

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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November 27, 2001

Re: Our file Number LR-O1-178; Legality of
sweepstakes concept in Oklahoma where the prize would be "beer for a
year"

Dear

This is in response to your inquiry for advice on whether sweepstakes concept would be permissible in Oklahoma where the prize would be "beer for a year". The two methods of fulfillment of the prize are "winning individuals would pick up the beer each month from their local distributor or winning individuals who are not located in a reasonable proximity to a distributor would receive the monetary equivalent in the form of 12 American Express vouchers." It was further stated that "the point-of-sale would advertise 'beer for a year' as the prize; however, there would be appropriate disclaimers informing the consumers that they may get the cash equivalent."

Oklahoma Statutes Title 37, O. S. Section 231 Unlawful acts, lists prohibited acts relating to the subsidization of retail dealers in low-point beer. Although there are no Oklahoma cases construing this statute, in the industry this is commonly referred to as a "tied house" statute. Through this statute the Legislature intended to prevent the integration of retail and wholesale outlets and to isolate the retail dealer from financial or business obligations to a wholesaler, brewer, etc. Sections 37 O.S. 231 (A) (3) and 37 O.S. 231 (9) provide as follows:

A. It shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a brewer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer, individually or through

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or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

3. Furnish, give, rent, lend, or sell to a retail dealer in low-point beer any equipment, fixture, outside signs, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in low-point beer;

9. Use or employ any device or scheme to subsidize in any manner any retail dealer in low-point beer; or

Therefore, the conditions of Oklahoma Statutes Title 37, Section 231 (A) (3) and 37 Section 231 (9) do not preclude a business engaged as a brewer, importer, or wholesaler from conducting a sweepstakes concept where the prize would be "beer for a year" if the promotion described herein does not favor any particular retail outlet and the retailer does not stand to be subsidized in any manner by the wholesaler in the fulfillment of the prize. The retailer is virtually out of the promotion. The retail outlet receives nothing of real or substantial value in violation of Section 37 O.S. 231. The retailer is not, therefore, "tied" to a wholesaler or brewer.

Please find enclosed Title 37, O.S. Section 231 in its entirety. If you have additional questions concerning this matter or if I can be of further assistance, please contact me.

This response applies only to the circumstances set out in your request of November 1, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure