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STATE OF ARKANSAS
ALCOHOLIC BEVERAGE CONTROL DIVISION
Little Rock, Arkansas

Robert S. Moore, Jr. Director	BOARD MEMBERS:
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Mr. William Foster
Chief, Regulations & Procedure Division
Alcohol and Tobacco Trade and Tax Bureau
Washington, DC 20091-0221

RE: Notice Number 4
Flavored Malt Beverages & Related Proposals
Dear Mr. Foster:

This is a response by the State of Arkansas Alcoholic Beverage Control Division to the proposal by the Dept. of Treasury Alcohol and Tobacco Tax and Trade Bureau [TTB] on a proposed regulation governing flavored malt beverages. As I understand it the proposal will allow the Federal standard of identity for beer products to include the use of distilled spirits products as long as the distilled spirits product flavoring agent is less than one half of one percent of the content of the beverage. The balance of the alcoholic beverage must be derived from the brewing process normally associated with beer products.

The portion that I am responding to is your call for comments as to whether or not the State of Arkansas will require any legislative changes if the TTB adopts a new standard of identity for malt beverages which allows distilled spirits products to be used as flavoring agents.

Our agency first had a chance to grapple with this problem when we received correspondence from the Miller Brewing Company on a new product that Miller wished to offer called Skyy Blue.

According to the representations contained on the label, as shown on the BATF COLA form for Skyy Blue, Skyy Blue was a malt beverage with natural flavor containing vodka. See BATF COLA form approved December 21, 2001, as attached.

In response to that submission our agency denied the application request that the product be handled in the state for two reasons, one of which was the fact that the product was not a beer product as defined in the Arkansas code.

As we noted for Miller Beer in our letter to them dated January 30, 2002, if beverage grade alcohol was going to be used as part of the product base then it would become classified as a light spirituous liquor.¹

Arkansas beer wholesalers cannot presently carry a product known as light spirituous liquor and retail beer permittees of this agency cannot sell a product classified as light spirituous liquor. Therefore, if the TTB does allow the use of distilled spirits products as a flavoring agent, then legislative changes will be required if this product is to be sold by beer-only permittees.

If the product is otherwise sold or handled by those persons that sell distilled spirits products, both at the wholesale and retail level, then no additional changes will be necessary or needed.

I support your formulation of this new rule, as it will achieve some needed objectives as far as uniformity of the product category is concerned on a nationwide basis. It will then remain with the individual states to decide how they wish to respond to this issue under the provisions of the 21st Amendment.

¹If indeed beverage grade alcohol known as vodka is used in the product then it appears that it is not going to be classified as a straight malt beverage product that could be handled by beer wholesalers. If there is beverage grade vodka included as part of the mixture in the container then under ACA 3-7-104, the product becomes defined and taxed in a product category known as light spirituous liquor. Under ACA 3-7-104(3) there is imposed a tax at the rate of 50 cents on each [wine] gallon of light spirituous liquor sold or offered for sale in the state of Arkansas. Under ACA 3-7-104(3)(B) light spirituous liquor means liquor distilled from the fermented juices of grain, fruits or vegetables and any mixture containing liquor distilled from the fermented juices of grain, fruits or vegetables, having an alcoholic content between one-half of one percent (0.5%) and five percent (5%) alcohol by weight; [Emphasis Mine]

Very truly yours,

ROBERT S. MOORE, J , DIRECTOR

RSM/DRB/kh

Atch: BATF COLA -issue date by BATF of December 21,2001

The BATF Certificate of Label Approval (COLA) form for Skyy Blue may be viewed in the ATF Reference Library