S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 09-15

Direct Shipment of Wine by Common Carrier

QUESTION

Pursuant to the provisions of 27 U.S.C. § 124, may a Tennessee resident who makes an onsite purchase at an out-of-state winery ship such wine back to his or her residence in Tennessee by common carrier?

OPINION

No. A Tennessee resident who makes an onsite purchase of wine at an out-of-state winery may not use a common carrier to ship such wine back to his or her residence in Tennessee. Tenn. Code Ann. § 57-3-402 prevents persons from importing or bringing into this state any alcoholic beverages unless the alcoholic beverages are consigned to a licensed manufacturer or wholesaler and appropriate state taxes are paid.

ANALYSIS

Prior to September 11, 2001, airline passengers were permitted under federal law to carry liquids, including bottles of wine, onto airplanes. After September 11, 2001, the Federal Aviation Administration issued guidelines that significantly curtailed the ability of passengers to carry on items, including liquids such as bottles of wine.

In November 2002, Congress enacted 27 U.S.C. § 124, which states, in relevant part:

> (a) Conditions for transporting certain wine.
> During any period in which the Federal Aviation Administration has in effect restrictions on airline passengers to ensure safety, the direct shipment of wine shall be permitted from States where wine is purchased from a winery, to another State or the District of Columbia, if—
> (1) the wine was purchased while the purchaser was physically present at the winery;
> (2) the purchaser of the wine provided the winery verification of legal age to purchase alcohol;

(3) the shipping container in which the wine is shipped is marked to require an adult's signature upon delivery;
(4) the wine is for personal use only and not for resale; and
(5) the purchaser could have carried the wine lawfully into the State or the District of Columbia to which the wine is shipped.

Pursuant to this statute, a person who has purchased wine for personal use while physically present at a winery and has provided valid evidence of legal age at the point of purchase may ship that wine by common carrier, but only if an adult must sign for the shipping container upon delivery and if the state into which the wine is being shipped would lawfully permit the purchaser to carry the wine into the state.

You have asked whether wine can be shipped into Tennessee pursuant to this federal statute. To answer that question, this Office must determine whether Tennessee law satisfies subsection (a)(5) of the federal statute and would permit a purchaser to carry such wine lawfully into the state. As explained below, Tennessee law does not permit such activity, and therefore a common carrier could not rely upon Section 124 as authority to ship wine into Tennessee.

Trafficking in alcoholic beverages was made legal in Tennessee by Chapter 49 of the Public Acts of 1939, which is currently codified in Title 57, Chapter 3 of the Tennessee Code. Chapter 49 created a three-tiered system for the distribution of wine and other alcoholic beverages within the state that remains in effect today. Under that system, manufacturers, wholesalers and retailers doing business in the state must hold an appropriate license. Tenn. Code Ann. §§ 57-3-202 – 204. Manufacturers of alcoholic beverages may sell only to licensed wholesalers. Tenn. Code Ann. § 57-3-404. Wholesalers may sell only to licensed retailers. Tenn. Code Ann. § 57-3-404(d). Retailers may purchase alcoholic beverages only from wholesalers. Tenn. Code Ann. § 57-3-404(b). The state imposes taxes on alcoholic beverages distributed and sold within this three-tiered system and makes the failure to pay those taxes a Class C misdemeanor. Tenn. Code Ann. §§ 57-3-301 – 304.

Section 14(2) of Chapter 49 of the 1939 Public Acts made it unlawful "for any person to import or transport, or cause to be imported or transported from any other state, territory, or country, into the State of Tennessee, any alcoholic beverages herein defined" except through the three-tiered system. This prohibition is currently codified at Tenn. Code Ann. § 57-3-402(a) and is essentially unchanged. This Office has previously stated in 1979 that Section 57-3-402(a) has a broad scope, so that "the import of <u>any</u> liquor is prohibited unless it is explicitly provided for by law. Thus an individual going to another state, obtaining alcoholic beverages and bringing them into this state would be in violation of this statute unless such transport is elsewhere authorized by law." Op. Tenn. Att'y Gen. 79-13 at 3 (Jan. 9, 1979) (emphasis in original). A violation of Section 57-3-402(a) is a Class A misdemeanor. Tenn. Code Ann. § 57-3-412(a)(1); *see also* 1939 Tenn. Pub. Acts 49, Sec. 15(1) ("any person who shall violate any provision of this Act shall be guilty of a misdemeanor" subject to a maximum fine of $500 and imprisonment of not more than six months). [1]

