

Bulletin

Comptroller of Maryland • Field Enforcement Division • Motor-fuel, Alcohol and Tobacco Tax Regulatory Bureau
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AB-62

January 15, 2010

To: ALCOHOLIC BEVERAGES LICENSED MANUFACTURERS AND WHOLESALERS,
AND COUNTY DISPENSARIES WHO SELL WINE AND DISTILLED SPIRITS

Subject: PRICE POSTINGS AND QUANTITY DISCOUNTS

The decision of the U.S. Court of Appeals for the Fourth Circuit issued on July 15, 2009, judgment entered on August 11, 2009 affirming the order issued by the U.S. District Court for Maryland on September 27, 2007, in the matter of *TFWS, Inc. v. Comptroller*, is now final.

The U.S. District Court for Maryland ordered that the post-and-hold system under Article 2B, §12-103(c) of the Annotated Code of Maryland and its accompanying regulations, and the ban of volume discounts under Article 2B, §12-102(a) and its accompanying regulations, were both unenforceable as *per se* violations of § 1 of the Sherman Act. Accordingly, the price filing and post-and-hold system under Article 2B, §12-103(c) and related regulations under Title 03.02.01.05 of the Code of Maryland Regulations and the prohibition of volume discounts under Article 2B, §12-102(a) are not in effect.

While volume discounts are permissible under Article 2B, §12-102(a), the discounts must be offered on a uniform, non-discriminatory basis.

The Comptroller is reviewing federal law, the laws and regulations of other states, and case law to determine whether regulations for volume discounts and other related issues are necessary.

Any proposed regulations will take into consideration our legal analysis and industry input, and be published in the Maryland Register with a 30-day period for public comment.

Jeffrey A. Kelly
Director