

June 20, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Melissa Carter
Keystone State Wine & Spirits, LLC

Re: Guidelines to Sell Beer to Beer Distributors

Dear Ms. Carter:

ISSUE: Your e-mail of May 7, 2014 requests the guidelines for selling beer to beer distributors. You inquire if you may do so under your importer's license or if an alternate license is required.

Pennsylvania Liquor Control Board's ("Board") records indicate that Keystone State Wine & Spirits, LLC is the holder of Importer Liquor License No. I-862 (LID 66999) for use by it at premises located at 7955 Jonestown Road, Harrisburg, Pennsylvania.

OPINION: Initially, please be advised that sections 491 and 492 of the Liquor Code make it unlawful for any person to possess any beer, wine or liquor within Pennsylvania that has not been purchased through a Pennsylvania Liquor Store, a licensed limited winery, a sacramental wine dealer, a limited distillery, or from an entity licensed to sell malt or brewed beverages. [47 P.S. §§ 4-491(2), 4-492(3)].

Furthermore, it is unlawful for any person to import alcohol into the Commonwealth except as permitted within the Liquor Code and the Board's Regulations. [47 P.S. § 4-491(8), (11)]. Section 9.91(a) of the Board's Regulations provides that a person cannot import malt or brewed beverages into the Commonwealth for delivery or use therein, unless the person holds a valid importing distributor (ID) license issued by the Board, or unless a person is exempted by other provisions of that section. [40 Pa. Code § 9.91(a)].

Additionally, the Tax Reform Code of 1971 prohibits the importation of untaxed beer. [72 P.S. § 9011]. Therefore, it is unlawful to possess any beer upon which state taxes have not been paid.

Importing distributors may sell or deliver malt or brewed beverages anywhere within the Commonwealth, subject to their territorial agreement(s), which have been purchased from manufacturers or persons outside this Commonwealth engaged in the legal sale of malt or brewed beverages, or from manufacturers licensed in Pennsylvania. [47 P.S. § 4-431]. Thus, the importation of malt or brewed beverages in Pennsylvania is allowed only by licensed importing distributors on whose premises the malt or brewed beverages must come to rest, who have properly registered the brand with the Board, and who have acquired the appropriate territorial rights from the manufacturer of the beverage in question and who have paid state taxes thereon. Please be advised that the Commonwealth of Pennsylvania, Department of Revenue, is the agency responsible for tax collection in the Commonwealth and may be accessed at the website www.revenue.state.pa.us.

An application for a new importing distributor license or for the transfer of an existing license may be obtained from the Bureau of Licensing by calling (717) 783-8250. You may also obtain the form via the Internet by going to the Board's website at <http://www.lcb.state.pa.us>. Once there, click on "Licensees," and then click on "Applications & Forms."

However, be advised that distributor licenses are subject to quota restrictions. Therefore, obtaining a new importing distributor license can be problematic if your county quota is filled or exceeded. [47 P.S. § 4-437(f)]. If the quota is filled or exceeded, you would need to purchase an existing license and have that license transferred to you. Please note that holding both licenses is not permissible; it is unlawful for an importer's licensee to engage in the liquor business. [47 P.S. § 4-492(14)].

In light of the aforementioned, your importer's (I) license will not enable you to sell beer to beer distributors; the importing distributor (ID) license, if available, would be able to do so.

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

Melissa Carter

June 20, 2014

Page 2

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
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 14-373