

Opinion No. 288, Answered by Letter
(Albert J. Stephan, Jr.)

September 12, 1962



Mr. William A. Geary, Jr.
Suite 400 Columbia Building
318 North 8th Street
St. Louis, Missouri

Dear Mr. Geary:

This is in response to your inquiry of July 20, 1962, as to whether the state liquor tax exemption enjoyed by distillers on sales made directly to military installations is a valid one in light of the fact that Missouri wholesalers are required to pay the tax on their sales to such federal instrumentalities.

We have investigated the practice you described and have learned that out-of-state distillers are permitted to ship liquor directly to military installations for sale thereon via licensed carriers without the payment of the gallonage tax as provided for in Section 311.550, Mo. Cum. Supp., 1961. However, when liquor is sold by a foreign distillery to a Missouri wholesaler who ultimately sells the same liquor to a military installation, the tax is paid on that liquor. The result is that the foreign distillery has a competitive advantage in its sales to military installations in at least the amount of the gallonage tax.

An opinion was prepared by this office at the request of Covell R. Hewitt and issued on September 19, 1949, which we believe disposes of the part of your question directed at the validity of the tax advantage which results when an out-of-state distillery sells directly to a military installation. The conclusion of the opinion, a copy of which is attached hereto, reads in part:

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"It is the opinion of this office that officers' clubs on military reservations in the State of Missouri as instrumentalities of the federal government are not subject to the jurisdiction of the State of Missouri, except as specifically reserved by the act of cession. The Department of Liquor Control has no jurisdiction over the sale of liquor by such officers' clubs or the purchase by them of liquor from sources outside of the State of Missouri."

Having re-examined that opinion, we believe it accurately states the law as it exists at this time and that sales and deliveries to military installations are beyond the ambit of the liquor control law generally and the gallonage tax specifically.

But your particular question is whether the same should not hold true with regard to sales by wholesalers located in this state. That question must be answered in the negative.

As our basis for this position, we invite your attention to Section 311.550, Mo. Cum. Supp. 1961, which provides in part:

"(3) The person who shall first sell such liquor to any person in this state shall be liable for the payment."

Section 311.553, Mo. Cum. Supp., 1961, then goes on to squarely place the duty of paying the gallonage tax imposed by Section 311.550, supra, on any out-of-state manufacturer or solicitor who causes the importation into this state of any taxable liquor "for sale or use for beverage purposes within this state." (Emphasis added)

Thus, the tax is actually not on the Missouri wholesaler's sale but on that of the out-of-state distiller. Moreover, examination of the opinion attached hereto and the authorities cited therein reveals that, for purposes of the liquor control laws of this state, sale to and use of liquor on military

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reservations cannot be regarded as a sale or use "within this state". However, the sale of liquor to a Missouri wholesaler (regardless of who the wholesaler's vendee may be) is most certainly a sale "within this state" and therefore taxable.

We are, therefore, constrained to rule that out-of-state distillers should not be relieved of payments of the gallonage tax on liquor sold to Missouri wholesalers for re-sale to military installations.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

Enclosure

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