

Opinion No. 59-107

August 17, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: W. K. Aldridge, Chief Division of Liquor Control Bureau of Revenue P. O. Box 1540
Santa Fe, New Mexico

{*169} This is written in reply to your recent request for an opinion on the following questions:

1. Would the rate of \$.11 per case or carton of 24-12 ozs. be applicable to cases containing 24-11 ozs. (under § 46-7-2)?
2. If the answer to the first question is in the negative, what rate of excise tax should be applied to cases of 24-11 oz. bottles or cans?

In answer to these questions, it is my opinion that:

1. No, the \$.11 rate is not proper.
2. The rate should be \$.05 per gallon.

The statute to which you refer is § 46-7-2, N.M.S.A., 1953 Compilation, (p.s.), which reads in part as follows:

"B. On bottled or canned beer: \$ 0.11 per case or carton of 24-12 ounce, 12-24 ounce bottles or cans. Other sizes, cases or cartons, at rate of 5 [cents] per gallon."

It seems clear that the \$.11 rate does not apply since from the clear words of the statute that rate applies only to 12-24 oz. and 24-12 oz. cases. These words are clear and are not susceptible to interpretation since they are not ambiguous. See **Dr Graftenreid v. Strong**, 28 N.M. 91, 206 P. 694.

Since the 24-11 oz. cases do not fall within the \$.11 rate, the only other rate set out in the statute is the general provision applying a \$.05 per gallon rate to all other sizes. This, then, is the rate which should be applied to cases which contain 24-11 oz. bottles or cans.