

field under the provisions of a prior Act of the General Assembly of Indiana, before the governing body of such city enacts a new ordinance to bring such airport or landing field within the provisions of Chapter 190 of the Acts of 1945.

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OFFICIAL OPINION NO. 36

May 1, 1945.

Hon. Burrell E. Diefendorf, Chairman,  
Indiana Alcoholic Beverage Commission,  
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of April 28th requesting an official opinion of this office upon the following questions:

"1. Is the additional excise tax of 4c per gallon of alcoholic malt beverages as levied by Section 13, of Chapter 357 of the Acts of the 1945 Legislature payable upon beer which at midnight on April 30th is still in the custody of the brewer but which has been cased and stamped?

"2. Are the additional excises levied by this Act upon vinous and spiritous beverages payable upon wines and liquors which at midnight on April 30th have been stamped under the former law and are in the possession of the wholesaler, but are sold and delivered by the wholesaler thereafter?"

The Act to which you refer levies a tax in addition to all taxes or excises now imposed of four cents (4c) upon each gallon of alcoholic malt beverages, one dollar (\$1.00) upon each gallon of spiritous beverages, and thirteen cents (13c) upon each gallon of vinous beverages. In each instance the tax is levied upon "the sale and/or possession for sale within this state" of the beverage taxed. In the case of malt beverages it does not state upon whom the tax is levied. The tax on spiritous beverages is levied against any permittee holding a distiller's, rectifier's, wholesaler's, dining car, winery, or boat wine permit, but provides that the same article shall be

taxed only once. The tax upon vinous beverages is levied against any holder of a winery, wine wholesaler's, dining car or boat wine permit.

This Act further provides that as to all of these taxes:

"The payment, collection and enforcement of the additional excise taxes herein levied and imposed shall be made in the same manner and paid by the same persons as now provided by law for the payment, collection and enforcement of excise taxes on alcoholic beverages, and the provisions of Chapter 226 of the Acts of the General Assembly for the year 1935, and all laws amendatory thereof and supplemental thereto, shall govern the payment, collection and enforcement of the additional excise taxes herein levied and imposed."

and it is further provided:

"\* \* \* No provision of this section or any subsection thereof shall be construed as imposing any floor stock tax on any goods held by any permittee of any class."

The rule of statutory construction most pertinent to an inquiry of this nature has been stated to be:

"\* \* \* It is a settled rule of statutory construction that statutes levying taxes are not to be extended by implications beyond the clear import of the language used, in order to enlarge their operation, so as to embrace transactions not specifically pointed out. In case of doubt such statutes are to be construed more strongly against the state and in favor of the citizen.  
\* \* \*"

Department of Treasury v. Muessel (1941), 218 Ind. 250.

See also Oster v. Department of Treasury, (1941), 219 Ind. 313.

It is equally well settled that:

"In construing a statute, courts will give effect to the intent of the Legislature, and, in seeking such

intent, will look to the act as a whole, as well as its general purpose and the evils or mischiefs it is enacted to remedy. The words or phrases of a statute will be taken in their plain, ordinary and usual sense unless a contrary purpose is clearly manifest. \* \* \*”

Indiana State Board, etc. v. Pickard (1931),  
93 Ind. App. 171.

The apparent intent of the Legislature is to raise additional revenue by the imposition of an excise tax additional to those already imposed, but collectible in like manner and from the same persons as is the case with the excise to which it is additional. Having so levied the tax, it remained for the Legislature to fix the time and manner of the initial application of this tax to the successive transactions which constitute a continuous and uninterrupted process of distribution. This was done by designating May 1, 1945, as the effective date and by forbidding a floor tax. It follows that by determining the legislative intent embodied in the term “floor tax” and applying it to the manner and time of payment of the existing excise, the point of impact of the new tax upon May 1st may be discovered.

A floor tax is customarily resorted to where a new tax is imposed which is payable at a particular step in the process of production or distribution and it is desired to equalize the tax burden upon all goods, regardless as to whether they have passed that point in the distributional system at which the new tax is payable. Such a floor tax, by imposing an equivalent burden upon floor stocks which would not otherwise bear the burden of a new tax, equalizes the competitive position of all goods that have not passed out of the course of production and distribution and into the hands of the consumer.

This was the nature of the floor tax which was levied by Section 13½ of this Act when it passed the House and which was stricken out by committee report in the Senate. At the same time the provision was inserted in Section 13 forbidding a construction which would result in the imposition of a floor tax. This is persuasive evidence of the nature of the tax which the Legislature sought to avoid.

By expressly controverting any construction which would result in the imposition of a floor tax, the Legislature in-

dicates an intention not to tax those goods which upon May 1st, 1945, have passed that point in the distributional system where the tax becomes due and payable under those provisions of law which determine the time and place of payment. Such time and manner of payment are not specified directly in Chapter 357, but, under the provision specifying that the additional excise is to be governed as to payment, collection and enforcement by the provisions of the former law, we must look to the former law for a determination of the rules governing these matters.

In my opinion, therefore, no tax is payable upon any alcoholic beverages if, at the time the tax takes effect, they have passed that point in the distributional system where the excise stamps were required to be affixed or the tax otherwise paid under the existing law. With this principle in mind, your specific questions will be separately discussed.

## I

It was required by 4 Burns' Indiana Statutes (1942 Replacement) Section 12-801, that:

“\* \* \* It shall be the duty of the brewer to pay the tax herein imposed prior to the withdrawal of such alcoholic malt beverages from the brewery premises or bottling house.

“Brewers or other persons shipping or transporting alcoholic malt beverages into this state from without this state may purchase tax stamps from the commission, and shall affix in the manner prescribed by the commission, the proper tax stamps to each barrel or keg of alcoholic malt beverages and to each case or carton containing bottles or cans of alcoholic malt beverages to be shipped or transported into this state for consumption or sale herein.”

The additional tax imposed by the 1945 Act will, therefore, be applicable to all alcoholic malt beverages (beer) which after midnight of April 30, 1945, are withdrawn from the brewery premises or bottling house of a domestic brewer or which are after that time shipped or transported into this state from without the state. It will not be applicable to any alcoholic malt beverages which have at that time already been

so withdrawn, shipped or transported. They have already passed the point of impact of the tax and to tax them would be to levy a floor tax.

## II

The tax upon alcoholic spiritous beverages is payable under the former law at the time such beverages are brought from a distillery or from a government warehouse to an Indiana wholesaler's premises. (Opinions of Attorney General (1941) p. 97.) Therefore, the additional tax is payable upon any spiritous alcoholic beverages that are brought from a distillery or a government warehouse to an Indiana wholesaler's premises after midnight of April 30, 1945, and is not payable upon any such spiritous beverages that have reached such premises prior to that time.

The tax upon alcoholic vinous beverages is payable under 4 Burns' Indiana Statutes (1942 Replacement) Section 12-803, at the time of such sale or withdrawal upon all such beverages which are sold or withdrawn for sale. Therefore, if such beverages have already been sold or withdrawn for sale prior to midnight, April 30, 1945, they are not subject to the additional tax imposed by the 1945 Act. Otherwise, they must bear that tax.

Each of the above statements presupposes that the tax levied by the former law was properly and fully paid prior to May 1, 1945. If not, the additional tax must be paid when the former tax is paid.

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### OFFICIAL OPINION NO. 37

May 4, 1945.

Hon. James M. Knapp,  
Director of State Personnel,  
141 South Meridian Street,  
Indianapolis, Indiana.

Dear Sir:

Your letter of April 18th requests an official opinion on the following question: