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WINE & SPIRITS WHOLESALERS OF TENNESSEE

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October 9, 2003

Chief, Regulations and Procedures Division
Alcohol & Tobacco Tax and Trade Bureau
P.O. Box 50221
Washington, D.C. 20091-0221

Re: Flavored Malt Beverages
Dear Sir:

The Wine & Spirit Wholesalers of Tennessee ("WSWT"), a trade association composed of businesses licensed to distribute wine and distilled spirits at wholesale in the State of Tennessee, strongly supports and endorses the rule proposed by the Alcohol & Tobacco Tax and Trade Bureau related to the beer and malt beverage regulations for those alcoholic beverages marketed as "flavored malt beverages." The WSWT endorses this rule because of its recognition and sensitivity to the state regulation and control over the distribution of distilled spirits. It also recognizes the unique and limited exception accorded to malt beverages in the distribution scheme of most states and recognizes that the states have the primary and principal responsibility to regulate the distribution of alcoholic beverages in the United States.

The proposed regulation would permit the addition of flavorings and other materials containing alcohol to malt beverage products, permitting the product to retain its character as a "malt beverage" only if the alcohol from the materials added constitutes less than .5% by volume of the finished product. The strict interpretation of malt beverages would be consistent with Tennessee law.

The Tennessee General Assembly has enacted two separate schemes for the distribution of alcoholic beverages. One distribution scheme, established for the manufacture, sale, and distribution of distilled spirits and wine, the other established to govern the distribution of beer and malt beverages. Tennessee, through its regulatory body, the Alcoholic Beverage Commission, has subjected wholesale liquor distributors to an extensive, comprehensive, and carefully crafted statutory and regulatory scheme designed to recognize the legitimate concerns about the distribution, advertising, sale, and consumption of distilled spirits and wine. Tennessee courts require licensed wholesale distributors to operate strictly within the Tennessee regulatory system. See *Brown Forman Distillers Corp. v. Olsen*, 676 S.W.2d 567 (Tenn. Ct. App. 1984).

<< 0042555A >>

October 9, 2003

Page 2

The Tennessee General Assembly, however, has accorded to beer and malt beverages a substantially freer and less restrictive economic environment concerning the distribution, advertising, marketing, and taxation of malt products.

Tennessee law specifically defines an alcoholic beverage as alcohol, spirits, liquor, wine, and any liquid containing alcohol, spirits, wine other than patent medicines and beer so long as the beer does not have an alcoholic content in excess of 5%. Tennessee law excludes from its regulatory coverage, products or beverages containing less than one-half of 1% alcohol by volume. See Tenn. Code Ann. § 57-3-101(a)(1)(A). Thus, Tennessee law recognizes that products which contain less than .5% of distilled spirits are not subject to state regulation as distilled spirits or wine by the Tennessee Alcoholic Beverage Commission. The rule, proposed by the TTB, would parallel the Tennessee law, excluding from the definition of a malt beverage, those malt beverages containing flavorings and other additives in which alcohol exceeds .5% of the total product.

The WSWT encourages the TTB to hold fast to the position that beer and malt based beverages are an exception to the general regulatory scheme governing distilled spirits and wine. There should be rigorous and strict limitations on the ability of a product which contains distilled spirits to be free from the regulations of state and federal governments governing the sale and distribution of distilled spirits. The proposed rule by the TTB closes a glaring loop-hole in existing federal law and would run parallel with the regulations of the State of Tennessee and its sister states.

The Wine & Spirit Wholesalers of Tennessee strongly support and encourage adoption of the proposed rule.

Very truly yours,

Henry E. Hildebrand, III
General Counsel