ICE CREAM AND SOFT DRINKS---COLLECTION OF REVENUE TAXES

The commissioner of Internal Revenue has made the following statement in the nature of a tentative ruling with reference to the collection of the tax upon soft drinks, ice cream and similar articles sold at soda fountains and similar places of business. The printed regulations relating thereto will be issued shortly. This is according to information furnished this paper from the office of Milton A. Miller, Collector of Internal Revenue, at Portland.

Sec. 630. That on and after May 1st, 1919, there shall be levied, assessed, collected and paid a tax of 1 cent for each 10 cents or fraction thereof of the amount paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business, for drinks commonly known as soft drinks, compounded or mixed at such place of business, or for ice-cream, ice-cream sodas, sundaes, or other similar articles of food or drink, when any of the above are sold on or after such date for consumption in or in proximity to such place of business.

Effective date: The tax is upon ice-cream, ice-cream sundaes, and soft drinks, and similar articles of food or drink sold at soda fountains or similar places of business on or after May 1st, 1919.

Who is a vendor: For the purpose of the tax and as used in these regulations, the term "vendor" means any individual, partnership, association, or corporation engaged in the business of selling any of the articles enumerated in section 630 to a purchaser for consumption. Thus, a vendor may be a manufacturer, jobber, wholesaler, retailer, trustee in bankruptcy, receiver, or peddler.

Rate of tax: The tax is measured by the price for which the food or drink is sold. It is on the actual sales price at the rate of 1 cent for each 10 cents or fraction thereof of the amount paid for any of the articles mentioned in section 630. Each sale for 10 cents or less is taxed 1 cent and every sale for over 10 cents is taxed 1 cent for each 10 cents or fraction thereof of the price. The tax is upon the whole of the amount of the price paid by the purchaser. "When the price is paid at one time tho in payment for several articles which are the subject of a single transaction of purchase or sale; the total price paid is the unit for computing the tax." Thus, if the purchaser orders two sodas at the same time, each sold for 15c, the tax is 3c and not 4c. If, however, he buys one soda for 15c the tax is 2 cents and if he then immediately purchases another 15c drink the tax is 2c on the second sale, which cannot be treated as part of the first sale. Any means by which separate purchasers pool their order for defeating or escaping the tax imposed by section 630 shall be carefully guarded against by the vendor, for its employment subjects the purchaser and the vendor (if he connives in it) to the penalties provided in section 1308 of the Act.

Place of business: The tax is upon the price of certain commodities "paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business." The words, "other similar place of business" refer primarily to the character of the business transacted rather than to any physical resemblance to the place where such business is done. Whether a person selling the above described articles is conducting a place of business similar to a soda fountain or ice-cream parlor is a question dependent on the facts in each particular case. Sales of soft drinks, ice cream, and similar articles of food or drink otherwise taxable, when made in the course of his regular business by a traveling vendor, (whether by means of a motor vehicle, pushcart, or otherwise) are subject to the tax imposed by section 630. Sales of soft drinks, ice cream and similar articles by individuals or organizations, such as religious, educational, or charitable societies, on special occasions only, as church festivals, social parties, etc., are not taxable; such sales in stands, booths and similar places at agricultural fairs, racing parks, public exhibitions, circuses, shows and similar places, are taxable. The distinction lies in the fact of the sale being made by the person conducting a place of business, even tho temporarily, and merely incidental sales which cannot properly be considered "business." Sales of soft drinks, ice cream, and similar articles of food and drink are not taxable when made in the regular course of business at a hotel, restaurant, cafeteria, lunch-room, or club-house, unless such articles are sold separate and apart from meals.

Consumption at place of business: The above section provides that the tax shall be levied upon the sale of "soft drinks, ice cream, ice-cream sodas, sundaes, or other similar articles of food or drink, when sold for consumption in or in proximity to such place of business." This provision is interpreted to mean that when any of the specified articles are sold in such containers or under such conditions as to indicate that they would ordinarily be consumed in or in proximity of the place of business, they are taxable. Ice cream sold in cones is taxable. When ice cream or any similar article is sold under conditions which indicate that it usually would be consumed at or in proximity to the premises, the fact that the purchaser does not so consume it but carries it away does not render it free from tax. When ice cream, soft drinks, or similar articles of food or drink are sold to be carried away for consumption at a place not in proximity to the place of business, such ice cream, food or drink being placed in containers of a kind ordinarily used to so convey the articles indicated, they are not taxable.

