NORTH CAROLINA GENERAL ASSEMBLY SENATE CHAMBER STATE LEGISLATIVE BUILDING RALEIGH 27601-2808

SENATOR PHILIP E. BERGER COMMITTEES:

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RALEIGH ADDRESS: 1121 LEGISLATIVE BUILDING COMMERCE (RANKING MINORITY MEMBER)

RALEIGH. NC 27601-2808 APPROPRIATIONS/BASE BUDGET

TELEPHONE: (919) 7335708 APPROPRIATIONS DOT

(919) 754-3246 FAX FINANCE

PENSIONS & RETIREMENT AND AGING

E-MAIL: PHILBE@NCLEG.NET

RULES AND OPERATIONS OF THE SENATE

DISTRICT ADDRESS: P0 BOX 1309 STATE GOVERNMENT, LOCAL GOVERNMENT

EDEN, NC 27289-1309 AND VETERANS AFFAIRS TELEPHONE: (336) 623-5210 TRANSPORTATION

(336) 623-6313 FAX WAYS AND MEANS

Mr. William H. Foster, Chief Regulations and Procedures Division Alcohol and Tobacco Tax and Trade Division P.O. Box 50221 Washington, DC 20091-022 1

RE: Notice No. 4 Proposed Rule Making (200 1-R-136P)
Dear Mr. Foster:

I am writing to express my support my support for the Alcohol and Tobacco Tax and Trade Bureau's proposed rulemaking for flavored malt beverages., The Bureau's action is an important clarification of federal alcohol beverage categories established to maintain an orderly marketplace in the United States.

Furthernore, the proposed standard reinforces North Carolina's three-tier system which is based, in part, on clear distinctions between categories of alcoholic beverages. I concur with the North Carolina ABC Commission's letter endorsing the proposed standard and encourage you to adopt the proposed regulation. (See letter from Ann S. Fulton, Acting Chairman, North Carolina Alcoholic Beverage Control Commission, dated August 19, 2003).

Unless there is a national standard rooted in existing law and regulation, manufacturers, retailers, and wholesalers will face a potential patchwork of individual state laws and regulations where the same product may ultimately be sold as "beer" in one state and as a "distilled spirit" in another. This would not be an appropriate standard for consumers or for regulators.

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Thank you for this opportunity to offer my support for the current proposed rulemaking regarding flavored malt beverage. Please feel free to contact me if you have any questions or desire further comment.

Sincerely,

Philip E. Berger

PEB/tb

<< 0044812B >>

STATE OF NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION 4307 MAIL SERVICE CENER RALEIGH, NC 27699-4307 919 779-0700 FAX 919 862-3583

ANN SCOTT FULTON COMMISSION MEMBERS:
ACTING CHAIRMAN RICKY WRIGHT
WAKE FOREST
MICHAEL C. MERRICK
ADMINISTRATOR MIKE A. JOYNER
CHARLOTTE

August 19, 2003

Mr. William H. Foster, Chief Regulations and Procedures Division Alcohol and Tobacco Tax and Trade Bureau PO Box 50221 Washington, DC 20091-00221

Attn: Notice No. 4

Dear Mr. Foster:

As Acting Chairman of the North Carolina Alcoholic Beverage Control Commission and as a member of the NABCA Board of Directors, I commend TTB on its prompt response to the states' concerns over the content, labeling, and marketing of Flavored Malt Beverages (FMBs), and write to indicate my support for TTB's proposed changes to its rules governing FMB standards, and their labeling and advertising. I am also appreciative of your excellent presentation explaining the history of the devlopment and approval process of these products at last October's Administrators Conference in Philadelphia.

Bearing in mind the controversy over this issue, and the confusion of ABC regulators and retailers of malt beverages as to the proper classification of FMBs (as well as consumers), I am writing to indicate my support of TTB's proposed rule changes in new section 7.11 whereby the finished flavored malt beverages must contain less than 0.5% alcohol by volume from alcohol by volume that is derived from distilled spirits or from distilled spirits in the form of flavors should, in fact, be clasified, taxed and distributed as a distilled spirit. I further believe that malt beverage manufacturers recent use of flavors containing distilled spiritis (to the extent that the alcoholic content of the finished product is derived principlally from the flavoring) has changed the character of the beverage to that of a distilled spirit, notwithstanding the place of manufacture (a brewery), or the initial brewing process.

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Mr. William H. Foster Page Two August 18, 2003

I also support TTB's proposal to require a mandatory statement of alcoholic content on the brand label for FMBs containing alcohol from sources other than from fermentation at a brewery (proposed new rule sec. 7.22(a)(5)). It has been our experience at the Commission that a statement of alcoholic content is beneficial to consumers, based on the inquiries and comments we have received over the years. I believe it is essential in the case of FMBs that alcohol content be stated because a significant number of the FMB's brand labels are, at first glance, vitually identical to distilled spirits product, labels, or resemble popular non-alcoholic juices, sodas, bottled waters and energy drinks.

Futher, I am in favor of the codification of ATF Ruling 2002-2 that would prohibit a manufacturer or brand owner from using descriptive language or terms referring to the intoxicating effects of the product, or claiming that the flavor of the FMB is like a particular distilled spirit product, either by type or brand. I do not believe statements such as these should appear on either the brand label or any other label, carton or advertisment for the product. These statements are, in my opinion, misleading, in that many products' labels have carried statements in such a way that the consumer is left with an impression that the product contains distilled spirits.

Finally, I support the additional proposed changes for Part 25 that revise the definition of "beer", and that govern the filing of formulas with TTB.

The changes proposed by the TTB will provide a national standard for manufacturers, wholesalers, and retailers of malt beverages, will provide for consistency in the historical and traditional categorization of products, taxation, and distribution by the federal government as well as the states, and will provide for consistency in consumer expectations.

Lastly, I am informed that despite concerns expressed previously by some manufacturers as to their ability to produce existing FMBs in accordance with the new proposals, the manufacturers have already demonstrated their expertise and ability to brew FMBs under the new proposed federal standard, so that the reformulated FMB products will look and taste the same, and have no discernable taste differences for consumers.

Thank you for the opportunity for comment on the proposed rule changes, and please feel free to contact us if you have any questions.

Very truly yours,

Ann S. Fulton Acting Chairman