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Excise Tax Credits
28 MRSA 452

JOSEPH E. BRENNAN
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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 30, 1978

Rodney S. Quinn
Ass't. Majority Leader
State of Maine
House of Representatives
15 Green Street
Gorham, Maine 04038

Dear Representative Quinn:

Your March 15, 1978 letter to Attorney General Brennan concerning excise tax credit on malt liquor and table wine has been referred to me for reply.

Your letter stated the following:

"The First Regular Session of the 108th Legislature amended Section 63-A, 28 MRSA § 523, 5th, as repealed and replaced by PL 1977, c. 564, § 100-A to allow a wholesale licensee to receive excise tax credit on malt liquor or table wine which had to be destroyed because of unsaleability as long as the destruction of these products was witnessed by an inspector of the Bureau of Alcoholic Beverages. Prior to this change in the law the wholesale licensee had to ship the unsaleable merchandise back to the brewery or winery.

Recently a wholesale licensee destroyed over a thousand cases of malt beverage because of unsaleability and this was witnessed by an inspector of the Bureau of Alcoholic Beverages. The licensee received his federal excise tax credit from the brewery but the Bureau of Alcoholic Beverages says that he is not entitled to receive state excise tax credit. . . ."

The facts contained in your March 15th letter would entitle the wholesale licensee to an excise tax refund provided one other condition is met, to wit: if credit is issued and allowed for the malt beverage by the manufacturer.

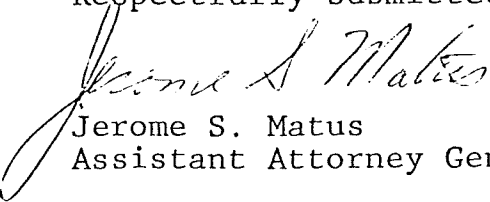
Your letter indicates that federal excise tax credit was received by the wholesale licensee from the brewery. A federal excise tax credit is not the operative credit referred to in 28 MRSA § 452 as enacted by PL 1977 c. 564 § 100-A. The operative credit referred to is credit for the beverage itself issued and allowed by the manufacturers.

I note that § 208 of L.D. 2199 of the 108th Legislature's second regular session is in engrossed form awaiting the Governor's signature. This section amends 28 MRSA § 452 by eliminating the requirement that a credit be issued and allowed by the manufacturer. Thus, on and after the effective date of this change in 28 MRSA § 452, malt liquor and table wine caused to be destroyed by a supplier the quantity and size of which are verified by the Bureau of Alcoholic Beverages and the destruction of which is witnessed by an inspector of the bureau will no longer require the issuance and allowance of a credit for same by the manufacturer to qualify the wholesale licensee for a refund of State excise tax. Conversely, all malt liquor and table wine so destroyed prior to the effective date of this change will still require the issuance and allowance of a credit for same by the manufacturer to qualify the licensee for a refund of State excise tax.

I enclose a copy of my February 23, 1978 memorandum to Keith H. Ingraham, Director of Alcoholic Beverages which explains the necessity for the issuance and allowance of the credit by the manufacturer as a necessary ingredient for the granting of an excise tax refund to a wholesaler.

I trust the foregoing is of assistance to you.

Respectfully submitted,


Jerome S. Matus
Assistant Attorney General

JSM:spa

Enc.

cc: Joseph E. Brennan
Attorney General

STATE OF MAINE

Inter-Departmental Memorandum Date February 23, 1978

From Keith H. Ingraham, Director

Dept. Bureau of Alcoholic Beverages

From Jerome S. Matus, Asst. Atty. Gen.

Dept. Bureau of Taxation-Attorney General

Subject State Excise Tax Refund

In your memorandum under date of February 9, 1978 you ask, in essence, whether or not a wholesaler is entitled to a refund of the state excise tax on malt liquor when the manufacturer or brewery does not give the wholesaler a credit or refund for the purchase of said malt liquor.

The answer to your question is in the negative.

Section 100-A of c. 564 of P.L. 1977 amended the fifth paragraph of 28 M.R.S.A. §452 to read as follows:

"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 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 caused to be destroyed by a supplier as long as the quantity and size are verified by the Bureau of Alcoholic Beverages and the destruction is witnessed by an inspector of the bureau if credit is issued and allowed for same by the manufacturer." (emphasis supplied)

The terms of the above-quoted statutory language which establish the basis for a refund of the excise tax on malt liquor are conjunctive rather than disjunctive in nature, and clearly provide as a necessary ingredient for the granting of a tax refund to a wholesaler, that the manufacturers of said malt liquor give the wholesaler a credit for same.

Jerome S. Matus
Assistant Attorney General

JSM;dp