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# Record No. 4200

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**MARION BOTTLING COMPANY,  
INCORPORATED**

v.

**TOWN OF GALAX**

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FROM THE CIRCUIT COURT OF GRAYSON COUNTY

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## RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.





IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 4200**

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VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 23rd day of July, 1953.

MARION BOTTLING COMPANY, INCORPORATED,  
Plaintiff in Error,

*against*

TOWN OF GALAX,

Defendant in Error.

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From the Circuit Court of Grayson County.

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This is to certify that upon the petition of the Marion Bottling Company, Incorporated, a writ of error has been awarded by one of the Justices of the Supreme Court of Appeals of Virginia to a judgment rendered by the Circuit Court of Grayson County, on the 23rd day of March, 1953, in a certain proceeding then therein depending wherein your petitioner was plaintiff, and the Town of Galax was defendant, provided the petitioner, or some one for it, shall enter into bond with sufficient surety before the Clerk of the said Circuit Court in the penalty of Three Hundred Dollars, conditioned as the law directs.

## RECORD

\* \* \* \* \*

## PETITION.

Your petitioner, Marion Bottling Company, Inc., a corporation created and existing under the laws of the State of Virginia, respectfully represents to the Court the following:

1. That Marion Bottling Company, Inc. is a corporation engaged in the business of mixing, compounding or manufacturing carbonated beverages and bottling and selling the same and is, therefore, deemed a manufacturer and not a merchant under the provisions of Section 199 of the Tax Code of Virginia.

2. The bottling plant of Marion Bottling Company, Inc. is located at Marion, Virginia.

3. Marion Bottling Company, Inc. owns and operates a warehouse located in the Town of Galax, Virginia; only its own bottled beverages are transported in large quantities, primarily by trailer-truck, from the bottling plant in Marion to the warehouse in Galax where such product is stored and then delivered to independent retailers and dealers by delivery trucks owned and operated by Marion Bottling Company, Inc.

4. On January 1, 1948 the Town of Galax assessed Marion Bottling Company, Inc. with license for 1948—Selling to Dealers—\$10.00. On January 1, 1949 the Town of Galax page 2 } assessed Marion Bottling Company, Inc. with Distributing House License for 1949—\$20.00 minimum with license based on purchases and  $\frac{1}{2}$  of State License.

5. Section 188 of the Tax Code of Virginia provides as follows: "A manufacturer taxable on capital by the state may, except as in this section provided, sell and deliver at the same time to licensed dealers for retailers, but not to consumers, any where in the state, without the payment of any license tax of any kind for such privilege to the state, or to any city, town or county."

6. As to the warehouse located in Galax, Virginia, Marion

Bottling Company, Inc. is a manufacturer (Tax Code, Section 199) taxable on capital by the state (Tax Code, section 73) selling and delivering at the same time to licensed dealers or retailers, but not to consumers, and the aforesaid license taxes *assessed* by the Town of Galax against Marion Bottling Company, Inc. are erroneous.

Wherefore, your petitioner prays that H. Prince Burnett, attorney for the said Town of Galax, be required to defend this application and that Walter G. Andrews, the town manager of the said Town of Galax, or other officers of the Town of Galax who made such assessments, be called and examined as a witness touching this application; that the aforesaid license assessments be corrected as set forth in this petition; and that your petitioner have such other and further relief in the premises as may be allowed by Statute in such cases made and provided; and as in duty bound your petitioner will ever pray, etc.

MARION BOTTLING COMPANY, INC.  
By Counsel.

FRANCIS M. HOGE, p. q.,  
Marion, Virginia.

page 3 } To: Town of Galax, Virginia.  
H. Prince Burnett, Attorney for the Town of  
Galax, Va.  
Walter G. Andrews, Town Manager, Galax, Virginia.

Please take notice that the undersigned petitioner will on the 30th day of December, 1949, make application to the Circuit Court of the County of Grayson, as hereinbefore set forth.

MARION BOTTLING COMPANY. INC.  
By Counsel.

FRANCIS M. HOGE, p. q.,  
Marion, Virginia.

Supreme Court of Appeals of Virginia

We hereby acknowledge legal and timely service of the within notice.

TOWN OF GALAX.  
By H. PRINCE BURNETT, Atty.  
W. G. ANDREWS.

Filed in the Clerk's Office the 29 day of Dec., 1949.

Teste:

JOE W. PARSONS, Clerk.

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STIPULATION.

Counsel for Marion Bottling Company, Inc. and for the Town of Galax stipulate and agree to the following in the above styled cause now pending in the Circuit Court of Grayson County, Virginia on petition of Marion Bottling Company, Inc. for correction of alleged erroneous license tax assessments by the Town of Galax:

1. Marion Bottling Company, Inc. is a bottler of soft drink beverages with its bottling plant located at Marion, Virginia and owns and operates a warehouse in the Town of Galax, Virginia. Bottled beverages are transported in large shipments from the Marion plant to the Galax warehouse, stored there, then delivered to independent retailers and dealers on delivery trucks owned and operated over more or less regular routes by Marion Bottling Company, Inc.

2. Bottled beverages are not offered for sale at the warehouse in Galax; there is no regular attendant in charge or any telephone installation at the warehouse. Unloading incoming shipments, storage and loading trucks for sale and delivery to independent dealers are the only operations carried on at the warehouse and it is open only at such times. Orders are received and filled on the regular delivery routes; no sales are made to consumers at any time and the bottling company does not own or operate any retail store.

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3. The Town of Galax assessed Marion Bottling Company, Inc. with a Selling to Dealers License for 1948 and Distributing House License for 1949 under Section 32 of its License Code.

March 28, 1950.

Respectfully submitted,

FRANCIS M. HOGE, Attorney for  
Marion Bottling Company, Inc.

H. PRINCE BURNETT, Attorney  
for the Town of Galax.

Filed in the Clerk's Office the 1st day of May, 1950.

Teste:

JOE W. PARSONS, Clerk.

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ORDER.

The matter in controversy between plaintiff and defendant having been fully argued, both orally and by printed briefs, and after mature consideration, the Court is of opinion that the license taxes assessed by the said Town of Galax against plaintiff, Marion Bottling Company, Inc. are valid and legal, and said plaintiff is not entitled to the relief prayed for in his said petition.

Entered. C. L. O. Book No. 13, Page 477. March 23, 1953.

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## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Marion Bottling Company, Inc., by counsel, hereby gives notice, pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of its appeal from that certain final order entered in the above styled cause on March 23, 1953.

The following is the error assigned:

1. The Court erred as a matter of law in holding that the license taxes assessed by the said Town of Galax against plaintiff, Marion Bottling Company, Inc., are valid and legal, and that said plaintiff is not entitled to the relief prayed for in his said petition.

FRANCIS M. HOGE,  
Marion, Virginia,  
Attorney for plaintiff.

I certify that a copy of the foregoing notice of appeal and assignments of error was mailed to H. Prince Burnett, Attorney at Law, Galax, Virginia, counsel for the defendant on May 1, 1953.

FRANCIS M. HOGE.

Received and filed in the Clerk's Office 4th day of May, 1953.

JOE W. PARSONS, Clerk.

A Copy—Teste:

H. G. TURNER, C. C.

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