OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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March 19, 2007

RE: LR-07-039-Permissibility of Promotional Program

Dear :

Receipt is acknowledged of your letter to Monty Bivens, Director of the Audit Division, wherein requests review and approval of a program that would give consumers the opportunity to receive merchandise when they redeem a certain number of points. "One point is equal to one bottle cap and different items may have different point values. For example, a t-shirt may be 15 points and a key chain could be 3 points."

You further stated that "there will also be an option for consumers to receive points without purchasing product which will be clearly communicated on the point of sale." Miller would like to utilize one of two options which are restated herein:

> **First No Purchase Option: Consumers simply send in a self-addressed stamped envelope to receive a designated number of points. The consumer requesting points via the mail will get the same number of points just as if he/she had made a purchase. At this time we are not certain what package configuration will be promoted with this program. If it is a 12-pack, a consumer requesting points via the mail would receive 12 points or if the promotional package is a 24 pack, the consumer would receive 24 points.**
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> **Second No Purchase Option: The order form would give consumers the option to obtain the item with a straight cash purchase, i.e. T-shirt: 30 points or purchase for $8.00.**

Title 37 O.S. Supp., 2005, § 231, 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 it 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 231 (3) and (9) provide as follows:

> §231. Unlawful acts
>
> A. It shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a manufacturer, 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 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; . . . [Emphasis added.]

The "Second No Purchase Option" is the simplest to evaluate in so far as it relates to a "straight cash purchase." The provisions of Section 231 would not prohibit the placing of the order forms in retail outlets. No purchase is required. If no particular retail outlet is mentioned and the retailer's name does not appear on the form, then there is no conflict with 231; there is no "tying" of the retailer and the wholesaler, brewer, etc. Further, the order form has no value unto itself.

An analysis of the other options is more difficult. In the first paragraph, reference is made to the point value assigned to a bottle cap and the number of points that may be required for different items. In the next paragraph, you state, "There will also be an option for consumers to receive points without purchasing product", however, there is no description of the purchase option that is alluded to in the second paragraph. Therefore, additional information would be needed in order to analyze this option.

Secondly, the "First No Purchase Option", although described as simply requiring the consumer to "send in a self-addressed stamped envelope to receive a designated number of points," you also state, "[a]t this time we are not certain what package configuration will be promoted with this program. If it is a 12-pack, a consumer requesting points via the mail would receive 12 points or if the promotional package is a 24 pack, the consumer would receive 24 points." This appears to contradict its characterization as a no purchase option.

Based on the foregoing, in order to provide a complete analysis of the proposed program, we would need a more detailed description of the purchase option that seems

implied in your letter, or clarification of why it is a no purchase option. Further, please clarify whether the First No Purchase Option is or is not tied to the purchase of a 12-pack or 24-pack. Finally, if the Second No Purchase Option involves the use of an order form with no purchase required, and no points, then there is no obligation created between the brewer and the retailer, and the retailer is not being subsidized for having the order forms on the premises.

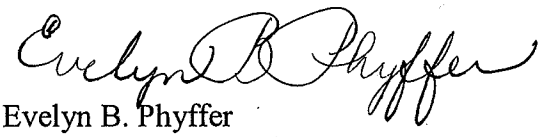
In addition to the foregoing, Title 37 O.S. Section 537, subsection (C)(6) provides that no package store licensee shall offer or furnish any prize, premium, gift or similar inducement to a consumer in connection with the sale of alcoholic beverages, except that goods or merchandise included by the manufacturer in packaging with alcoholic beverages or for packaging with alcoholic beverages shall not be included in the prohibition.

The statutes referenced above may be viewed in their entirety at the following website by entering the appropriate section number as the search term:

www.oscn.net/applications/oscn/search.asp?simple=true

This response applies only to the circumstances set out in your request of February 8, 2007. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to which 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,
OKLAHOMA TAX COMMISSION



Evelyn B. Phyffer
Tax Policy Analyst

cc: Monty Bivens, Director
Audit Division

Donna Hunter McKay
Audit Division