

Opinion No. 63-01

January 4, 1963

BY: OPINION Of EARL E. HARTLEY, Attorney General

TO: Mr. George H. Franklin Chief, Division of Liquor Control Bureau of Revenue Santa Fe, New Mexico

QUESTION

Certain questions have arisen in connection with taxation and other aspects of a licensed New Mexico liquor wholesaler whose operation will be limited to the shipment of alcoholic beverages in foreign commerce. Basically, the operation is to be as hereafter set forth.

The wholesaler owns and operates a United States customs bonded warehouse at Sunland Park, New Mexico. He proposes to sell imported and domestic liquors to foreign tourists leaving the United States, to United States tourists leaving the United States for a trip abroad, to diplomats stationed abroad and the like, with a specific restriction that these liquors are to be consumed outside the United States. All the liquors will arrive at Sunland Park or El Paso, Texas, via common carriers in "customs bond." If delivered to El Paso, transportation to Sunland Park will be performed by a bonded United States Customs Cartman. When the liquors are shipped from Sunland Park they are transported to the United States Customs officials at the point of exportation by the cartman. After the customs inspector at the point of exportation has checked the goods against the sales voucher and ticket, the goods are handed to the purchaser who is already on the International Bridge.

Based on this fact situation you ask the following questions:

1. Can this wholesaler, who holds liquor imported duty free "in bond," be issued a permit to transport this liquor out of the State even though no State excise tax has been paid thereon?
2. What does the permit need to specify?
3. Is it permissible for the liquors to be moved from the wholesaler's warehouse via a federally bonded cartman, or must they be transported via common carrier?
4. If a State excise tax has been paid on the liquor, can a tax refund be made?

CONCLUSIONS

1. Yes

2. See analysis
3. Transportation via a federally bonded cartman is permissible.
4. Yes

OPINION

{*2} ANALYSIS

The New Mexico Legislature, by two express provisions, has made it clear that a State excise tax does not have to be paid on alcoholic liquors which are shipped out of the State.

Section 46-10-8 (c), N.M.S.A., 1953 Compilation (PS), provides as follows:

"It is a violation of the Liquor Control Act for any person to transport alcoholic liquors, on which the excise tax has not been paid, out of {*3} the state, unless the shipment is accompanied by a permit issued by the division for the exact quantity and class transported showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic liquors."

Section 46-7-9, N.M.S.A., 1953 Compliation (P.S.), provides in pertinent part as follows:

"The commissioner of revenue shall refund or allow credit for the tax paid on alcoholic liquors. . . shipped out of the state, upon adequate proof of such. . . out of state shipment."

At first glance it might appear that one or the other of such provisions is unnecessary. However, the provisions are designed to take care of two different situations, namely, when the state excise tax has been paid and when it has not been paid.

Every New Mexico wholesaler may, from time to time, ship alcoholic liquors out of the State. In some of these instances the State excise tax will have been paid. Hence the provision for a refund.

In the case of a wholesaler such as the one at Sunland Park, whose entire business consists of out-of-state shipments, use of the permit provision (Section 46-10-8 (c), supra) seems desirable from the standpoint of administrative ease.

Such a permit must state the exact quantity and type of liquor transported and its origin and destination. If the consignee has a federal or state liquor license the permit should so state, and conversely, if he does not, the permit should so state. In addition, while Section 46-10-8 (c), supra, does not, for practical reasons, require proof of export prior to issuance of the permit, we believe the wholesaler should be required to submit such

proof after the fact. He can use the same "proof of export" form which is completed by the customs officials for submission to the United States Internal Revenue Service.

In answer to your third question, there is no requirement in Section 46-10-8, supra, that transportation of alcoholic liquors **out** of this State be by common carrier. Consequently we see no objection to such transportation by a federally bonded customs cartman. We would point out, however, that some of the alcoholic liquors which are to be transported from El Paso, Texas, **to** Sunland Park are to be made by a customs cartman. When such is the case there must be compliance with Section 46-10-8, supra, which provides that when anyone other than a common carrier transports liquor into this State he must have "in his possession on entering New Mexico, a permit from the division for the quantity and class of liquor to be delivered, designating the name of the shipper and consignee, and the point of origin and destination of the liquor."

In answer to your last question, if the State excise tax has been paid on alcoholic liquors which the wholesaler ships out of New Mexico, a refund can be made pursuant to Section 46-7-9, supra, upon adequate proof of out-of-state shipment. Here again the proof of export form mentioned above should be required. Further, shipment out of the State requires a permit from the division even though the State excise tax has been paid. Section 46-5-4, N.M.S.A., 1953 Compilation.

By: Oliver E. Payne

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