organization which is exempt from Federal income tax under section 501(c)(3) of the Code, although such articles are received on a consignment basis. Therefore, it is held that the educational organization in the instant case is liable for reporting and paying the retailers excise tax due on its sales of jewelry and related items, furs, toilet preparations, luggage, handbags, etc., since that organization controls and determines the prices for which the articles are sold.

Revenue Ruling 56-331 is hereby amplified.