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EUGENE HAHN
State Representative 47th Assembly District

Chair:
Assembly Committee
on Rural Affairs

July 31, 2003

Chief, Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
P.O. Box 50221
Washington, D.C. 20091-0221

Attn: Notice 4

Dear Sir or Madam:

I am writing to express my support for the U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau proposed rulemaking for flavored malt beverages (2001R-1.36P).

In clarifying that any product sold, marketed and taxed as malt beverage product must be made according to traditional brewing methods and processes, the proposed 0.5% standard ensures the stability of the retail licensing system and the overall marketplace. This consistent standard will allow wholesalers and retailers to continue to distribute, sell and market flavored malt beverages as they do today. The flavored malt beverage products that look and taste the same will be available to wholesalers and retailers in all states with no interruption and no discernable taste differences for consumers.

Thank you for the opportunity for me to offer my support for the TTB proposed rulemaking for flavored malt beverages.

Sincerely,

Eugene Hahn
State Representative
47th Assembly District

Office Room Madison, Wisconsin 53708-8952

Flavored Malt Beverages: Fact Sheet

The intent of the TTB standard

The U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) has sought over the last several years to clarify the application of longstanding federal law to flavored malt beverages. TTB's past rulings in this area were intended to limit the alcohol contribution derived from the use of alcohol flavoring materials and to collect accurate information on the composition of products that the agency regulates.

The legal issue TTB has asserted is straightforward: A malt beverage under the Federal Alcohol Administration Act and the Internal Revenue Code may only contain alcohol which is the result of fermentation at the brewery. This basic distinction between beer and other alcohol beverages is the basis for much of the legal and regulatory framework governing the alcohol beverage industry.

Brewers continue to invest in the Flavored Malt Beverage Category

All of the major domestic brewers and several international brewers have made substantial investments in these products, and all have continued to test or introduce new brands to build up the category. U.S. brewers are already testing reformulated products that have the same taste, color and other attributes as the products containing high proportions of distilled alcohol.

States should be concerned about the Federal Standard

In addition to possible conflicts with tax and distribution laws, the FMB proposal is consistent with the manner in which our federal-state regulatory structure has evolved under the 21st Amendment. . While some unique definitions of beer exist in state law, most of those laws permit brewers and other suppliers to provide consistent products throughout the nation. This product uniformity is expected by consumers and eases state regulatory burdens by providing consistent product standards and quality. Furthermore, brewers do not believe that state-by-state regulation of flavored malt beverage formulas is a good use of state regulatory expertise or resources.

A number of states have already filed comments in response to the TTB Notice

As of July 15, 2003, alcohol beverage control agencies in Virginia, West Virginia, Mississippi, Arkansas, and Louisiana had filed comments in support of the TTB proposal. Missouri filed a comment in favor of a national standard. Prior to formal publication of the TTB notice, more than a dozen states had expressed support for the current proposal, and others had indicated the need for a consistent national standard.

Deadline for filing comments with the Tax and Trade Bureau

Comments must be received by October 21, 2003.

Flavored Malt Beverages/TTB Talking Points

Current Status

In March 2003, the U.S. Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) formally proposed a new standard for the composition of flavored malt beverages (FMB's).

"The proposed regulation permits the addition of flavorings and other materials containing alcohol to malt beverage products only if the alcohol from such materials constitutes less than 0.5% by volume of the finished product."

In other words, FMB products, just like all other malt beverage products, must derive the vast majority of its alcohol from the fermentation process. Only 0.5% of a FMB's alcohol can come from flavorings containing alcohol.

The new rule, if adopted, would require all flavored malt beverages to be made according to traditional brewing methods and processes.

Background/Historical Perspective

Since the late 90s, new products such as Mike's Hard Lemonade, Smirnoff Ice, Skyy Blue, Jack Daniel's Hard Cola and others have entered the market place.

In 1996, the TTB provided basic guidance on the formulation and composition of these new products. In general terms, the TTB allowed these products to be sold, marketed, and taxed as malt beverages as long as the alcohol content, regardless of its source, was less than 6% by volume.

With the growth of this category and the introduction of numerous "spirits branded" flavored malt beverages, consumer groups and state regulators requested the TTB to finalize its on-going study of this category.

In the spring of 2002, based on composition analyses of current flavored malt products, the TTB determined that 76% to 99% of the alcohol in most of the products was derived from distilled alcohol contained in the flavoring.

What the proposed rule does and why it is important

TTB's March 2003 proposal, if adopted, "permits the addition of flavorings and other materials containing alcohol to malt beverage products only if the alcohol from such materials constitutes less than 0.5% by volume of the finished product."

The TTB's proposed standard clarifies that any product sold, marketed and taxed as a malt beverage product must be produced in accordance with the strict standards required of all other malt beverage products.

The proposed "0.5% flavored malt beverage standard" is firmly based on longstanding federal and state statutes and regulations designed to properly identify products for the benefit of consumers and to protect government revenues.

The proposed standard ensures product integrity, preserves longstanding distinctions imposed on beer, wine and spirits, and provides a uniform and consistent classification system on which states, manufacturers, wholesalers, retailers and consumers can rely.

Absent a national standard rooted in existing law and regulation, manufacturers, retailers, and wholesalers face a potential for a patchwork of individual state laws and regulations.

Manufacturers can make FMBs under the proposed rule and consumers

Brewers have the expertise and technical ability to brew the same flavored malt beverages that exist today under the new standard.

- o Miller's brewing process ensures that the flavor profile of the FMB duplicates the flavor profile of current formulations for its current flavored malt beverages.

- o Miller can make FMB products that comply with the proposed TTB rule with no discernable taste differences for consumers.

Proposed rule brings clarity to the marketplace and preserves the category for wholesalers and retailers

- o Proposed TTB standard will NOT adversely affect wholesalers or retailers.

- o In fact, failure to adopt the rule or the promulgation of an alternative to the 0.5% standard will likely trigger unnecessary and disruptive state legislative and regulatory actions.

- o With the adoption of the 0.5% standard, wholesalers and retailers will be able to continue to distribute, sell and market flavored malt beverages as they do today.

- o TTB's proposal will NOT adversely affect U.S. or international beverage producers or flavor manufacturers.

Who supports the standard?

- o All the major brewers, the Beer Institute, the NBWA (National Beer Wholesalers Association) and many small brewers support the TTB's proposed standard.

- o In addition, a number of state have already endorsed a national standard consistent with the 0.5% proposed by the TTB. (AR, MS, VA, WVA, WY, MO currently endorse the 0.5% standard) ,;

CALL TO ACTION

- o Support the proposed "0.5% standard" by submitting comments to the TTB by October 21, 2003 ...Reference TTB Notice No.4

- o Mail to:
Chief, Regulations / Procedures Division, Tax and Trade Bureau
P.O. Box 50221
Washington, DC 20091-0221

- o E-mail to: nprm@ttb.gov

- o Fax to:
202-927-8525