



North Carolina Department of Revenue

Beverly Eaves Purdue
Governor

David W. Hoyle
Secretary

July 23, 2012



Re: Excise Tax on Spirituous Liquor

This letter is in response to your letter dated April 23, 2012 wherein you requested the North Carolina Department of Revenue ("Department") provide a private letter ruling as to whether [REDACTED] would be exempt from the excise tax on spirituous liquor as imposed by N.C. Gen. Stat. § 105-113.80.

The statement of pertinent facts submitted for the Department's consideration is as follows:

"Senate Bill 324 was signed by the Governor on June 27, 2011 as Ch. SL 2011-333. It is codified as NCGS 18B-112. The legislation recognized [REDACTED] to establish a [REDACTED] with exclusive authority 'to issue retail permits to retail establishments [REDACTED] and to regulate the purchase, possession, consumption, sale and delivery of alcoholic beverages at retail outlets and premises.'

"NCGS 18B-112 provides that the [REDACTED], as a [REDACTED], is exempt from the provisions of Chapter 18B, except for specifically enumerated provisions it is required to comply with. Those provisions are listed in Section 18B-112(b). Article 8 of Chapter 18B, which includes NCGS 18B-804 and 18B-805, is not among the provisions that [REDACTED] must comply with. NCGS 18B-804 includes and incorporates by reference NCGS 105-113.80(c).

"The North Carolina Alcoholic Beverage Control Commission (NCABCC) is responsible for setting a uniform price for liquor in the State, which includes a number of taxes. NCGS 18B-804 sets out the components of the uniform price for liquor in the state.

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“ [REDACTED] requires the [REDACTED] to adopt by ordinance the enumerated provisions [REDACTED] is required to comply with in [REDACTED], and that ordinance must be approved by the Secretary of the Interior and published in the Federal Register. The [REDACTED] on September 8, 2011. It incorporated all of the enumerated provisions required by [REDACTED]. It was approved by the Secretary of the Interior, and was published in the Federal Register on February 2, 2012. 77 Fed. Reg. 5265 (Feb. 2, 2012).

“ [REDACTED] provides that the [REDACTED] must purchase spirituous liquor at the same price and the same basis that local boards purchase spirits from the [REDACTED]. Consistent with this requirement, and in order to preserve uniform pricing of liquor in the State, the [REDACTED] has enacted its own Section 18B-804 in the [REDACTED], which provides as follows:

[REDACTED]

“The [REDACTED] is taking direct shipments of spirituous liquor from the NCABCC. The [REDACTED] will then sell this product to the [REDACTED] at a price that includes the [REDACTED] markup required by [REDACTED]. [REDACTED] is a wholly owned enterprise of the [REDACTED], as provided for in [REDACTED]. [REDACTED] is the entity that conducts the [REDACTED].”

ISSUE: Whether the [REDACTED] would be exempt from the excise tax on spirituous liquor as imposed by N.C. Gen. Stat. § 105-113.80.

Department's Response:

As written, [REDACTED] provides that the [REDACTED] must comply with a list of provisions in Chapter 18B of the North Carolina General Statutes concerning the regulation of alcoholic beverages. This list does not include Article 8 of Chapter 18B which contains N.C. Gen. Stat. §§ 18B-804 and 18B-805. N.C. Gen. Stat. § 18B-804 describes the components of the uniform State retail price of spirituous liquor that specifically incorporates by reference the excise tax imposed pursuant to N.C. Gen. Stat. § 105-113.80(c). The referenced taxing statute gives the Department the authority to collect an excise tax of 30% which is computed on the sum of three specific items and levied on liquor sold at retail. N.C. Gen. Stat. § 18B-805 also refers to taxes levied by the Department under Chapter 105 of the North Carolina General Statutes when describing how revenue, including proceeds from the sale of alcoholic beverages, must be distributed.

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Although the [REDACTED] is not required to follow the requirements under the pricing and revenue distribution provisions of N.C. Gen. Stat. §§ 18B-804 and 18B-805 or to pay the excise taxes imposed pursuant to N.C. Gen. Stat. § 105-113.80(c), [REDACTED] has adopted its own version of Section 18B-804 of Article 8 which would require the [REDACTED] to charge the same uniform price for spirituous liquor sold at retail that would be charged under the uniform State retail price pursuant to N.C. Gen. Stat. § 18B-804.

Based on the State's Statutes and the [REDACTED] as currently written, both the [REDACTED] and the State agree that [REDACTED] is exempt from the excise tax imposed on spirituous liquor in North Carolina. However, statutes and codes can be amended or repealed. To protect the [REDACTED] and the State in the event of a statutory or [REDACTED] change, the Department suggests having a meeting with representatives of the [REDACTED], the North Carolina Alcoholic Beverage Commission, and the Department to discuss and explore the drafting of a [REDACTED] between the [REDACTED] and the State which includes, but is not limited to, consideration of the following provisions: (1) the [REDACTED] may impose charges, markups, and taxes at the same level and at the same amount as the State imposes charges, markups, and taxes on spirituous liquor sold at retail, (2) the [REDACTED] will abide by the State's public policy of uniform spirituous liquor pricing at retail, (3) [REDACTED] permittees and the public (whether [REDACTED]) will pay for the spirituous liquor at the State uniform retail price as provided in Chapter 18B of the North Carolina General Statutes, (4) when the [REDACTED] imposes a [REDACTED] charge, markup, or tax on retail sales equal to the amounts imposed by the State, these sales shall be exempt from State charges, markups, or taxes, and (5) the [REDACTED] charges, markups, and taxes may be retained by the [REDACTED] to offset costs of operating the [REDACTED] with any remaining profits being distributed as determined by the [REDACTED].

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, then the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

[REDACTED]
Administrative Officer
Excise Tax Division
Phone: 919-733-8510
Fax: 919-733-1821
Email: Al.Milak@dorn.com
Website: www.dorn.com