

Regulatory Enforcement
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INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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FREE GOODS, DISCOUNTS, REBATES, REFUNDS AND PRICE REDUCTIONS

Proprietors of Distilled Spirits Plants, Importers,
Wholesale Liquor Dealers and Others
Concerned:

Purpose. This circular is to advise industry members that an ATF Ruling will be published in an early issue of the ATF Bulletin which will amplify the provisions of Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue).

Background. It has been called to the attention of the Bureau of Alcohol, Tobacco and Firearms that some industry members have been providing retailers with inordinate amounts of free goods and/or substantial price reductions, volume discounts, rebates, and refunds.

The particular practice in question involves distillers and other suppliers providing certain retailers with alcoholic beverages at greatly reduced prices through the guise of volume discounts. The transactions are usually handled through wholesalers who have agreed to make deliveries at little or no mark up above their cost. The difference between the wholesaler's cost and the normal selling price to the retailer is usually subsidized directly or indirectly in whole or part by the distiller or other supplier.

In general, 27 U.S.C. 205(b)(3) states that it is unlawful for any producer, bottler, importer, or wholesaler of alcoholic beverages, directly or indirectly, or through an affiliate, to induce any retailer to purchase alcoholic beverages from him to the exclusion, in whole or in part, of similar products sold or offered for sale by other persons in interstate commerce by furnishing, giving, renting, lending or selling to the retailer any fixtures, signs, supplies, money, services, or other things of value.

It was held in Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue) that so-called free goods, discounts, rebates, refunds, and price reductions given to retailers at the time of entering into an agreement of sale are merely methods used to arrive at an agreed sales price and as such do not come within the purview of the Federal Alcohol Administration Act. However, if the free goods, discounts, rebates, etc. are such that the pricing aspect is merely a subterfuge, the transaction would constitute a "gift" within the meaning of 27 U.S.C. 205(b)(3).

In amplification of Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue) the Bureau takes cognizance of the fact that discounts may be granted to introduce new products, promote slow moving items, pass on to retailers savings to the supplier as a result of volume purchase, etc. and as such are methods used to arrive at an agreed sales price. However, if the discount is such that it is in reality a subterfuge for granting financial assistance to a retailer or for any other proscribed purpose the discount would constitute a gift within the meaning of 27 U.S.C. 205(b)(3).

In considering whether a discount is in fact a method for arriving at an agreed price and not a subterfuge, the Bureau holds there must be a reasonable relationship between the discount and purpose for which it is granted, i.e., a discount given in connection with a volume purchase must bear a reasonable relationship to the savings in cost accruing to the supplier in the manufacture, sale, or delivery of the product.

Further, the Bureau holds that where a primary supplier (producer, rectifier, bottler, etc.) participates with a wholesaler, directly or indirectly, in a proscribed transaction, both the supplier and wholesaler may incur liability under 27 U.S.C. 205(b)(3) and be subject to the penalty provisions of the statutes.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N. W., Washington, D. C. 20226.



Rex D. Davis
Director