

**Question for the Record regarding the Ways and Means Oversight
Subcommittee hearing on the Department of the Treasury Alcohol and
Tobacco Tax and Trade Bureau**

Question

The TTB administers the Webb-Kenyon Act, which grants TTB authority to prevent alcohol shipments from one state to another in violation of the receiving state's laws. The explosion of e-commerce has also reached alcoholic beverages – beer, wine, spirits, even grain alcohol are all for sale on the Internet.

What action is TTB taking to help ensure that internet sales of alcohol are not sold in violation of state excise tax laws and state drinking age laws – and what sort of resources would the TTB need in order to adequately prevent online sales of alcohol from violating state excise tax and drinking age laws.

Answer

The Alcohol and Tobacco Tax and Trade Bureau (TTB) continues to adhere to the guidance set forth in ATF Ruling 2000-1, issued by our predecessor, in which we advised that we could under appropriate circumstances take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State. We advised that we would intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. We noted that, while we are vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the Federal Alcohol Administration Act (FAA Act), the extent of this authority does not extend to situations where an out-of-State retailer is making the shipment into the State of the consumer. The text of ATF Ruling 2000-1 is attached for your reference.

Since TTB's inception, we have received only two direct shipping referrals from states, both involving very limited quantities of alcohol, and we took appropriate enforcement action in both. Neither case involved shipping wine to a minor.

We have also developed and pursued cases where retailers were acting as wholesalers without the appropriate Basic Permit and selling large quantities of alcohol to out of state residents. One case was resolved with a \$17,000 offer in compromise. Another case is being resolved with a \$225,000.00 offer in compromise. In the latter case, the wholesaler involved stipulated to operating from an un-permitted location but would not stipulate to Webb-Kenyon violations.

Finally, TTB works closely with its state counterparts through our State Liaison and through our Office of Field Operations so that we can address matters of

mutual interest, including issues implicating Webb-Kenyon. Consistent with the 2001 Ruling, we rely upon the States to seek our assistance where they have found a continuing, material adverse impact upon them, based upon activities of those operating outside the state.

Based upon the above, we do not believe that additional resources are necessary to address Webb-Kenyon issues.

ATF Ruling 2000 - 1

Direct Shipment Sales of Alcohol Beverages

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a number of requests from various States for our assistance in the enforcement of State alcoholic beverage laws. The States are concerned with mail order sales and shipments made directly to consumers in the State from sellers located outside the State. These transactions usually involve small quantities of wine or beer shipped by out-of-State sellers (including beer and wine of the month clubs) and, when considered individually, seem to have a negligible effect on interstate commerce. Taken in the aggregate, however, these shipments result in a substantial revenue loss to the States of the purchasers. The National Conference of State Liquor Administrators has estimated that these types of interstate sales result in State tax revenue losses of tens of millions of dollars. The States are also concerned that shipments may be made to underaged drinkers.

The States have asked ATF whether these types of transactions violate the Webb-Kenyon Act, 27 U.S.C. § 122. The States have also asked about the circumstances under which ATF will take enforcement action against these types of transactions.

Background

The Twenty-first Amendment to the Constitution provides that the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is prohibited.

The Liquor Law Repeal and Enforcement Act, known as the Webb-Kenyon Act, provides that the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State into any other State which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either

in the original package or otherwise, in violation of any law of such State is hereby prohibited. 27 U.S.C. §122.

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling distilled spirits or producing wine. Finally, a basic permit is required for persons who engage in the business of purchasing for resale at wholesale distilled spirits, wine or malt beverages. 27 U.S.C. § 203. Retailers are not required to obtain basic permits under the FAA Act. The FAA Act provides that basic permits are conditioned upon, among other things, compliance with the Twenty-first Amendment and other Federal laws relating to its enforcement.
27 U.S.C. § 204(d).

Held: The Webb-Kenyon Act is a law relating to the enforcement of the Twenty-first Amendment and is a condition of the basic permit under 27 U.S.C. § 204(d) for violations of which ATF may suspend or revoke the basic permit.

Held Further: Under these provisions of law, ATF could under appropriate circumstances take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State. ATF will intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. However, while ATF is vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the FAA Act, the extent of this authority does not extend to situations where an out-of-State retailer is making the shipment into the State of the consumer.

27 U.S.C. 122, 27 U.S.C. 203; 27 U.S.C. 204 (d)