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Review request of Section 32401 of the Alcoholic Beverage Tax Law by taxpayer.

Under section 32401, a person who purchases Alcoholic Beverages tax-paid from a vendor is not entitled to claim a refund for alleged overpayments of Alcoholic Beverage tax. 6/9/86.

June 9, 1985

Dear Mr. [redacted]

This is in reply to your letter of May 9, 1985

According to your letter, you are an importer, wholesaler and exporter of liquor, beer and wine. You wish to purchase domestically produced beverages for resale on the international export market. For various reasons, you are unable to purchase these products directly from the manufacturers or distillers, and must buy them instead from other sources on a tax-paid basis.

You wish to claim refunds of alcoholic beverage taxes you pay to your vendors, but our staff has previously advised you that such refunds would not be allowable under Revenue and Taxation Code Section 32401. You request that the staff's interpretation of that section be widened to allow the refunds for the following reasons:

“The payment of all taxes is a duty not a privilege. If it were done on a voluntary basis no one would pay taxes at all. Once taxes are paid not only does the taxpayer lose the money itself, they also lose control over the money and how it is spent. They cannot set these funds aside or dictate to the government how this money should be allocated to governmental programs.

“I find myself asking, How is it that a manufacturer that has already paid its taxes to the proper agency maintain that he is the only one due back money should a good be exported? What difference does it make to the government whom originally paid the state or federal taxes?

“The answer is, it should make no difference who originally paid the taxes, only that this product can be shown to have been exported. When someone purchases tax paid goods for export that person should be able, free of artificial restraints, to file back for these taxes upon supplying proof of export.

“This is a common practice all around the world (for instance France and Germany) but for some strange reason it appears that an artificial export controls are imposed in the states because of certain restrictive and unconstitutional controls placed within our system by powerful manufacturer lobbies.

“If the state does not allow this practice (while the rest of the world does) how can it rationalize the fact that every time it takes such an action the state unjustly enriches itself at the expense of the exporter and for the sole benefit of the producer?

“Why should the government arbitrarily prohibit a person such as myself the right to file back for these taxes? In doing so, the state loses its neutral position in the matter and they then take on the appearance of politically siding with the producer. By not allowing an exporter the right file back for taxes it would appear that the state or federal agency was acting in concert with the producer to restrain export trade. It would seem that the government had entered into a monopoly export agreement with the distillery. I ask you, can this be constitutionally justified?

“The only possible beneficiary of Section 32401 as it is presently interpreted is the manufacturer by the exclusion of the exporter to the detriment of the exporter and to that of the people of the United States whose interests are not being served. The current restrictive policy does not promote a favorable international balance of trade.

“I ask that these arbitrary barriers be removed as there can be no legal or constitutional justification for this situation to exist. If there is no current provision for a exporter to file back for these taxes then this situation should be corrected by allowing these credits to be claimed by all exporters.”

As an administrative agency, the Board has no authority to declare a statute unconstitutional or to refuse to enforce a statute on the grounds of alleged unconstitutionality. (Cal. Const. Art. III Sec. 0.5.) The Board can refund tax overpayments only to the extent it is authorized to do so by the Statute.

Section 32401 of the Revenue and Taxation Code authorized a refund of alcoholic tax overpayments to:

“...the person from whom the excess amount was collected or by whom it was paid under this part...or his successors, administrators, or executors.”

Thus, this section authorizes a refund only to the person who has reported the tax to the Board, or to that person’s successors, administrators, or executors. The Statute does not authorize a refund to persons who have paid tax reimbursement to vendors.

We also note that Revenue and Taxation Code 32211 and 32212 authorize an exemption for “distilled spirits [which] have been exported without this State or sold for export by the licensee making the report...” Sections 32171, 32173 and 32175 of the Code set forth similar rulers for beer, wine and imported beer or wine. It follows that claims of exemption for alcoholic beverages on export grounds may be made only by the person who reports the taxes to the Board.

