

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

EW JB ✓ JSE
October 6, 1969

Keith H. Ingraham, Chairman
Warren E. Winalow, Jr., Assistant

Maine State Liquor Commission
Attorney General

Section 452, refund on tax on malt liquor

SYLLABUS:

The excise tax on malt liquor levied pursuant to 28 M.R.S.A. § 452 should not be refunded when the malt liquor in question has been destroyed by breakage, (either by rail or by truck,) destroyed by fire, or lost by theft.

FACTS:

The Maine State Liquor Commission has asked the Attorney General whether the excise tax on malt liquor levied pursuant to 28 M.R.S.A. § 452 should be refunded when the malt liquor in question has been destroyed by breakage, (either by rail or by truck), destroyed by fire, or lost by theft.

QUESTION:

Whether the excise tax on malt liquor levied pursuant to 28 M.R.S.A. § 452 should be refunded when the malt liquor in question has been destroyed by breakage, (either by rail or by truck), destroyed by fire, or lost by theft.

ANSWER:

No.

OPINION:

Pertinent parts of 28 M.R.S.A. § 452 read as follows:

"There shall be levied and imposed an excise tax on all malt liquor manufactured in this State of 5 1/3 cents per gallon to be paid by the manufacturer in addition to the fee provided by law. A wholesale licensee who imports malt liquor shall pay an excise tax of .25 per gallon and at a like rate for any multiple or fraction thereof. ..."

Keith H. Ingraham

October 6, 1969

The Commission is authorized to give such proper credits and to make such proper tax adjustments as they may from time to time deem the wholesale licenses to be entitled to upon the filing of affidavits in such form as they may prescribe and shall refund all excise tax paid by the wholesale licenses on all malt liquor returned to the manufacturer in original containers, if credit is issued and allowed for same by the manufacturer, upon the filing of affidavits in such form as they may prescribe.

A refund shall be granted for the excise tax imposed by this State on malt beverages sold by wholesalers to any instrumentality of the United States or any Maine National Guard state training site accredited with exemption by the commission. A refund shall be granted for the excise tax imposed by this State on malt beverages sold to any vessel of foreign registry. Any wholesaler selling to such an instrumentality, training site or vessel shall present proof of such sale to the commission and shall thereupon receive from the Treasurer of State a refund of all state excise taxes paid in connection with such sale."

The excise tax is levied on either the manufacturer or the importation of malt liquor; not the sale. The tax is imposed and becomes due at the time of manufacture or importation, not at some later date. Therefore, if the malt

Keith Ingraham

October 6, 1969

liquor is lost or destroyed after manufacture, or after importation, the tax was nevertheless due as imposed.

The provisions of 28 M.R.S.A. § 452 are specific as to the situations in which a "refund" shall be made, namely, where the malt liquor is returned to the manufacturer in original containers (if credit is allowed for same by the manufacturer) and when the malt liquor is sold by wholesalers (a) to an instrumentality of the United States, or (b) to any Maine National Guard state training site credited with exemption by the Commission, or (c) to any vessel of foreign registry. These are the only situations in which a refund can be granted by the Commission. Situations in which malt liquor is lost or destroyed are not covered by the Statute and no refunds thereon should be allowed.

It does not appear that the situations in question could qualify as "credits or adjustments" under 28 M.R.S.A. § 452. A clear distinction between "refunds" and "credits and adjustments" is made in the Statute. Any refund granted by the Commission must be specifically based on the language of the Statute.

WGW, Jr./mf

Warren E. Winslow, Jr.