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STATE OF MAINE
Department of Public Safety
Liquor Licensing
164 State House Station
Augusta, Maine
04333

John Elias Baldacci
Governor

Michael P. Cantara
Commissioner

October 15, 2003

Bill Foster, Chief
Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
P.O. Box 50221
Washington, DC 20091-0221
Attn: Notice No. 4

Dear Chief Foster:

The Department of Public Safety Liquor Licensing Division is responsible for the enforcement of liquor laws and rules established in Maine to govern the manufacture, importation storage, transportation and sale of all liquor: We are writing this letter to the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") in support of the proposed rule recently issued in TTh Notice No. 4 of March 2003 regarding the alcohol content of Flavored Malt Beverages ("FMBs"). This rule would prohibit a product from being classified as "beer" if more than 0.5% of the alcohol content is derived from alcohol obtained by distillation.

The proposed TTB rule is important because it establishes a national benchmark and guidance on how to classify and tax these products. Maine, and every state, has independent power that allows it to classify alcoholic liquors produced or introduced inside of the state boundaries. Maine often considers federal policy before making a decision related to labeling, taxation, licensing and distribution of malt liquor. "Malt Liquor" includes, but is not limited to ale, beer, porter and stout. "Malt Liquor" includes beverages made with malt liquor, but to which no spirits are added.

Maine has a law establishing a category for "low-alcohol spirits". "Low-alcohol spirits product" in Maine means, "a product containing spirits that has an alcohol content less than 6% by volume." A product with more than 1/2 of 1% alcohol, including products that are allowed by the alternative TTB proposal allowing for up to 50% of the alcohol in a product to come from distillation can be labeled and sold in Maine as a low-alcohol spirit.

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We believe that the TTB is doing the right thing by proposing a rule that provides needed national guidance to the states, and needed product integrity for consumers expecting to purchase a malt beverage. Without the TTB 's proposed 0.5% federal standard, the same product may ultimately be sold as "beer" in one state and "distilled spirits" in another and would result in considerable consumer confusion. Thus we support the TTB's proposed 0.5% rule because it will provide Maine consumers important protections gained through accurate labeling and ensure that products labeled as "flavored malt beverages" are truly products that have alcohol obtained by fermentation of malt.

Only during the past year have most state governments come to fully realize how some manufacturers were engaged in the practice of blending a little bit of beer with substantial amounts of alcohol obtained by distillation. If the TTB delays or fails to adopt the proposed 0.5% rule then many, if not most, of the states that have laws similar to those in Maine will find the need to act under their independent authority to determine the alcohol beverage category, label disclosures, tax, necessary wholesale and retail license requirements in order to continue the selling of these products in their state. On the other hand, if the TTB acts expeditiously and adopts the proposed .5% rule by the end of the year, then we believe that Maine, and other potentially impacted states, could continue to follow the federal policy and not feel compelled to act independently.

In summary, we ask the TTB to act expeditiously and adopt the proposed rule as soon as possible. Sincerely,

Lt. John Dryer

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