[1] It is, of course, permitted to transport alcoholic beverages through the state for delivery to another state without consigning such beverages to a licensed manufacturer or wholesaler, if certain documentation requirements are satisfied. *See* Tenn. Code Ann. §§ 57-3-402(d), 57-3-403(a). The threshold for documentation related to the

In 1947, the General Assembly enacted enhanced criminal penalties for the transportation or possession of untaxed alcoholic beverages above a certain volume. Section 1 of Chapter 182 of the Public Acts of 1947 (now codified at Tenn. Code Ann. § 57-3-401(a)) made it a felony "for any person, firm, or corporation, other than a common carrier, to transport…unstamped alcoholic beverages…within, into, through, or from the State of Tennessee, in quantities in excess of three (3) gallons. . .." [2] Section 2 of that same bill (now codified at Tenn. Code Ann. § 57-3-401(c)) clarified that the imposition of this new penalty on the unlawful transport of over three gallons of alcoholic beverage was to be "supplemental to" and not to change any existing provisions of alcoholic beverage law. Accordingly, the preexisting misdemeanor prohibition on the importation of any amount of alcoholic beverage outside the three-tiered system was not affected by the adoption of Chapter 182.

Chapter 182, as codified in Tenn. Code Ann. § 57-3-401, was subsequently modified by Chapter 608 of the Public Acts of 1992 to change references from "unstamped" beverages to "untaxed" beverages and to add a new subsection (b). This new subsection made it unlawful, subject to the same felony penalty, for any person "to import, ship or deliver, cause to be imported, shipped or delivered into this state any alcoholic beverages in excess of one gallon" upon which taxes have not been paid or which have not been transported in accordance with the three-tiered system. As an amendment to Section 57-3-401, the language of the new subsection (b) was also subject to the limitation contained in subsection (c) and did not modify any provision of law existing when Section 57-3-401 was originally enacted. Accordingly, Chapter 608 did not affect the preexisting misdemeanor prohibition on the importation of any amount of alcoholic beverage outside the three-tiered system.[3]

In summary, persons may not lawfully carry any amount of alcoholic beverages, including wine, into the state of Tennessee outside the three-tiered system. Tenn. Code Ann. § 57-3-401. Therefore, if a Tennessee resident makes an onsite purchase of wine at an out-of-state winery, that resident is not permitted by 27 U.S.C. § 124 to use a common carrier to ship such wine back to Tennessee.

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transportation of alcoholic beverages in Tennessee, whether delivery within or outside the state, is for quantities in excess of 3 gallons. *Id*. If alcoholic beverages are found in a vehicle that is not a common carrier in excess of one gallon without receipts or other prescribed documents demonstrating that state taxes have been paid, the lack of such documents is deemed prima facie evidence that the alcohol is improperly possessed for purposes of gift, sale or distribution, and both the alcohol and vehicle are subject to confiscation. Tenn. Code Ann. § 57-3-411; *see also* Tenn. Code Ann. § 39-17-703 (receipt, possession or transportation of more than 5 gallons of intoxicating liquors without proper revenue stamp presumed to be for purpose of unlawful resale or redistribution within state, which is a Class A misdemeanor).

[2] Violations of the Act were initially a felony punishable by imprisonment for not less than 2 years. 1947 Tenn. Pub. Acts 182, sec. 1. The penalty was changed to a Class E felony in 1989. 1989 Tenn. Pub. Acts 591, sec. 61.

[3] One court has suggested that the distinction between activities subject to a felony penalty for exceeding the 3-gallon limit contained in Tenn. Code Ann. § 57-3-401(a) ("transport" or "possess") and activities subject to the same penalty for exceeding the 1-gallon limit contained in Tenn. Code Ann. § 57-3-401(b) ("import, ship or deliver") is not clear in all circumstances. *See Jelovsek v. Bredesen*, 545 F.3d 431, 434 & n.2 (6th Cir. 2008). Regardless of how those two subsections are reconciled, the unlawful importation of any amount of alcoholic beverage into the state remains a misdemeanor.

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