Beverages taxable: In general, such beverages as are commonly known as soft drinks which are compounded or mixed at the fountain where sold are subject to the tax. Beverages, tho sold at the fountain, if delivered, ready for consumption from a bottle or closed container and on which a tax has been paid under section 628 of the Revenue Act of 1918, are not subject to the tax.

Articles taxable: Examples: The following articles of food or drink are subject to the tax within the meaning of section 630 of the revenue act of 1918: all beverages when compounded or mixed at the fountain, such as orangeade, lemonade, pineapple juice, coca cola, root beer, moxie, phosphates, fruit and flavoring sirups compounded or mixed with carbonated water or plain water, milk, milk shakes in any form, malted milk shakes in any form, cream and egg shakes, ice cream sodas, ice cream, ice cream sundaes, ice cream sandwiches, flavored ices, and all other similar foods or drinks not enumerated or specified. This list, however, is not intended or considered to be complete but merely illustrative of the class of articles subject to tax.

Beverages not taxable: There are certain drinks which are often sold at soda-fountains, ice-cream parlors or similar places of business which are not regarded as soft drinks, or ice-cream products or similar articles of food or drink within the meaning of section 630 of Revenue Act of 1918. Such beverages are exemplified by hot beef tea, coffee, (hot, cold or iced) tea, (hot, cold or iced) buttermilk, milk, hot chocolate or cocoa, hot clam broth, hot clam bisque, and hot tomato bouillon. No tax applies on the sale of beverages or drinks, such as ginger ale, root beer, moxie, mineral water etc., when served directly from a container, in which case the manufacturer's tax on such drinks has already been levied. See section 628 of the Revenue Act of 1918. However, if any of the drinks or beverages herein mentioned are compounded or mixed with carbonated water or extract or other ingredient at the fountain, they are taxable.

Beverages not taxable: Medicinal: There are certain medicines, such as bromo seltzer, citrate of magnesia, Rochelle Salts, seidlitz powders, bicarbonate of soda, castor oil, Epsom salts, and essence of pepsin, which are often sold at soda fountains, ice cream parlors, and similar articles of food or drink and hence are not taxable.

Tax Paid By Purchaser.

Sec. 630. Such tax shall be paid by the purchaser to the vendor at the time of the sale and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 502.

Payment of tax: The tax is upon the sale by the vendor to the purchaser and must be paid at the time of sale by the purchaser upon all taxable sales made by the vendor.

Return and collection of tax: The tax imposed must be paid by the purchaser to the vendor and the vendor must make return under oath in duplicate, and pay the tax so collected, to the collector of the district in which the principal place of business is located, on or before the first day of each month for the business done during the preceding month. Daily records shall be kept by the proprietors or their agents in charge, showing separately the amounts received for each class of taxable transactions (grouped according to amount of sale) and the tax paid thereon. The Collector of Internal Revenue may in his discretion require any person receiving payment for taxes, to make daily deposits of the same so received in a special amount in such bank as the collector shall designate. The daily records of the proprietors or their agents, with copies of their monthly returns, shall be kept on file, in the place of business of such proprietors, in such manner as to be readily accessible to investigating internal revenue officers. In case the proprietor of a soda fountain, ice-cream parlor, or similar place of business does not use an adequate cash register or check system from which daily and monthly records may be kept, a separate receptacle shall be used to retain the tax collected by the vendor from the purchaser. Such receptacle shall be so arranged or subdivided into compartments suitable for holding the different amounts of tax collected, in order to facilitate the compilation of the daily and monthly records of the tax collection.

Mr. and Mrs. Bob Thompson and son motored to Pendleton Friday and spent Saturday in that city.

Frank and Adrian Engelman, of Ione, were in Heppner on Monday, court business calling them to the city.