In your case, the alcoholic beverage taxes are paid by the manufacturers, distillers or other wholesalers. When you purchase the alcoholic beverages from your vendor, you reimburse the vendor for such taxes, but you do not pay the taxes to the Board. Accordingly, we agree with the staff’s previous opinion that you are not entitled to claim refunds under Section 32401.

Very truly yours,

[redacted]

JEM:ba

bc: Oakland-District Administrator

[redacted]

May 9, 1986

Board of Equalization-Legal

P.O. Box 1799

Sacramento, Ca. 95808

Dear [redacted]

We spoke briefly on the phone Wednesday the 7<sup>th</sup>. I am a importer, wholesaler, and exported of liquor, beer and wine. I wish to purchase domestically produced liquor, beer or wine for resale on the international export market. Since I am unable to purchase directly from the source (the manufacturer or distillery) I must buy these goods from other wholesale sources on a tax-paid basis.

I am asking to have Section 32401 widen its present, narrow scope to include all exporters under similar circumstances.

The payment of all taxes is a duty not a privilege. If it were done on a voluntary basis no one would pay taxes at all. Once taxes are paid not only does the taxpayer lose the money itself, they also lose control over the money and how it is spent. They cannot set these funds aside or dictate to the government how this money should be allocated to governmental programs.

I find myself asking, How is it that a manufacturer that has already paid its taxes to the proper agency maintain that he is the only one due back money should a good be exported? What difference does it make to the government whom originally paid the state or federal taxes?

The answer is, it should make no difference who originally paid the taxes, only that this product can be shown to have been exported. When someone purchases tax paid goods for export that person should be able, free of artificial restraints, to file back for these taxes upon supplying proof of export.

This is a common practice all around the world (for instance France and Germany) but for some strange reason it appears that an artificial export controls are imposed in the states because of certain restrictive and unconstitutional controls placed within our system by powerful manufacturer lobbies.

If the state does not allow this practice (while the rest of the world does) how can it rationalize the fact that every time it takes such an action the state unjustly enriches itself at the expense of the exporter and for the sole benefit of the producer?

Why should the government arbitrarily prohibit a person such as myself the right to file back for these taxes? In doing so, the state loses its neutral position in the matter and they then take on the appearance of politically siding with the producer. By not allowing an exporter the right file back for taxes it would appear that the state or federal agency was acting in concert

with the producer to restrain export trade. It would seem that the government had entered into a monopoly export agreement with the distillery. I ask you, can this be constitutionally justified?

The only possible beneficiary of Section 32401 as it is presently interpreted is the manufacturer by the exclusion of the exporter to the detriment of the exporter and to that of the people of the United States whose interests are not being served. The current restrictive policy does not promote a favorable international balance of trade.

I ask that these arbitrary barriers be removed as there can be no legal or constitutional justification for this situation to exist. If there is no current provision for a exporter to file back for these taxes then this situation should be corrected by allowing these credits to be claimed by all exporters.

Most Sincerely,

[redacted]

November, 14 1985

Dear Mr. [redacted]

This is in regard to your letter dated October 24, 1985 and our numerous telephone conversations regarding a refund of distilled spirits taxes on distilled spirits purchased tax-paid by you and subsequently exported outside this state. You stated that, although you possess a distilled spirits importers license, your California wholesaler may refuse to sell distilled spirits to you on an ex-tax basis. You asked whether or not the Board of Equalization would issue a refund to you on tax-paid distilled spirits exported if you provided proof of export.

Attached is a copy of Section 32401 of the Alcoholic Beverage Tax Law which governs the Board's policy regarding refunds and credits. It state, in part, that "If the Board determines that any amount...has been erroneously or illegally collected or computed, the Board shall set forth that fact in the records of the Board...the excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person...". Based on this section, the Board's policy regarding refunds of taxes overpaid is to refund overpayments to the person who made the overpayment. This policy has been verified with [redacted] of our legal staff.

I hope this explanation answers your question. If you have further questions of a legal nature in this regard, please contact [redacted] of our legal staff at (916) 445-6557.

Sincerely,  
Pete Lee  
Senior Tax Auditor  
Excise Tax Unit

PL:mn  
Enclosure

Cc: Mr. James Mahler  
Board of Equalization-Legal