

Opinion No. 45-4643

January 24, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar, Chief Division of Liquor Control Bureau of Revenue Santa Fe, New Mexico

{*9} In your letter dated January 23, 1945, you state that the holder of a dispenser's liquor license has applied for refund of tax stamps affixed to bottles and containers destroyed by fire. You inquire whether, under the law, you are authorized to make a refund to a retail license holder.

Section 61-709 of the N.M. 1941 Compilation provides as follows:

"The commissioner of revenue shall refund to purchaser cost of stamps on following conditions:

(a) When stamps are returned by purchaser upon proper showing to bureau as to why same were not used and that there has been no violation of the law in not using them.

(b) When stamps have been affixed to containers broken or goods destroyed in shipment, or otherwise damaged as to be unfit for sale or consumption, or goods to be shipped out of the state, proper replacement or refund shall be made by the commissioner of revenue on adequate proof as to the number and value of said stamps, and that the stamps in question have been mutilated. On draught beer returned to breweries because of spoilage, replacement as above shall be made by the commissioner of revenue on receipt of the original credit memorandum to the wholesaler from the brewery crediting such beer. Purchasers of wine for sacramental or religious purposes may have the value of stamps affixed to containers refunded by commissioner of revenue under such rules and regulations as he may prescribe."

It is true that the wholesaler is the purchaser of tax stamps in the first instance; however, the retailer, likewise, is a purchaser of the merchandise, with the stamps affixed, from the wholesaler. In my opinion, the foregoing section authorizes you to replace the stamps mutilated and destroyed, in the hands of the retailer, provided adequate and satisfactory proof of the destruction of the merchandise and mutilation of the stamps is presented to you. This contention is strengthened by virtue of the last sentence in said section, providing for refund to the purchasers of sacramental wine.