North Carolina Department of Revenue

Beverly Eaves Purdue
Governor

David W. Hoyle
Secretary

July 23, 2012

Re: Excise Tax on Spirituous Liquor

This letter is in response to your letter dated April 23, 2012 wherein you requested the North Carolina Department of Revenue (“Department”) provide a private letter ruling as to whether the Eastern Band of Cherokee Indians (“EBCI”) would be exempt from the excise tax on spirituous liquor as imposed by N.C. Gen. Stat. § 105-113.80.

The statement of pertinent facts submitted for the Department’s consideration is as follows:

“Senate Bill 324 was signed by the Governor on June 27, 2011 as Ch. SL 2011-333. It is codified as NCGS 18B-112. The legislation recognized the authority of the Eastern Band of Cherokee Indians (EBCI) to establish a Tribal Alcoholic Beverage Commission (TABCC) with exclusive authority ‘to issue retail permits to retail establishments and to regulate the purchase, possession, consumption, sale and delivery of alcoholic beverages at retail outlets and premises.’

“NCGS 18B-112 provides that the EBCI, as a sovereign nation, is exempt from the provisions of Chapter 18B, except for specifically enumerated provisions it is required to comply with. Those provisions are listed in Section 18B-112(b). Article 8 of Chapter 18B, which includes NCGS 18B-804 and 18B-805, is not among the provisions that EBCI must comply with. NCGS 18B-804 includes and incorporates by reference NCGS 105-113.80(c).

“The North Carolina Alcoholic Beverage Control Commission (NCABCC) is responsible for setting a uniform price for liquor in the State, which includes a number of taxes. NCGS 18B-804 sets out the components of the uniform price for liquor in the state.
“...requires the EBCI to adopt by ordinance the enumerated provisions specified in NCGS 18B-112, and that ordinance must be approved by the Secretary of the Interior and published in the Federal Register. The EBCI passed Ordinance 768 (2011) on September 8, 2011. It incorporated all of the enumerated provisions required by NCGS 18B-112(b). It was approved by the Secretary of the Interior, and was published in the Federal Register on February 2, 2012. 77 Fed. Reg. 5265 (Feb. 2, 2012).

“...provides that the EBCI must purchase spirituous liquor at the same price and the same basis that local boards purchase spirits from the NCABCC. Consistent with this requirement, and in order to preserve uniform pricing of liquor in the State, the EBCI has enacted its own Section 18B-804 in the Cherokee Code, which provides as follows:

‘...The uniform pricing of Spirits sold to permittees and the public shall be the same uniform price as published by North Carolina 18B-804. Where a tax or markup is imposed by this section, the TABCC is authorized to impose the same tax or markup as a Tribal tax or markup, where appropriate, and to utilize such tax or markup in operations of the TABCC and profits after operation shall be distributed as determined by Tribal Council.’

“The TABCC is taking direct shipments of spirituous liquor from the NCABCC. The TABCC will then sell this product to the Tribal Casino Gaming Enterprise (TCGE) at a price that includes the Tribal markup required by Cherokee Code Section 18B-804. TCGE is a wholly owned enterprise of the EBCI, as provided for in Cherokee Code Chapter 16A. TCGE is the entity that conducts the EBCI’s gaming and hotel operations.”

**ISSUE:** Whether the EBCI would be exempt from the excise tax on spirituous liquor as imposed by N.C. Gen. Stat. § 105-113.80.

**Department’s Response:**

As written, NCGS 18B requires the EBCI to comply with a list of provisions in Chapter 18B of the North Carolina General Statutes concerning the regulation of alcoholic beverages. This list does not include Article 8 of Chapter 18B which contains N.C. Gen. Stat. §§ 18B-804 and 18B-805. N.C. Gen. Stat § 18B-804 describes the components of the uniform State retail price of spirituous liquor that specifically incorporates by reference the excise tax imposed pursuant to N.C. Gen. Stat. § 105-113.80(c). The referenced taxing statute gives the Department the authority to collect an excise tax of 30% which is computed on the sum of three specific items and levied on liquor sold at retail. N.C. Gen. Stat. § 18B-805 also refers to taxes levied by the Department under Chapter 105 of the North Carolina General Statutes when describing how revenue, including proceeds from the sale of alcoholic beverages, must be distributed.
Although the EBCI is not required to follow the requirements under the pricing and revenue distribution provisions of N.C. Gen. Stat. §§ 18B-804 and 18B-805 or to pay the excise taxes imposed pursuant to N.C. Gen. Stat. § 105-113.80(c), EBCI has adopted its own version of Section 18B-804 of Article 8 which would require the Tribe to charge the same uniform price for spirituous liquor sold at retail that would be charged under the uniform State retail price pursuant to N.C. Gen. Stat. § 18B-804.

Based on the State’s Statutes and the EBCI as currently written, both the Tribe and the State agree that EBCI is exempt from the excise tax imposed on spirituous liquor in North Carolina. However, statutes and codes can be amended or repealed. To protect the EBCI and the State in the event of a statutory or Cherokee Code change, the Department suggests having a meeting with representatives of the Tribe, the North Carolina Alcoholic Beverage Commission, and the Department to discuss and explore the drafting of a compact between the EBCI and the State which includes, but is not limited to, consideration of the following provisions: (1) the EBCI may impose charges, markups, and taxes at the same level and at the same amount as the State imposes charges, markups, and taxes on spirituous liquor sold at retail, (2) the Tribe will abide by the State’s public policy of uniform spirituous liquor pricing at retail, (3) permittees and the public (whether Tribal or non Tribal) will pay for the spirituous liquor at the State uniform retail price as provided in Chapter 18B of the North Carolina General Statutes, (4) when the EBCI imposes a Tribal charge, markup, or tax on retail sales equal to the amounts imposed by the State, these sales shall be exempt from State charges, markups, or taxes, and (5) the Tribal charges, markups, and taxes may be retained by the EBCI to offset costs of operating the TABCC with any remaining profits being distributed as determined by the Tribal Council.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, then the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

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