DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade Bureau

TTB Ruling

Number: 2013–1 March 27, 2013

Malt Beverages Sold Exclusively in Intrastate Commerce

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been asked to clarify whether brewers are required to obtain a certificate of label approval for domestically bottled malt beverages that will be sold exclusively in the State in which they were bottled. The regulations implementing the Federal Alcohol Administration Act do not require a brewer to obtain either a certificate of label approval or a certificate of exemption for a domestically bottled malt beverage that will not be shipped or delivered for sale or shipment into another State. Regardless of whether a domestically bottled malt beverage will be sold in interstate commerce, brewers must comply with all applicable marking, branding and labeling requirements under regulations implementing the Internal Revenue Code of 1986 for all beer removed from the premises, and must comply with the health warning statement requirements imposed by the Alcoholic Beverage Labeling Act with regard to alcoholic beverages manufactured or bottled for sale or distribution in the United States.

TTB RULING 2013–1

Background

TTB has been asked to clarify the certificate of label approval requirements as they apply to brewers who are selling their domestically bottled malt beverages exclusively in the State in which the malt beverages were bottled.

FAA Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 205(e), hereafter referred to as section 205(e)), provides that it is unlawful for any person engaged in business as a brewer, importer or wholesaler of malt beverages "to sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any * * * malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with * * * regulations, to be prescribed by the Secretary of the Treasury, with respect to packaging, marking, branding, and labeling" of the malt beverages.

Section 205(e) also provides that in order to prevent the sale or shipment or other introduction of mislabeled alcohol beverages in interstate or foreign commerce, it is generally unlawful to bottle such products or to remove bottled malt beverages from customs custody for sale or any other commercial purpose, without having first obtained a certificate of label approval from the Secretary of the Treasury, "issued by the Secretary in such manner and form as he shall by regulations prescribe."

Section 205(e) provides that a brewer or wholesaler of malt beverages is not required to obtain a certificate of label approval if upon application to the Secretary, he or she can show to the Secretary's satisfaction that the malt beverages to be bottled by him or her "are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce."

In addition, the penultimate paragraph of section 205 sets forth rules applicable to malt beverages sold in interstate commerce. With regard to labeling, this paragraph states that the provisions of section 205(e) shall "apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof * * * only to the extent that the law of such State imposes similar requirements with respect to the labeling * * * of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof."

TTB Regulations

The TTB regulations that implement the labeling provisions of the FAA Act as they relate to malt beverages are set forth in 27 CFR part 7. The regulations with respect to certificates of label approval for domestically bottled malt beverages (which do not apply to malt beverages in customs custody) are found in subpart E of part 7. (The regulations applicable to imported malt beverages withdrawn from customs custody, which are not the subject of this ruling, are found in subpart D of part 7). The regulations require a certificate of label approval in order to bottle or pack malt beverages, or to remove malt beverages from the plant where bottled or packed. See 27 CFR 7.41.

The regulations provide that certificates of label approval for domestically bottled or packed malt beverages are required only if, among other things, the malt beverages are for shipment, or delivery for sale or shipment, into another State. See 27 CFR 7.40. Consistent with the penultimate paragraph of section 205, the regulations also incorporate provisions applicable to malt beverages sold in interstate commerce; these provisions are not the subject of this ruling.

We also note that unlike the regulations for wine and distilled spirits (set forth in 27 CFR parts 4 and 5, respectively) the part 7 regulations do not require certificates of exemption for malt beverages sold exclusively in intrastate commerce. TTB and its predecessor agencies have never issued certificates of exemption for malt beverages.

Discussion

Under the statutory and regulatory provisions cited above, Federal label approval is not required for domestically bottled malt beverages unless they are bottled or packed for shipment, or delivery for sale or shipment, into a State from outside of that State. Accordingly, bottlers of malt beverages are not required to obtain either a certificate of label approval or a certificate of exemption for malt beverages that will be sold exclusively within the State where the bottling brewery is located.

Brewers may continue to apply for certificates of label approval for malt beverages currently sold in intrastate commerce to cover the possibility that such products may be sold in interstate commerce in the future. Furthermore, nothing in the FAA Act or the TTB labeling regulations relieves brewers from their obligation to comply with any applicable State requirements or regulations with regard to label approval.

Other Labeling Requirements

We remind brewers that they must comply with the marking, branding and labeling requirements for all beer removed from the premises under regulations implementing the Internal Revenue Code of 1986. See 27 CFR part 25, subpart J. In addition, the health warning statement requirements imposed by the Alcoholic Beverage Labeling Act, 27 U.S.C. 215, apply to all alcoholic beverages manufactured or bottled for sale or distribution in the United States. These requirements apply regardless of whether the product is sold in interstate commerce. See 27 CFR part 16.

TTB Determination

Held: The regulations implementing the FAA Act do not require brewers to obtain a certificate of label approval in order to bottle or pack malt beverages that will not be shipped or delivered for sale or shipment into another State. The regulations do not require a brewer to obtain either a certificate of label approval or a certificate of exemption for a domestically bottled malt beverage that will be sold exclusively in the State in which it was bottled.

Held further: Regardless of whether a domestically bottled malt beverage will be sold in interstate commerce, brewers must comply with all applicable marking, branding and labeling requirements under regulations implementing the Internal Revenue Code of 1986 for all beer removed from the premises, and must comply with the health warning statement requirements imposed by the Alcoholic Beverage Labeling Act with regard to alcoholic beverages manufactured or bottled for sale or distribution in the United States.

Date signed: March 27, 2013

John J. Manfreda,

Administrator
Alcohol and Tobacco Tax and Trade Bureau

OPR: RRD