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From: Ed [eherrmann@uplandbeer.com]
Sent: Tuesday, October 21, 2003 1:11 PM
To: nprm@ttb.gov
Cc: marc sattering; Andrew St. Lawrence
Subject: FW: Support for TTB Notice #4
Chief, Regulations and Procedures Division
Tax and Trade Bureau
PO Box 50221
Washington, DC 20031-0221

RE: TTB Notice #4

I am writing to express the support of the Brewers of Indiana Guild for the proposed standard of composition for Flavored Malt Beverages as set forth by the Tax and Trade Bureau Notice No. 4, which identifies certain alcoholic beverage products currently taxed as beer that should be classified and taxed as distilled spirits.

The Upland Brewing Company has been committed to producing quality ale and lager beers, adhering to traditional beer style guidelines, ingredients and manufacturing processes. With our focus on the unique parameters of traditional beer styles in the craft of brewing, and the use of premium, traditional ingredients, Upland Brewing Company, like other microbrewers throughout the country, produce fermented ales and lagers which are marketed at a higher cost than malt beverage products which are derived primarily from rice, corn, or flavors added from distilled spirits. While the flavor profiles, full-bodied style, bitterness characteristics and higher cost of traditionally brewed ales and lagers leads to responsible, moderate consumption by adult customers, these same characteristics tend to make our products less appealing in general to underage children, when compared to flavored malt beverages.

Flavored malt beverages are treated to remove the color, malt taste, and aroma and hop bitterness, and carbonation. The overwhelming flavor profile is from the spirits addition, and the majority of alcohol comes from the spirits added. In its current definition of malt beverage,

allows products which are formed with as much as 99 percent of the alcohol in the final product to come from the addition of distilled spirits. In addition, the product packaging and names mirror that of the distilled spirit additives, serving the

promote the characteristics and marketing of the associated distilled spirits. These products, because they are taxed at the beer rate, instead of the distilled alcohol rate, can be marketed at a lower price point, and offer a pre-mixed cocktail product that is very attractive to underage consumers. They serve as a "gateway" product that introduces youth to the associated distilled alcohol products, even if only by their location and promotion by retailers who are otherwise prohibited from marketing the associated distilled spirit. At a minimum, the labeling and marketing associated with flavored malt beverages leads to confusion among consumers as to the definition of "beer".

The proposed rule is a vital step needed to maintain clear and distinct definitions for classification of alcoholic beverages, and will help guarantee consistent policies for each alcohol category. It is appropriate that the limit of alcohol in a "beer" derived from distilled spirits be limited to 0.5% alcohol by volume. The 0.5% alcohol by volume limit is the standard for determining the tax status of beer, wine, and fruit flavor concentrates, as well as juices and sodas that contain small amounts of alcohol. I feel the TTB has correctly analyzed state laws and regulations that currently mirror the federal standards, and the support the 0.5% standard as it appears to eliminate the need for changes in a majority of states.

In summary, we support the proposed "0.5% Standard" for Flavored Malt Beverages as outlined in TTB Notice #4, because it protects the image of what the public considers traditional beer, it will insure fairness and consistency in taxation policies, and it will reduce marketing of products which may have an increased appeal to underage consumers.

Sincerely,

Ed Herrmann