

Bureau Rulings - II

Subpart A - ALCOHOL

27 U.S.C. 122, 27 U.S.C. 203; 27 U.S.C. 204 (d)

Direct Shipment Sales of Alcohol Beverages

Federal basic permits issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) under the Federal Alcohol Administration Act (FAA Act) are conditioned on the permittee's compliance with the Twenty-first Amendment to the United States Constitution, and with laws relating to its enforcement. The shipment of alcoholic beverages into a State in violation of that State's laws is a violation of the Twenty-first Amendment and of the Webb-Kenyon Act. Consequently, ATF may take administrative action to suspend or revoke the basic permit of any industry member who ships alcoholic beverages into any State in violation of that State's laws. The ATF ruling announced in Industry Circular No. 96-3, dated February 11, 1997 is modified by this ATF ruling.

ATF Ruling 2000 – 1

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a number of requests from various States for our assistance in the enforcement of State alcoholic beverage laws. The States are concerned with mail order sales and shipments made directly to consumers in the State from sellers located outside the State. These transactions usually involve small quantities of wine or beer shipped by out-of-State sellers (including beer and wine of the month clubs) and, when considered individually, seem to have a negligible effect on interstate commerce. Taken in the aggregate, however, these shipments result in a substantial revenue loss to the States of the purchasers. The National Conference of State Liquor Administrators has estimated that these types of interstate sales result in State tax revenue losses of tens of millions of dollars. The States are also concerned that shipments may be made to underaged drinkers.

The States have asked ATF whether these types of transactions violate the Webb-Kenyon Act, 27 U.S.C. § 122. The States have also asked about the circumstances under which ATF will take enforcement action against these types of transactions.

Background

The Twenty-first Amendment to the Constitution provides that the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is prohibited.

The Liquor Law Repeal and Enforcement Act, known as the Webb-Kenyon Act, provides that the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind,

from one State into any other State which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State is hereby prohibited. 27 U.S.C. §122.

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling distilled spirits or producing wine. Finally, a basic permit is required for persons who engage in the business of purchasing for resale at wholesale distilled spirits, wine or malt beverages. 27 U.S.C. § 203. Retailers are not required to obtain basic permits under the FAA Act. The FAA Act provides that basic permits are conditioned upon, among other things, compliance with the Twenty-first Amendment and other Federal laws relating to its enforcement. 27 U.S.C. § 204(d).

Held: The Webb-Kenyon Act is a law relating to the enforcement of the Twenty-first Amendment and is a condition of the basic permit under 27 U.S.C. § 204(d) for violations of which ATF may suspend or revoke the basic permit.

Held Further: Under these provisions of law, ATF could under appropriate circumstances take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State. ATF will intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. However, while ATF is vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the FAA Act, the extent of this authority does not extend to situations where an out-of-State retailer is making the shipment into the State of the consumer.

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