



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

Hon. Bert Ford, Administrator
Texas Liquor Control Board
Austin, Texas

Dear Sir:

Opinion No. 0-299

Re: A refund or deduction for the
amount of tax paid on broken
bottles, which contain beer, to
brewery.

Your request for an opinion on the question as is here-
in stated has been received by this office.

Your letter reads, in part, as follows:

"I would appreciate an interpretation as to
whether or not bottles of beer that are broken
upon which the tax has been paid or, bottles of
beer that are broken upon which the tax has not
been paid and are stored in the brewery, shall
entitle the brewery to a refund or a deduction
for the amount of tax paid on those broken
bottles which contain beer."

Article 667-23 of the Penal Code reads as follows:

"(a) There is hereby levied and assessed
a tax at the rate of One Dollar and Twenty-four
Cents (\$1.24) per barrel on all beer sold, stored,
distributed, transported, or held for the purpose
of sale in this state whether manufactured in or
imported into this State. Said tax shall be paid
and evidenced by placing stamps, which the State
Treasurer is herein authorized to provide in the
denominations required, on each original package
as defined in this Article; provided, further,
that at the time said stamp is affixed the person
affixing the stamp shall with indelible ink or
stamp cancel the same by placing the date and the
licensee's full name or initials upon said
revenue stamp.

"(b) It is the purpose and intent of this Act to require the tax to be paid and the stamp evidencing same to be affixed on the first sale, distribution, storage, or transportation and at the source, to the end that it will preclude any person evading the payment of this tax. Any person in possession of beer that has not been stamped in accordance with the provisions hereof shall be held to be in violation of this Article and liable for the taxes herein provided and the penalties for such violation.

"(c) On beer imported into this State the duty of payment of the tax and affixing and cancelling the stamp as required herein shall rest primarily upon the importer, and it is hereby declared to be unlawful to import beer into this State unless and until said tax has first been paid and the stamp evidencing such payment has been first affixed and cancelled as required by this Act. It is provided, however, that a holder of a manufacturer's license who imports beer into this State for rebottling purposes shall not be required to affix the State tax stamps to the container in which he receives the same, and that the same may be transported, delivered and stored by him without the State tax stamps being affixed to the containers thereof, but in all instances where beer is imported into this State for rebottling purposes the importer thereof shall be required by rule and regulation of the Board to make and keep such records and submit such reports as may be required, to the end that it will preclude any person from evading the payment of the proper tax.

"(d) On beer manufactured in this State the duty of paying the tax and affixing and cancelling the stamp as required herein shall rest primarily upon the manufacturer, and it is hereby declared to be unlawful for any manufacturer to transport any beer or to deliver to any person any beer to be transported away from the brewery of said manufacturer unless and until tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Act; provided, however, that no person holding a Manufacturer's License in this State shall be required to affix stamps on any

containers of beer stored in the brewery where same is brewed or being transported therefrom to a point outside of this State."

"(e) Tax stamp of proper denomination shall be placed on each original package as herein defined upon which the stamp is required to be affixed, in such a way that the original package cannot be conveniently and practically opened without mutilating or defacing said stamp; provided, however, that as to packages where this requirement is in the judgment of the Board impractical the Board shall have authority by regulation to require the affixing of the stamp in any manner it may deem necessary for the protection of the revenue due to the State.

"(f) It shall be unlawful to transport to destinations in this State any beer upon which tax has not been paid and such payment evidenced by stamps affixed and cancelled as required by law.

"(g) If any person has paid the tax on any beer and affixed tax stamps to the containers thereof and thereafter said beer is shipped out of Texas for consumption, a claim for refund may be made upon paying a fee of Five Dollars (\$5) to the Board at the time and in the manner prescribed by the Board or Administrator. So much of any funds derived hereunder as may be necessary, not to exceed two (2) per cent thereof, is hereby appropriated for such purpose. The Board may promulgate rules and regulations generally for the enforcement of this provision.

