

MAINE STATE LEGISLATURE

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28 MRSA 452

STATE OF MAINE

Inter-Departmental Memorandum Date February 2, 1977

To Louis E. Page, Director Dept. Bureau of Alcoholic Beverages
Malt and Wine Division
From Phillip M. Kilmister, Assistant Dept. Attorney General
Subject Briggs, Inc.-Refunded Excise Tax

As you are well aware, the fifth paragraph of 28 M.R.S.A. § 452 provides for refunds by way of credits and adjustments relating to the excise tax imposed upon the importation of malt liquor, and reads as follows:

"The commission is authorized to give such proper tax adjustments as they may from time to time deem the wholesale licensee 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 licensee on all malt liquor or table wine 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." (emphasis supplied)

It is the position of the Bureau that no excise tax refund may be allowed a wholesale licensee in the State of Maine for beer which is not returned to the manufacturer (brewery) in original containers.

In the Briggs situation, the necessary affidavits (Notice of Intent) and proof of destruction of the beer in Bangor under the supervision of a federal inspector have been presented. It is the contention of the wholesaler that he is entitled to a tax refund without the necessity of returning the beer to the actual premises of the brewery, and there would appear to be merit in this position.

I would call to your attention the provisions of the federal Alcohol, Tobacco and Firearms Act as set forth in 26 U.S.C.A. § 5056 (a) which provides for the refund and credit of tax to manufacturers of malt liquor as follows:

- "a) Beer returned or voluntarily destroyed. Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefore, under such regulations as the Secretary or his delegate may prescribe,

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if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations" (emphasis supplied)

Although the language of 28 M.R.S.A. § 452 does not expressly provide for the destruction of malt liquor under supervision, it does not necessarily follow that such a procedure does not constitute a return to the manufacturer or brewery of malt liquor in original containers. Of prime importance should be proper notification of the removal of malt liquor from the market in order to show a verified amount of malt liquor to be destroyed. Supervision of such destruction by a duly qualified federal inspector would enhance the establishment of such verification.

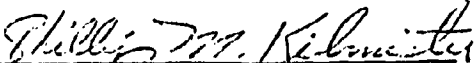
Perhaps amendment of 28 M.R.S.A. § 452 would be in order so as to clarify the above-procedure.

Where the manufacturer or brewer gives proper notification of intent to accept return of the beer for destruction, and an agent or representative of said brewer or manufacturer does so within the State of Maine, it would seem unreasonable to conclude that this does not constitute "a return to the manufacturer in original containers." Unless there are compelling reasons which dictate a contrary result, it would seem an unreasonable construction of the statute (28 M.R.S.A. § 452) to require a return of the malt liquor to the brewery in all instances.

Please be advised that an opinion of this Office under date of October 6, 1969, remains in full effect and in no manner conflicts with the interpretation of 28 M.R.S.A. § 452 set forth above. We held in said opinion that:

"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 truck,) destroyed by fire, or lost by theft."

purposeful removal from the market place of malt liquor for the purpose of destruction and a proper accounting of the quantity destroyed is vastly different from the fortuitous destruction of said malt liquor by an act of God, negligence, or other unintentional act.


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Assistant Attorney General

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