

1973 WL 26649 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 7, 1973

***1 Re: Shipment of Alcoholic Liquors into South Carolina by Wholesalers**

Honorable Joe G. Shinn
Director
South Carolina Alcoholic Beverage Control Commission
Post Office Box 1445
Columbia, South Carolina 29202

Dear Mr. Shinn:

You have inquired about the legality of alcoholic liquors being shipped into South Carolina via vehicles provided by wholesalers licensed by the South Carolina Tax Commission. Specifically, can a South Carolina wholesaler dispatch his vehicles to an out of state delivery point or distillery, take custody of the alcoholic liquors, and return to South Carolina?

The importation of alcoholic liquors and beverages into South Carolina is regulated by §§ 4-131, et seq., South Carolina Code of Laws (1962), as amended. § 4-141 provides in pertinent part that:

Alcoholic liquors shall be shipped or moved from a point without South Carolina to a point within the geographic limits of South Carolina . . . by wholesalers licensed by the South Carolina Tax Commission.

Thus, South Carolina wholesalers are specifically authorized to move alcoholic liquors into the State.

The nature of the South Carolina statutory scheme is such that any wholesaler who participates in the interest to movement of alcoholic liquors does so as an agent of or carrier for the registered producer. The wholesaler cannot convert the alcoholic cargo to his own use at the out of state point of delivery because § 4-141 further requires that:

Such alcoholic liquors shall be shipped or moved only to the registered producer in care of the producer representative who is registered to handle the property of the registered producer originating the shipment. (Emphasis added.)

Only after delivery to the producer's representative is complete can the shipment of alcoholic liquors be forwarded to the licensed wholesalers. (§ 4-141.) The net result of these provisions is that the producer ships to himself in care of his registered representative in South Carolina. The subsequent transfer of the alcoholic liquors to South Carolina wholesalers constitutes a sale and delivery consummated within the geographic boundaries of the State. Therefore, the interstate sale of alcoholic liquors in South Carolina is precluded by these statutory provisions. [Heublein v. South Carolina Tax Commission](#), 257 S.C. 17, 183 S.E.2d 710 (1971), Aff'd, 41 U.S.L.W. 4093 (U.S. Dec. 18, 1972).

Those sections of South Carolina's Alcoholic Beverage Control Act which govern the importation of alcoholic beverages were recently reviewed by the United States Supreme Court in [Heublein v. South Carolina Tax Commission](#), 41 U.S.L.W. 4093 (U.S. Dec. 18, 1972). In upholding the imposition of a tax on income Heublein derived from the sale of its goods in South Carolina, the Court held that, by virtue of the Twenty-First Amendment:

. . . [A] state is totally unconfined by traditional Commerce Clause limitations when it restricts the importation of intoxicants destined for use, distribution, or consumption within its borders.

*2 Requiring manufacturers to localize their sales was found to be a legitimate method of checking on the accuracy of records involving every stage of the liquor importation process. Consequently, this statutory requirement was upheld as an appropriate element in the state's system of regulating the sale of alcoholic liquors.

In summary, wholesalers licensed by the South Carolina Tax Commission may be used to move alcoholic liquors into the State. Regardless of who actually transports the shipment, common carrier or wholesaler, the delivery from the producer, through his representative, to the wholesaler is an intrastate transaction and the sale is taxable as such.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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