"(h) No bottled beer shall be stored in this State except it be in a container or original package bearing the proper tax stamp, unless the same is exposed for sale by a retailer or is being cooled for sale by a retailer, except when the same is legally in the possession of the ultimate consumer.

"(i) Except as may be otherwise provided by rule and regulation of the Board no person shall be authorized to purchase any beer tax stamps herein provided unless he is a holder of a Manufacturer's or Distributor's License; provided however, that the holder of a Manufacturer's

or Distributor's License may designate as his agent for the purchase of stamps any manufacturer or wholesaler located outside the State whose products are imported into this State by the holder of such license; and the State Treasurer shall make no sale of beer tax stamps to any person not authorized to purchase same.

"(j) The Board shall from time to time inspect the records of manufacturers, importers, or distributors to ascertain whether there has occurred any evasion of the tax imposed by this Article upon beer sold, stored, distributed, transported, or held for the purpose of sale in this State. It is hereby declared to be the law that as to all beer sold, stored, distributed, transported or held for the purpose of sale in this State and for which the tax has not been paid and evidenced as required by law prior to the first such act, the tax hereby imposed shall be double the amount of tax required to be paid upon beer that is stamped before its first sale, storage, distribution, or transportation in this State; and any person who shall sell, store distribute, transport, or hold for purpose of sale any unstamped beer shall be in violation of the law and may be held liable for the tax that may be found to be due to the State. Any receipts or sales or record of receipt or sales of beer by any person in quantity exceeding the amount of beer for which tax stamps have been purchased by such person from the Board shall be prima facie evidence of the sale of beer without payment of the tax thereon.

"(k) It shall be unlawful for any person to open any container of beer having a stamp thereon without then and there mutilating or otherwise defacing such stamp so that it cannot be again used; and

"(l) It shall be a violation of law for any person to attach to any container of beer or to possess any stamp that has been theretofore attached to a different container, or to use for the packing of beer, or to possess for such purpose any container bearing a stamp that has theretofore been used for the delivery of beer unless the stamp required by law to cover the previous sale or delivery has thereafter been defaced, mutilated, or removed.

"(m) Any payment of taxes upon beer found to have been sold, stored, or transported before payment thereof, voluntarily or as a result of seizure and sale shall not excuse any person from penalties provided for failure to pay taxes and evidenced such payment by the application of stamps as required in this Article."

Section (b) of Article 667-23, supra, specifically provides that -

"It is the purpose and intent of this Act to require the tax to be paid and the stamp evidencing same to be affixed on the first sale, distribution, storage, or transportation and at the source to the end that it will preclude any person evading the payment of this tax. * * * *"

Section (e) of the above quoted Statute, provides that the -

"Tax Stamp of proper denomination shall be placed on each original package as herein defined upon which the stamp is required to be affixed. * * * *"

Section (h) of Article 667-23, supra, provides that -

"No bottled beer shall be stored in this State except it be in a container or original package bearing the proper tax stamp, unless the same is exposed for sale by a retailer or is being cooled for sale by a retailer, except when the same is legally in the possession of the ultimate consumer."

After a careful search of the statutes, we do not find any statutory provision which provides that the brewery shall be entitled to a refund or a deduction for the amount of tax paid on broken bottles, which contain beer, when such bottles were broken while in the possession of the brewery.

In view of the foregoing statutes you are respectfully advised that it is the opinion of this department that a brewery is not entitled to a refund or a deduction for the amount of tax paid on broken bottles, which contain beer, upon which the tax has been paid or bottles of beer that are broken upon which the tax has not been paid and are stored in the brewery.

Hon. Bert Ford, Administrator, page 6 0-299

Trusting that the foregoing answers your inquiry, we
remain

Yours very truly,
ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW/omb/wc

Approved Opinion Committee By s/RWF Chairman

APPROVED JUL 6, 1939
s/W.F. Moore
FIRST ASSISTANT
ATTORNEY GENERAL