

Opinion No. 59-182

November 3, 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

{*284} This is written in reply to your recent request for an opinion on the effect of the proviso, attached to § 46-7-2, N.M.S.A., 1953 Compilation (P.S.), on the holding in Opinion of the Attorney General No. 59-107, dated August 17, 1959, which held that the tax rate on cases or cartons of canned or bottled beer of 24-11 oz. size was 5 [cents] per gallon. The proviso in question reads as follows:

"Provided, that in computing the tax on any package, fractional parts of a cent over one-half cent shall be paid as one cent (1 [cent]), and fractional parts of a cent less than one-half cent shall be omitted."

You have stated that under the rate set by the above cited opinion, the rate for a case of 24-11 oz. bottles is \$ 0.1031 per case. This being true, it is clear that the amount which should be charged in this case would be {*285} merely 10 [cents] in view of the proviso which clearly applies in this instance from its very wording.

Boston E. Witt

Assistant Attorney General