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National Taxpayers Union

September 22, 2003

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

Dear Sir or Madam:

On behalf of the 350,000-member National Taxpayers Union (NTU), America's oldest and largest taxpayer group, I write to comment regarding the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) Notice No. 4, Flavored Malt Beverages and Related Proposals.

NTU has, since it was founded in 1969, consistently stood as an outspoken opponent of unnecessary government regulation, and against unnecessary changes to current, longstanding regulations. NTU is especially opposed to government intrusion into the marketplace, especially when the purpose is to give a particular company or companies an unfair advantage they could not win otherwise. In our review of Notice No. 4, Flavored Malt Beverages and Related Proposals, and the assembled comments to date, it would appear that the reasoning behind this proposed rule change falls into the category of either competitor envy, or ravenous hunger for new tax revenue by various government agencies. For both of those reasons, NTU is strongly opposed to the proposed rule change. In our view, the implementation of a 0.5% standard (providing that flavorings containing alcohol could only be added to such beverages if such materials constituted less than 0.5% of the finished product) is unfair to the affected companies and their customers. It would either force a significant tax increase, and/or a change in the production process of the product and how it is sold. These resulting outcomes are unnecessary, as well as unfair, and certainly reason enough for the proposed rule change to be rejected.

As Treasury notes in its presentation of Notice No. 4, Flavored Malt Beverages and Related Proposals, the rule change has been proposed because Flavored Malt Beverages (FMBs) have grown to become a market favorite. Because of that fact, competitors have lobbied hard to somehow change the product (and perhaps the taste or the quality), change how it is taxed (to punish the companies or their customers), or to change the way the product is sold (to make it less attractive, or much less accessible). Needless to say, those are extremely inappropriate goals for TTB, or for a pro-taxpayer, pro-consumer Administration. Likewise, FMBs should not be taxed at a higher rate, by any level of government, simply to satisfy those clamoring for more revenue to spend in greater quantities. NTU sees the implementation of the proposed rule as a regulatory tax increase levied upon the American people, and we will continue to oppose it as such.

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For more than two decades, FMBs have been produced, sold, and taxed just as they are produced, sold, and taxed now. There is no good reason why that should be changed, despite the entreaties from competitors and the various taxing entities. To implement the proposed rule would be a huge change from current regulations.

All FMBs have approximately the same alcohol content as beer, and should be taxed at the same rate. Alcoholic content has long been the determining factor for legislative and administrative decision makers, and unless TTB has the sole intent to change the rules simply to aid competitors or to capture more revenue, alcoholic content should continue to be the single determining factor now. To change that standard to what is clearly a contrived rule, after 20 years, would be nothing short of outrageous!

Rule changes that would require labeling alterations, primarily designed to remake FMBs into distilled spirits (which they are not), are equally absurd. Such changes would surely force FMBs out of consumer friendly locations, like the supermarkets and grocery stores where they are sold now, into far fewer locations (ABC and liquor stores, for example), thus making the product much less accessible for consumers. That is obviously not a service to consumers, and any such change should be rejected by TTB.

American consumers are among the savviest in the world. They know what they buy, and they know what they enjoy when it comes to FMBs. The present labeling requirements (including alcoholic content) are more than adequate. To use a labeling change to effectively render a product more expensive and much harder to buy would be anti-consumerism at its worst.

Unlike the 0.5% proposed standard, the most unreasonable, most Draconian rule possible, the alternative proposal of a "predominance" standard (requiring that no less than 51% of the alcohol content of the FMB be derived from fermentation at the brewery) would at least be fair. It would be consistent with the Federal Alcohol Administration Act, and numerous food labeling requirements. While NTU opposes any change from present law, if there is a change it should clearly be based on the alternative predominance standard, which (again) requires 51% of the alcohol content of the FMB to be derived from fermentation at the brewery. That alternative does, at a minimum, make some sense, and if there is a change, that standard would be the least harmful to the producing companies, to the retailers, and most importantly, to the millions of consumers who should be able to continue to conveniently purchase and enjoy FMBs at a fair price.

Thank you for the opportunity to comment.

Sincerely,

Al Cors, Jr.  
Vice President, Government Affairs