September 15, 2014

Telephone: (717) 783-9454
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Amanda
The American Spirits Exchange, Ltd.

RE: Direct Sales of Wine and Spirits

Dear Amanda:

ISSUE: This office is in receipt of your e-mail dated August 25, 2014, wherein you indicate that your company, Redemption Spirits, LLC, t/a American Spirits Exchange Limited, acts as the authorized agent for many wine and spirits brands in the United States. You further stated that you hold a Pennsylvania importers permit. You explain that you have a client who wants to register a wine brand in Pennsylvania and you will be acting as your client's broker. You ask if you may sell the wine directly to retailers since you are the broker. In addition, you ask if you may directly sell wine and spirits as the supplier of those products.

Pennsylvania Liquor Control Board ("Board") records indicate that Redemption Spirits, LLC ("Redemption"), t/a American Spirits Exchange Limited, holds Importer License No. I-828 (LID 64137) for use by it at premises located at 205 Mill Street, Bridgeport, Pennsylvania. Redemption also holds Limited Winery License No. LK-341 (LID 66047) for use by it at premises located at 408 East 4th Street, STE 209, Bridgeport, Pennsylvania.

OPINION: Initially, be advised that only the Board, a sacramental wine licensee, licensed direct shipper, or an importer licensee may import liquor or wine into Pennsylvania. [47 P.S. § 4-491(11)]. An importer license permits the holder to bring or import wine and spirits into Pennsylvania from other states or United States possessions and foreign countries, and to purchase wine and spirits from manufacturers located outside of Pennsylvania which will be sold either outside of Pennsylvania or to the Board. All importation of wine and/or spirits into Pennsylvania by the 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 or spirits 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, 5-505.1]. A licensed importer is not permitted to sell directly to licensees or Pennsylvania residents; sales must be made through the Board. However, this can be effectuated in multiple ways.

First, you could submit a listing proposal to the Board for the sale of your products through the Board's over six hundred (600) wine and spirits stores. Products 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 Selection at (717) 783-7601. SLOs must be shipped to a Board-operated store and may be either for personal use or, if purchased by a licensee, for resale in any licensed establishment.

Further, please note that the holder of a vendor's permit may sell liquor to the Board and employ agents who may promote the sale of liquor through the Board's wine and spirits stores. [40 Pa. Code § 13.71]. Such agents may also solicit from licensees orders for those brands of liquor that have been listed as an SLO or luxury item. [40 Pa. Code § 13.73]. SLOs or luxury item orders obtained by the licensed vendors or their agents shall be filed with one (1) of the wine and spirits stores. [40 Pa. Code § 13.73]. All SLO purchases and luxury item purchases must first be consigned to a wine and spirit store before being released for delivery to the consumer. SLOs and luxury item orders placed by a licensed vendor or the vendor's agent for a retail customer may be released by the wine and spirits store for delivery to the consumer. [40 Pa. Code § 13.79(d)]. A vendor's permit would permit this service. Furthermore, a fee may be charged for these services.

Finally, section 488 of the Liquor Code provides that Pennsylvania residents may purchase wine over the Internet and have it shipped to one (1) of the Board's more than six hundred ten (610) 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 any one (1) month. Furthermore, the wine will be subject to a shipping charge, and must add 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 two percent (2%) sales tax in Philadelphia County and one percent (1%) sales tax in Allegheny County).

For information on how to obtain a vendor's permit or direct wine shipper permit, please contact the Bureau of Licensing at (717) 783-8250 or visit the Board's website at www.lcb.state.pa.us, click on "For Licensees," and then "Applications and Forms."

Additionally, it is recommended that you review the document entitled "Procedures and Policies for Vendors," which contains detailed information on the Board's listing process, as well as helpful information for potential vendors. You can access the document on-line at the Board's website, www.lcb.state.pa.us, by clicking on "Industry Partners," then "Sell Products in PA," then select "Procedures & Policies for Vendors Manual."

In sum, considering the above, as a licensed importer, you would not be permitted to sell your client's products directly to licensees or Pennsylvania residents. Sales must be made through the Board as indicated above.

However, please note that in your capacity as a limited winery, you would be able to sell the products produced by your limited winery directly to licensees and Pennsylvania residents. Under the Liquor Code, limited wineries are afforded the statutory ability to operate as a direct retailer of wine to consumers. [47 P.S. § 5-505.2].

Please do not hesitate to contact this office should you have additional questions.

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
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. 14-511