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October 20, 2003

William Foster, Director
Regulations and Procedures Division
Alcohol, Tobacco Tax and Trade Bureau
Post Office Box 50221
Washington, D.C. 20091

ATTENTION: Notice No.4
Dear Mr. Foster:

As a member of the New York State Assembly, I write in support of a compromise of the 5 1/49 "majority" standard for flavored malt beverages (FMBs). Maintaining current standards, thereby allowing existing products to remain in the market place, is important in our state for a number of reasons. Continuing to allow producers and distributors to offer familiar products is in their best interests as well as those of consumers in New York. Further, the nuances in how such beverages are marketed and distributed have evolved in New York to minimize the illegal and inappropriate use of alcoholic beverages generally, and of these relatively new products in particular.

For over two decades, the federal government has allowed the use of flavors containing alcohol in beers and FMBs under 6% alcohol by volume without limitation. The alcoholic beverage industry has responsibly developed a new market for these beverages with varying taste and flavor types. In New York, these beverages are marketed outside of liquor stores, in other retail establishments, primarily grocery stores, consistent with the marketing of other beer products. Establishing a 90/10 standard, as has been suggested, would not merely alter the make up of existing products, but would instead force FMB brewers to make massive changes to the basic production process - a daunting task for such entities and, more significantly, essentially remove the existing product from the market.

The remarkable acceptance among consumers for relatively low alcohol content beverages other than beer marks a significant and positive development in our society. Indeed, as they currently exist, flavored malt beverages, refreshing in taste, with significant and distinct flavor components, are viewed as reasonable compliments to meals, like wine but with lower alcohol content and traditionally consumed in lower quantities than many of their sister malt beverages such as beer. A 90/10 rule would force an increase in the amount of malted barley and other traditional ingredients used in FMBs and would consequently result in a dramatically different product.

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In sum, the outcome of a decision against a 51/49 majority could, in effect, eliminate or dramatically change an existing product that has been used responsibly by loyal purchasers. It would have an adverse effect on producers and would create confusion and turmoil in distribution and marketing. Indeed, entirely different distribution systems would need to be utilized in New York State. The economic impact of this change without added value would further be contrary to our efforts in New York to revitalize our flagging economy.

Thank you for giving all due consideration to this important issue. I respectfully request that you keep me apprised of the outcome of your deliberations. Please feel free to contact me if there is anything further I might provide in this instance.

Sincerely,

Kevin A. Cahill

Member of Assembly

KAC:kk