State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Monte Williams, Chief
Excise Taxes Division (MIC: 56)

Date: July 17, 1997

From : Monica Gonzalez Brisbane
Tax Counsel

Subject: **Request for Legal Opinion -Importation of Alcoholic Beverages**

I am writing in response to your January 8, 1997 memorandum requesting a legal opinion regarding the Alcoholic Beverage Tax on products shipped from an out-of-state manufacturer to a California warehouse, for temporary storage, prior to being sold and shipped to a California wholesaler/distributor.

BACKGROUND FACTS:

According to your memorandum, the facts are as follows:

There are several beer manufacturers located outside California which sell products to distributors located within this state. Generally, a manufacturer carries several types of product. To maximize the economics of production and shipping, the distributors provide the manufacturer with a "forecast" of anticipated sales of each product line during a given period. Based on the combined forecasts of all distributors, the manufacturer develops a production schedule for each of its products. The manufacturing facility is then prepared to produce the forecasted quantities.

As each product is manufactured, it is shipped to a warehouse in California, based on the forecasts of the California distributors. The warehouse is essentially used as a staging area for all of the product lines. It is from the warehouse that actual orders are filled by the manufacturer, based on purchase orders submitted by the distributors. The product from the various product lines may remain in these warehouses for one to two weeks prior to distribution. In addition, if the forecasts are not accurate, there may be excess product which may remain in storage longer than two weeks or be returned to the manufacturer.

The manufacturers argue that the product is being shipped directly to the distributors, and the distributors should be responsible for reporting and paying the Alcoholic Beverage Tax. The manufacturers contend that the product remains in interstate commerce until received by the distributor, and that storage at the warehouse is a temporary interruption of interstate commerce and is necessary to package the orders of each distributor.

BRIEF ANSWER:

Based on the facts presented and the discussion below, the out-of-state manufacturer delivering product, in this case beer, to a warehouse in California for sale to a distributor is the legal importer of the beer into California and is, consequently, responsible for reporting and paying the Alcoholic Beverage Tax. See Bus. & Prof. Code §§ 23017 and 23661, Rev. & Tax. Code §§ 32151 and 32175.

DISCUSSION:

Rev. & Tax. Code § 32151[1] provides, in pertinent part, that

> "[A]n excise tax is imposed upon all beer and wine sold in this State . . . by the manufacturer, wine grower, or importer, ..." (Emphasis added).

An importer is defined in Bus. & Prof. Code § 23017 (b) as including the following:

> "Any person,[2] except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State."

According to Bus. & Prof. Code § 23661, beer can be brought into California only when consigned to a licensed importer and only when delivered either to the premises of the licensed importer or to a licensed public warehouse. Therefore, under the facts you provide, the out-of-state manufacturer is the consignor and also the licensed importer/consignee in order to be able to deliver the beer into California.

Further, § 32175 states that "[i]t shall be presumed, . . . that all beer and wine imported into this state by a beer manufacturer or wine grower or importer has been sold in this state at the time it is received by the licensee . . . ." A licensee is defined as any person holding a license issued by the department. See Bus. & Prof. Code § 23009. That would include a licensed importer who receives beer brought into California. As such, given the facts you present, the out-of-state manufacturer, in its role as a licensed importer, is receiving the beer into California when it is delivered to the warehouse here. Since the law provides a presumption that beer imported into the state is sold at the time it is received by the licensee, the manufacturer/importer is responsible for the Alcoholic Beverage Tax. The two exceptions to this presumption of sale (beer still in internal revenue bond[3] or brought into this state for export) are not applicable to the fact pattern you pose.

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[1] Unless otherwise indicated, all statutory references are to the Rev. & Tax. Code.

[2] Bus. & Prof. Code § 23008 provides that a "person" includes a corporation.

[3] Even if the out-of-state manufacturer could show that the beer or wine was maintained in internal revenue bond, that would not insulate the out-of-state manufacturer from the Alcoholic Beverage Tax liability because

It is not necessary to reach any argument regarding the Interstate Commerce Clause. The Alcoholic Beverage Tax law places liability for the tax on the licensee who receives the first delivery in the state-- the licensed importer. Therefore, under the facts you present, the out-of-state manufacturer is the importer and is responsible to report and pay the AB tax. See Rev. & Tax. Code § 32251.

If you have any questions, please contact me at 322-0438.

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cc: Ms. Mary Armstrong
Ms. Janet Vining
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§ 32171 provides that beer is also presumed sold when removed from internal revenue bond. As such, the out-of-state manufacturer would still be required to report and pay the Alcoholic Beverage Tax when the beer was removed from internal bond in this state.