

August 20, 2014

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Dave Hertwig

E: Importation of Rum

Dear Mr. Hertwig:

ISSUE: This office is in receipt of your e-mail, dated July 29, 2014, wherein you submit three (3) questions inquiring:

1. What type of license is needed to import wholesale rum from the Caribbean into Pennsylvania for the purpose of blending and bottling and eventual reselling?
2. The method of resale, specifically referencing whether it would be similar to the direct sale by a winery or if the item would have to be submitted to be listed as a Special Liquor Order (“SLO”).
3. If you would be required to sell assets of your current fifty percent 50% ownership of two (2) restaurant (“R”) liquor licenses and your rental of a building to another R licensee.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that you are vice president of Coppa Grill, LLC which holds Restaurant Liquor License No. R-16706 (LID 59157) for premises located at 135 West 3rd Street, Williamsport, Pennsylvania. Information as to your other holdings is unavailable.

OPINION: 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, a licensed limited winery, a distillery or a licensed limited distillery. [47 P.S. § 4-491(2)]. 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)].

Accordingly, in order for you to import rum, you would need an importer's license. Section 410 of the Liquor Code authorizes the importation of wine and/or liquor by a licensed importer. All such importation into Pennsylvania by a licensed importer must be consigned to the Board or to the principal place of business or authorized place of storage maintained by the licensee. [47 P.S. § 4-410(e)]. Once the wine and/or liquor are properly imported into Pennsylvania via a licensed importer, the product may be stored by the importer at its warehouse or at storage facilities maintained by a bailee-for-hire licensee or a bonded warehouse licensee. [47 P.S. §§ 4-410, 5-501, and 5-505.1].

In your proposed plan to blend and bottle rum, you would need a manufacturer license, even though you are not producing the alcohol. The word "manufacture" is defined in section 102 of the Liquor Code as including:

[A]ll means, methods and processes used, employed and made use of, to produce and make alcohol or liquor from raw materials, and shall mean and include rectification and blending of alcohol and liquor, the production, recovery or reuse of alcohol in the making, developing, using in the process of manufacture, denaturing, redistilling or recovering of any alcohol or liquor in distilleries, denaturing plants and wineries.

[47 P.S. § 1-102].

Given this broad definition of the word "manufacture," the activities you would undertake to blend and bottle the rum would require a limited distillery ("AL") license. Since you intend to import rum from the Caribbean, please be advised that section 9.33 of the Board's Regulations prohibits a manufacturer license from importing liquor from outside this Commonwealth or from purchasing liquor from a resident manufacturer unless the distiller also holds an importer License. [40 Pa. Code § 9.33].

An AL license allows the holder to produce not more than one hundred thousand (100,000) gallons of distilled liquor per year. [47 P.S. § 5-505.4]. Limited distilleries can manufacture and sell bottled liquor produced on the licensed premises to the Board, to licensees, and to the public between 9:00 a.m. and 11:00 p.m., operate and maintain up to two (2) Board-approved, additional satellite locations, apply for and hold a restaurant, hotel, or eating place retail dispenser license to sell alcoholic beverages for on-premises consumption at the licensed distillery premises, sell food and liquor for consumption on or off the licensed premises, and offer on-premises tastings. [Id.].

With regard to your question concerning the possession of multiple licenses, please be advised that section 411 of the Liquor Code generally prohibits interlocking business simultaneously holding of an interest in both a retail license and a manufacturing license. [47 P.S. § 4-411]. Section 411(b) of the Liquor Code states that no manufacturer,

importer or sacramental wine licensee, and no officer or director of a manufacturer, importer or sacramental wine licensee shall own any stock or have any financial interest in any hotel or restaurant licensed under this act. [47 P.S. §§ 4-411(b)].

Additionally, section 411(c) of the Liquor Code, in relevant part, states that no manufacturer, importer or sacramental wine licensee, or officer, director, stockholder, agent or employee of a manufacturer, importer or sacramental wine licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any hotel, restaurant or club license, his servant, agent or employee, for equipping, fitting out, or maintaining and conducting, either in whole or in part, a hotel, restaurant or club licensed for the selling of liquor for use and consumption upon the premises. [47 P.S. §§ 4-411(c)].

Section 411(e) of the Liquor Code, in relevant part, states that no hotel, restaurant, retail dispenser or club licensee, and no officer, director or stockholder, agent or employee of any such licensee shall in any wise be interested, directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same used by a distributor, importing distributor, or by an importer or sacramental wine licensee in the conduct of his business. [47 P.S. §§ 4-411(e)].

Please note that section 411 of the Liquor Code generally prohibits someone from simultaneously holding an interest in both a retail license and a manufacturing license. [47 P.S. §§ 4-411]. However, section 411 provides an exception which allows an entity to acquire a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for use at the same location, and further allows more than one (1) location to be so licensed. [47 P.S. §§ 4-411]. There is also an exception applicable to a person who holds a five percent (5%) or less interest in a publicly or privately-held entity owning a restaurant or eating place retail dispenser license. This is not regarded as a "financial interest" and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee. [47 P.S. § 4-411].

Therefore, it is permissible for you to possess both an importer license and a limited distillery license, as the regulation specifically references a manufacturer concurrently holding an importer license. It is not permissible for you to hold onto your current licenses/assets and to acquire manufacturing licenses, however, unless doing so would fall into the aforementioned exceptions.

Should you have any additional questions, do not hesitate to contact this office.

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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
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LCB Advisory Opinion No. 14-476