

10-1-1957

## Taxation—City Sales Tax on Alcoholic Beverages

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### Recommended Citation

Richard Vogt, *Taxation—City Sales Tax on Alcoholic Beverages*, 7 Buff. L. Rev. 172 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss1/95>

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case the change did not come about in this manner, but occurred because the Surrogate sent the infants to a new domicile, thereby precluding the possibility of manipulation by the guardian to suit his own, possibly fraudulent purposes. This can only be construed as having been done in good faith and for the sole benefit of the infants, which is the chief consideration in determining an infant's domicile.

### City Sales Tax On Alcoholic Beverages

*Hoffman v. City of Syracuse*,<sup>18</sup> presented a problem of interpretation, involving an ambiguous regulation and conflicting directives issued by the city's commissioner of finance. Pursuant to a state enabling act,<sup>19</sup> the City of Syracuse imposed a two per cent tax on alcoholic beverages sold at retail for off-premises consumption. Simultaneously, with the adoption of an ambiguous regulation the city's commissioner of finance issued a directive effective as of January 1, 1952, which "authorized and directed" the liquor dealers of Syracuse to compute the sales tax on alcoholic beverages on the basis of the full retail prices, but, less the federal and state excise taxes included therein. This directive seemingly interpreted the regulation as to the proper method of calculating the taxes. Plaintiffs complied with this directive with the apparent approval of the local taxing authorities until 1955, when the commissioner issued new directives which in essence countermanded the 1952 directive and seemingly contradicted the regulation. The new directive stated that effective as of October 1, 1955, the plaintiffs would be required to include the federal and state excise taxes in the overall retail price when computing the tax.

Plaintiffs did not controvert the courts unanimous finding that the latter directives correctly interpreted the statute, but contended that since the regulation was still in effect, the method of computing the taxes remained as before, notwithstanding the 1955 directive. The court dismissed the plaintiffs' argument by replying that since the 1955 directives were in conformity with the statute, the plaintiffs were no longer justified in relying on either the "ambiguous regulation" or the "explicit but erroneous" 1952 directive. "The tax is imposed, not by the directive or, for that matter, by the regulation, but by the state and local statutes."<sup>20</sup>

This type of dispute points up the confusion that may result when an administrative official in attempting to clarify the meaning of an ambiguous regulation, issues a countermanding directive rather than an amendment to the regulation itself.

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18. 2 N.Y.2d 484, 161 N.Y.S.2d 111 (1957).

19. N.Y. Sess. Laws 1947, c. 278.

20. *Hoffman v. Syracuse*, note 18 *supra* at 492, 161 N.Y.S.2d at 117; See also, *Good Humor Corp. v. McGoldrick*, 289 N.Y. 452, 46 N.E.2d 881 (1943).