

VOLUME NO. 43

OPINION NO. 52

ALCOHOLIC BEVERAGES - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
REVENUE, DEPARTMENT OF - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
TAXATION AND REVENUE - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
MONTANA CODE ANNOTATED - Sections 1-2-101, 16-1-106(14), 16-1-401, 16-1-404, 16-2-201.

HELD: Section 16-2-201, MCA, authorizes the Department of Revenue to apply a 5 percent discount to the price of liquor sold in unbroken case lots; the terms of the statute require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are, in turn, based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included.

January 24, 1990

John W. Northey
Office of the Legislative Auditor
State Capitol
Helena MT 59620

Dear Mr. Northey:

You have requested my opinion concerning the following question:

Does the 5 percent discount authorized by section 16-2-201, MCA, on the sale of liquor in unbroken case lots apply to the liquor license and excise taxes as well as to the liquor itself?

Your query arises from the current practice of the Department of Revenue in applying the discount for liquor sold in unbroken case lots. The Department applies the discount to the posted price of the liquor, i.e., the retail price plus applicable taxes. This practice seems in conflict with the language of section 16-2-201, MCA, which provides for a "[r]eduction of 5% of the retail price of liquor" sold in unbroken case lots, but does not mention a discount on the applicable taxes.

There is no definition of "retail price" in the liquor statutes; however, it can be determined from certain other statutes that the retail price does not include the applicable liquor taxes. For example, the "posted price" of liquor is defined to include both the retail price of liquor and excise and license taxes. § 16-1-106(14), MCA. Moreover, in computing the amount of excise and license taxes on liquor sold and delivered in the state, the statutes provide for applying a specific percentage to the "retail selling price" of liquor. §§ 16-1-401, 16-1-404, MCA. Thus, the retail price of liquor is a price to which excise and license taxes have not yet been added.

With respect to the discount on unbroken case lots, the clear language of section 16-2-201, MCA, requires that it be applied to the "retail price." Based on the above-cited statutory provisions, I conclude that excise and license taxes should not be considered when calculating the 5 percent discount.

However, having concluded that the 5 percent discount applies to the retail price rather than the posted price of liquor sold in unbroken case lots, it must be noted that the amount of excise and license tax revenue from the sale of such liquor would nevertheless remain the same as that currently collected by the Department of Revenue. This is so because the liquor excise and license taxes are applied to the discounted retail price, as is explained below.

The taxing statutes provide that the rate of taxation on liquor should be based upon the "retail selling price" of liquor. §§ 16-1-401, 16-1-404, MCA. The statutes do not define "retail selling price" and the question thus arises as to whether the phrase means the discounted retail price or the nondiscounted retail price for the sale of unbroken case lots.

The legislative history of the discount statute, § 16-2-201, MCA, is helpful in answering this question. The discount was enacted as Senate Bill 164 (chapter 334) in 1975. The fiscal note prepared for consideration of the bill contains the following statement:

The liquor excise tax ... remains at 16% ... and the liquor license tax ... remains at 5% These taxes are levied against the retail sales price of liquor so that if the retail price were discounted 5% on case lots there would be a consequent loss in tax revenue to state and local government units.

The above-quoted statement indicates that the excise and license taxes were intended to be applied to the discounted retail price, rather than to the nondiscounted retail price. The 1975 fiscal note also included estimates for several tax years, and the estimates clearly reflect that the taxes were to be applied to the discounted retail price. In addition, minutes from the meetings of the House and Senate Business and Industry Committees in 1975 reflect the anticipation of a loss in revenue due to the discount. Such a loss would not have been anticipated had it been intended that the taxes be applied to the nondiscounted retail price. See Minutes of the Senate Business and Industry Committee, January 29, 1975, and of the House Business and Industry Committee, March 10, 1975.

THEREFORE, IT IS MY OPINION:

Section 16-2-201, MCA, authorizes the Department of Revenue to apply a 5 percent discount to the price of liquor sold in unbroken case lots; the terms of the statute require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are, in turn, based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included.

Sincerely,

MARC RACICOT
Attorney General