Maryland Alcohol and Tobacco Tax

Administrative Release

Comptroller of the Treasury ● Alcohol & Tobacco Tax Unit ● Goldstein Treasury Building ● Annapolis, Maryland 21404-2999
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TO: Licensed Wine and Distilled Spirits Wholesalers

SUBJECT: Private Labels and Limited Availability Products

In recent months the Alcohol and Tobacco Tax Unit has been asked to clarify provisions of Article 2B of the Annotated Code of Maryland and applicable regulations relating to private labels and labels which have a limited availability. This administrative release is intended to set forth the Unit's interpretation of these provisions.

Section A(6) of Regulation 03.02.01.05 re price filings defines a private label as *"any label that is owned by a licensed retail dealer, or is bottled and labeled exclusively for sale to a licensed retail dealer."* Section A(7) defines a restricted or confined label as *"any label of wine or distilled spirits, domestic or imported, other than private labels and those labels available for sale to licensed retailers generally."* Section B(3) prohibits the sale of a restricted or confined label. The section also states that *"A label that is sold to more than one licensed retail dealer in Maryland may not qualify as a private label and shall be made available for sale to licensed retailers generally."* The effect of the above provisions when considered in their entirety is that a label may be offered for sale to only one retail licensee if it meets the "private label" definition but once it is sold to a second licensee it must be offered to all retailers.

A question has arisen as to what constitutes a private label. Clearly, a label "owned" by a retailer qualifies as a private label. However, over the years the term *"labeled exclusively for sale to a licensed retail dealer"* has apparently been subject to multiple interpretations. If a product is bottled by a supplier under a written exclusivity agreement with a Maryland retailer, it would qualify as a private label. However, this exclusivity agreement must be universal and not only applied to Maryland sales. In other words, a supplier could not enter into an exclusivity agreement with a Maryland retailer for a brand that the supplier otherwise distributes outside of Maryland. Such labels, if sold in Maryland, must be offered for general sale to all retailers.

On occasion a supplier may only be able to provide a wholesaler with a limited quantity of product for distribution. Typically, these products are limited production, highly popular and/or high priced, and most often are wine products. Wholesalers may elect or feel compelled by necessity to distribute these products on an "allocation" basis. Section 12-102 of Article 2B of the Annotated Code of Maryland provides *"This section shall not restrict a manufacturer or wholesaler or non-resident dealer from limiting the quantity of alcoholic beverages to be sold to any licensee under a voluntary or compulsory plan of ration . . . ."*

Allocation or rationing plans would not be considered as creating a "restricted label" situation, prohibited by the price filing regulation, if they are designed and implemented in a fair and reasonable manner. Wholesalers may use a variety of criteria to rationalize these allocation plans, but the criteria must be consistently applied. Factors such as retailer's past purchase history of the brand, types of accounts (e.g., restaurants only), pre-orders, etc., would be acceptable factors to consider in developing such plans if universally applied. Wholesalers should develop written allocation plans for each affected product and such plans shall be available for inspection upon request by the Alcohol and Tobacco Tax Unit.

To the extent that any wholesaler's existing policies and practices are inconsistent with the above, corrective action should be taken. Please contact the Alcohol and Tobacco Tax Unit if you have any questions pertaining to private labels or allocation plans.

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