



COMMONWEALTH of VIRGINIA

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The Honorable Douglas S. Waldron
City of Manassas Commissioner of the Revenue
9027 Center Street
Post Office Box 125
Manassas, Virginia 20110

Dear Commissioner Waldron:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether growlers—reusable beer containers with hand-closed ceramic stoppers—are considered factory sealed containers and thus exempt from the excise tax imposed by the City of Manassas Code of Ordinances § 110-282(B)(3). Respecting the longstanding practice of Attorneys General, I decline to address the interpretation of a local ordinance or the fact-specific application of such an ordinance. I address only the question of the circumstances under which growlers are exempt as a matter of state law from local taxation.

Applicable Law and Discussion

Section 58.1-3840 of the *Code of Virginia* authorizes a locality to impose an excise tax on various items, including meals. However, the meals tax may not be imposed on “alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption.”¹ Virginia Alcoholic Beverage Control Board (the “ABC Board”) regulations define a “growler” as “a reusable glass, ceramic, or metal container having a capacity of not more than 64 fluid ounces (or two liters if a metric-sized container) that has a resealable closure.”² For application of the excise tax exemption at § 58.1-3840(B), the question of whether the resealing of a growler is “factory sealed” is determinative. However, “factory sealed” is not defined in the Virginia Code or in regulations of the ABC Board.

“Ordinarily, when a particular word in a statute is not defined therein, a court must give it its ordinary meaning.”³ The ordinary meaning of “factory-sealed container” is simply a container sealed in a factory. “Factory” has been defined as “a building or group of buildings with facilities for the

¹ VA. CODE ANN. § 58.1-3840(B) (2013).

² See 3 VA. ADMIN. CODE § 5-40-30(B).

³ Moyer v. Commonwealth, 33 Va. App. 8, 35 (2000) (citing McKeon v. Commonwealth, 211 Va. 24, 27 (1970)).

manufacture of goods,”⁴ “a building or group of buildings where products are made,”⁵ and “a building or buildings where people use machines to produce goods.”⁶ The Standard Industrial Classification of the United States Department of Labor describes “manufacturing” as “establishments engaged in the mechanical or chemical transformation of materials or substances into new products. *These establishments are usually described as plants, factories, or mills . . .*”⁷ A malt liquor brewing company has been characterized without question as being a manufacturer by the Supreme Court of Appeals of Virginia.⁸

For beer manufacturing, the manufacturing establishment or “factory” is the brewery. Thus, a growler is “factory sealed”—and its contents thereby exempt from local excise taxes—only if it is sealed and sold by a brewery. If it is sealed and sold by any other business, it may be “sealed,” but it is not “factory sealed,” and therefore, not exempt from local taxation.

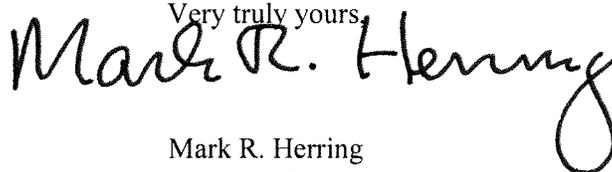
Whether a growler sold at a particular location for off-premises consumption is “factory sealed” and tax-exempt is thus a factual determination. Attorneys General historically have declined to render official opinions on specific factual matters.⁹ I do note that, in making this determination, Virginia law requires that “[i]f there is any doubt concerning the exemption, [such] doubt must be resolved against the party claiming the exemption.”¹⁰

Conclusion

Accordingly, it is my opinion that if a growler is factory sealed, meaning in this context that it is sealed and sold by a brewery, and if it is sold for off-premises consumption, then state law makes it exempt from local excise or meals taxes. Whether any particular sale of a growler satisfies these conditions is a factual determination to be made by the Commissioner of the Revenue or other appropriate tax official. In making this determination, any doubt must be resolved against the exemption and in favor of taxation.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

⁴ DICTIONARY.COM UNABRIDGED, www.dictionary.com/browse/factory (Random House, Inc.) (last visited Sept. 1, 2016).

⁵ MERRIAM-WEBSTER (online dictionary), www.merriam-webster.com/dictionary/factory (last visited Sept. 1, 2016).

⁶ CAMBRIDGE DICTIONARY, <http://dictionary.cambridge.org/us/dictionary/english/factory> (last visited Sept. 1, 2016).

⁷ U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, “Standard Industrial Classification,” Division D: Manufacturing, at www.osha.gov/pls/imis/sic_manual.display?id=4&tab=division (emphasis added).

⁸ *Virginia Brewing Co. v. Commonwealth*, 113 Va. 145, 146 (1912).

⁹ See 2009 Op. Va. Att’y Gen. 80, 81 & n.17 (“Attorneys General consistently have declined to render official opinions on specific factual matters . . .”); 2010 Op. Va. Att’y Gen. 56, 59 n.5 (“The authority of the Attorney General to issue advisory opinions is limited to questions that are legal in nature.”).

¹⁰ See 2014 Op. Va. Att’y Gen 166, 168 (citing 2002 Op. Va. Att’y Gen. 331, 335).