

Opinion No. 237

Beer—Taxes—Interstate Commerce.

HELD: If a brewer situated within the state makes a sale within the state to be delivered without the state, the barrelage tax provided for in paragraph 3 of Sec. 3 of the Montana Beer

Act, could be collected. But to attempt to collect a tax for the sale of beer manufactured in Montana and sold in another state, would constitute an interference with interstate commerce and be unlawful.

June 6, 1933.

You ask whether the Board of Equalization may collect a tax upon beer manufactured within the state and shipped to points outside of the state and so to residents of foreign states.

Under paragraph 3 of Section 13, Chapter 106, Laws of 1933, it is provided: "In addition to the annual license taxes hereby imposed, a tax of fifty cents (50c) per barrel of 31 gallons is hereby levied and imposed on each and every barrel sold by such licensed brewers."

The Beer Act imposes a tax upon the sale of beer, not upon its manufacture. Section 49 provides: "Beer which is sold by breweries wherever located, shall be considered as a sale made within the county to which it is transported for wholesale or retail sale, irrespective of the place of manufacture."

If a brewer situated within the state makes a sale within the state to be delivered without the state, the tax could be collected. If a brewer within the state makes a sale without the state, it is not a sale within the contemplation of this chapter. To attempt to collect a tax for the sale of beer manufactured in Montana and sold in another state, would constitute an interference with interstate commerce and be unlawful. (State v. Western Union Telegraph Company, 43 Mont. 445.)