

Florida residents bringing wine into state

Number: INFORMAL

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The Honorable John Ostalkiewicz
Senator, District 12
6000 South Rio Grande Avenue, Suite 101
Orlando, Florida 32809

Dear Senator Ostalkiewicz:

You ask whether Chapter 97-213, Laws of Florida, prohibits Florida residents from driving into another state and, with their personal vehicles, transporting wine into this state without paying in-state taxes.

An increasing number of out-of-state businesses in recent years have begun selling alcoholic beverages directly to Florida consumers, using such modern tools of commerce as the Internet and direct mail. Concerns have been raised about ways to keep alcoholic beverages from being sent to minors and to ensure that the State receives its proper tax revenues when alcoholic beverages are purchased through these means by Florida residents.

Through federal and state litigation, this office has vigorously defended Florida's authority to maintain necessary regulatory controls over alcoholic beverages. This office has appealed a Florida circuit judge's determination that the State cannot sue an out-of-state company for not paying Florida taxes when it shipped wine into the state. This office has also appealed a similar order issued by a federal trial court. Decisions are pending from the state First District Court of Appeal and the 11th United States Circuit Court of Appeals.

This office will continue to argue in favor of Florida retaining its ability to regulate the sale and shipment of alcoholic beverages within the state. At the same time, this office fully supports open markets in order to allow Florida consumers the greatest possible range of marketplace choices. Toward that end, earlier this year I suggested a way of meeting this challenge by allowing mail-order shipments into Florida while enabling the State to collect taxes on those shipments and prevent distribution to minors. The Legislature, however, chose the opposite approach, subjecting out-of-state distributors to felony charges if they ship products into Florida.

Despite my stated belief that the legislation is anticompetitive, hostile to Florida consumers and damaging to the state's reputation in the national and international business communities, the measure became law and was enacted as Chapter 97-213, Laws of Florida.

As noted above, the act, among other things, makes it a felony to knowingly and intentionally ship alcoholic beverages from an out-of-state location directly to a Florida consumer in violation of the state Beverage Laws.[1] In addition, section 561.545(2), Florida Statutes, created by section 9 of the act, provides:

"Any common carrier or permit carrier or *any operator of a privately owned car*, truck, bus, or other conveyance who knowingly and intentionally transports any alcoholic beverage from an out-of-state location *directly to any person in this state* who does not hold a valid manufacturer's or wholesaler's license or exporter's registration or who is not a state-bonded warehouse is in violation of this section." [2] (e.s.)

The statute thus prohibits the operator of a privately owned vehicle from delivering alcoholic beverages from out-of-state to a person in this state. The language, however, does not appear to encompass an individual who brings alcoholic beverages into the state for his or her own consumption since that person is not transporting or delivering the alcoholic beverage to someone in this state. [3]

Section 562.15, Florida Statutes, provides that it is unlawful for any person within this state to own or possess any alcoholic beverage without fully complying with all pertinent provisions of the state Beverage Law relating to the payment of excise taxes. The section, however, does not apply:

"To persons possessing not in excess of 1 gallon of such beverages if the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages." [4]

Section 562.16, Florida Statutes, imposes personal liability for the amount of tax on any person or corporation owning or possessing any beverage upon which a tax is or would have been imposed by the Beverage Law if the beverage was brought into the state in accordance with said law. This section, however, is inapplicable to a person possessing no more than 1 gallon of such beverages, provided the person purchased the beverage outside of Florida in accordance with the laws of that place and the beverage was brought into Florida by that person. [5]

Neither section 562.15 nor 562.16, Florida Statutes, was substantively amended during the 1997 legislative session. [6]

Accordingly, section 561.545(2), Florida Statutes, as created by Chapter 97-213, Laws of Florida, does not prohibit a Florida resident from driving to another state to purchase alcoholic beverages in that state and transporting such beverages into Florida for the resident's personal use. However, sections 562.15 and 562.16, Florida Statutes, limits the amount of alcoholic beverages that a resident may bring back into the state for his or her personal use without payment of the appropriate state taxes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 561.545(1), Fla. Stat., created by s. 9, Ch. 97-213, Laws of Florida. The act also provides for the repeal of the alcoholic beverage surcharge effective July 1, 1999, and addresses the marketability of alcoholic cider.

[2] *And see* s. 561.545(4), Fla. Stat., which provides that a common carrier or permit carrier, or any operator of a privately owned conveyance found by the Division of Alcoholic Beverages and Tobacco to be in violation of s. 561.545(2) as a result of a second or subsequent delivery from the same source and location within a 2-year period after the first delivery, shall be issued a notice, by certified mail, to show cause why a cease and desist order should not be issued. Any person violating subsection (2) within two years after receiving such an order, or after a prior conviction for violating subsection (2), commits a third degree felony.

[3] See the statement of legislative findings in s. 561.545, Fla. Stat., stating that:

"the direct shipment of alcoholic beverages by persons in the business of selling alcoholic beverages to residents of this state in violation of the Beverage Law poses a serious threat to the public health, safety, and welfare, to state revenue collections, and to the economy of the state[.]"

[4] Section 562.15(2), Fla. Stat.

[5] As in s. 562.15, Fla. Stat., s. 562.16 places the burden of proof that the beverages were purchased outside the state and in accordance with the laws of the place where purchased on the possessor of the beverages.

[6] Section 562.16, Fla. Stat., was amended by Ch. 97-103, Laws of Florida, a revisers bill, to remove gender specific language.