

May 15, 2014

Telephone: (717) 783-9454

Fax: (717) 787-8820

Raymond Neeb  
ArtsQuest

**RE: Wholesale Discount and Tax Exemption**

Dear Mr. Neeb:

ISSUE: This is in response to your e-mail of May 8, 2014, in which you state that ArtsQuest just received its performing arts facility restaurant liquor license and the accompanying ten percent (10%) wholesale discount card. You note that ArtsQuest is also a 501(c)(3) organization, exempt from taxation. You were recently informed that you could not use the wholesale discount card and also be exempt from paying taxes on your organization's liquor purchases at your assigned store. You ask if this is correct.

In addition, you note that ArtsQuest previously obtained special occasion permits ("SOPs") for its annual August event and you never received a wholesale discount when making purchases for those events. You ask whether that should have been allowed or whether it does not apply to SOPs.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that ArtsQuest holds Performing Arts Facility License No. PAF-94 (LID 69570) for premises located at 789 E. 1<sup>st</sup> Street, Bethlehem, Pennsylvania. It appears that conditional approval was granted on May 2, 2014.

OPINION: Pursuant to section 305(b) of the Liquor Code, certain types of licensees are entitled to purchase liquor at wholesale from Board wine and spirits stores. [47 P.S. § 3-305(b). This includes restaurant licensees, of which a performing arts facility license is a subset. A Wholesale Liquor Purchase Permit is issued to qualified licensees. On presentation by the permit holder or his authorized agent at a Pennsylvania Wine and Spirits Store, the Wholesale Liquor Purchase Permit Card will allow the purchase of liquors at the wholesale prices established by the Board. The card shall be presented each time a purchase is to be made at wholesale. [40 Pa. Code § 11.9]. Purchases must total at least fifty dollars (\$50.00) to qualify for the discount, which is currently ten percent (10%). [40 Pa. Code § 11.5].

A licensee having a valid Pennsylvania Tax Exemption Certificate is entitled to purchase alcohol on a tax-free basis, so long as the valid certificate is presented at the Board store.

Please note that each certificate must be retained by the store for each purchase, so the tax-exempt licensee must present a new certificate at each purchase. In response to your specific question, an eligible licensee may use both the Wholesale Liquor Purchase Permit Card and the Pennsylvania Tax Exemption Certificate when purchasing alcohol, so long as the above parameters are met.

In response to your second question, SOP holders are not eligible for the wholesale discount under the Liquor Code because they are permit holders and not licensees [See 47 P.S. § 3-305]. Therefore, ArtsQuest, as an SOP holder, would have been a retail customer of the Board and not eligible for the wholesale discount. A valid tax exemption would apply for purchases made by an SOP holder.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
John Metzger, Executive Director  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Tisha Albert, Director, Bureau of Licensing  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing  
Dale Horst, Director of Retail Operations  
Charles Mooney, Director, Regional Operations

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