

RULES WITH REGARD TO SHIPPING ALCOHOL INTO PENNSYLVANIA FROM OTHER STATES

Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), and not the Pennsylvania Liquor Control Board (“Board”), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the Bureau and is offered for information and guidance only.

As a general rule, it is unlawful for anyone in Pennsylvania to possess alcohol not acquired from a Pennsylvania wine and spirits store, a sacramental wine dealer or a licensed limited winery or limited distillery. [47 P.S. §§ 4-491(2), 5-505.4(b)]. Similarly, it is unlawful for any person to import alcohol into Pennsylvania except as permitted within the Liquor Code and the Board’s Regulations. [47 P.S. § 4-491(8), (11)]. The law provides that:

It shall be unlawful [f]or any person, other than the board or the holder of a sacramental wine license, an importer's license or a direct shipper's license, to import any liquor whatsoever into this Commonwealth.

[47 P.S. § 4-491 (11)].

Therefore, unless the recipient of the liquor falls within one (1) of the four (4) exceptions provided in section 491(11) – the Board, a sacramental wine licensee, an importer, or a direct shipper – such importation of liquor is illegal.

Section 488 of the Liquor Code provides that Pennsylvania residents may purchase wine over the Internet and have it shipped to one of the Board’s approximately six hundred twenty (620) wine and spirits stores of their choosing, where they may pick it up, provided such purchases are made via the Internet from direct wine shippers, who have been licensed by the Board. [47 P.S. § 4-488]. The following additional conditions apply to such direct wine shipper orders: Pennsylvania residents may only order wines that are not listed in the Board’s Internet catalog of available wines; Internet orders will be shipped to wine and spirits stores of the purchaser’s choice; the purchaser must be at least twenty-one (21) years old; and all wines must be for personal use, not for resale; the purchaser or his or her designee must sign an affidavit affirming these facts on receipt of the order; and a direct wine shipper may not ship more than nine (9) liters to a single resident in

RULES WITH REGARD TO SHIPPING ALCOHOL INTO PENNSYLVANIA FROM OTHER STATES

any one (1) month. Furthermore, the wine will be subject to a shipping charge, a four dollar fifty cent (\$4.50) handling fee, Pennsylvania's eighteen percent (18%) liquor tax, and six percent (6%) sales tax (and an additional one percent (1%) sales tax in Allegheny County and two percent (2%) in Philadelphia County).

In addition, liquors and wines not listed for regular sale through the Board's wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the Board) via special liquor order ("SLO"). [47 P.S. § 3-305]. SLOs may be placed at any of the Board's wine and spirits stores, or via the Bureau of Product Management at 1-800-332-7522, Option 1. SLOs must be shipped to a wine and spirits store operated by the Board and may be either for personal use or, if purchased by a Board licensee, for resale in any licensed establishment. Such wines are subject to both the aforementioned eighteen percent (18%) liquor tax, the six percent (6%) sales tax, and may be subject to the additional local tax as mentioned above.

With regard to the direct shipment of wine, please be aware of the United States Supreme Court's decision in Granholm v. Heald, 544 U.S. 460, 125 S.Ct. 1885 161 L.Ed.2d 796 (2005). In Granholm, the Court declared unconstitutional state laws in New York and Michigan that prohibited residents of those states from buying directly from out-of-state wineries. The Court held that where a state permits in-state wineries to ship their products directly to consumers, while requiring out-of-state wineries to ship only through the three (3)-tier system, such differential treatment violates the Commerce Clause of the United States Constitution.

A lawsuit, Cutner v. Newman, 398 F. Supp. 2d 389 (E.D. 2005), was filed in federal court challenging Pennsylvania's laws on direct shipping. On November 9, 2005, the United States District Court for the Eastern District of Pennsylvania issued an order enjoining enforcement of Pennsylvania's laws prohibiting out-of-state wineries from selling and shipping directly to consumers, hotels, and restaurants in a manner which treats in-state wineries differently than out-of-state wineries.

Thereafter, the Attorney General's office advised the Board that the provisions of the Liquor Code and Board Regulations which, at the time, permitted in-state wineries to deliver directly to Pennsylvania licensees and consumers, while prohibiting out-of-state wineries from doing so, were

RULES WITH REGARD TO SHIPPING ALCOHOL INTO PENNSYLVANIA FROM OTHER STATES

unconstitutional. Therefore, the Board took measures to temporarily remedy the differential treatment until the Pennsylvania General Assembly has the opportunity to provide a legislative remedy addressing the issues raised by the Granholm case.

A third alternative currently available allowing for the direct shipment of wine into Pennsylvania is through out-of-state wineries that have acquired a limited winery license. Section 505.2 of the Liquor Code authorizes the issuance of a limited winery license. Holders of such licenses may sell alcoholic ciders, wines and wine coolers directly to individuals and to brewery, hotel, restaurant, club, public service liquor licensees and to Pennsylvania winery licensees. [47 P.S. § 5-505.2]. As a result of the aforementioned court rulings, any in-state limited winery or out-of state entity that applies for and obtains a limited winery license from the Board may ship wine directly to Pennsylvania residents, at their homes, who have placed orders to such entities via telephone or the Internet. Such wines are subject to the applicable state sales tax, but not the eighteen percent (18%) tax.