June 10, 2015

Michael Shondeck
Nittany Beverage
VIA E-MAIL: mike@nittanybeverage.com

RE: Distributor Invoice Corrections

Dear Mr. Shondeck:

ISSUE: This is in response to your e-mail inquiry of May 12, 2015, in which you asked for guidance regarding the processes that a licensed distributor may utilize to credit a retail or wholesale customer if that customer is inadvertently incorrectly invoiced. You provide an example as follows:

> A licensee orders one (1) case of Brand X and is invoiced twenty dollars ($20.00) for the product. The licensee pays the invoice (ex: Invoice # 1111) in full that day as required by law. The following day, or after a period of time, it is determined that the distributor did not have the correct price for Brand X on that particular invoice because of an error at the distributor, either by the order-taker, or by the person responsible for maintaining the distributor's product database. The correct price of a case of Brand X should be nineteen dollars ($19.00) per case, meaning that the licensee was overcharged by one dollar ($1.00) on Invoice #1111.

You ask if the following proposed remedy is legal:

> The distributor creates a new invoice (ex: Invoice #1115) that shows a return of one (1) case of Brand X at twenty dollars ($20.00), and a sale of one (1) case of Brand X at nineteen dollars ($19.00), resulting in a credit for the account of one dollar ($1.00), plus any applicable taxes. A note is made on the invoice referencing what invoice is being corrected (#1111). The actual product is not returned, but a copy of the resulting credit memo is given to the licensee for its records. A copy would also be retained by the licensed distributor as per record-keeping regulations. This return is purely to correct an invoicing mistake, and not to give an allowance or rebate to a licensee.

You also reference Advisory Opinion No. 98-203 which dealt with a similar question.

Pennsylvania Liquor Control Board ("Board") records indicate that UNA, Inc., trading as Nittany Beverage, with premises located at 139 North Patterson Street in State College, Centre County, is the holder of Importing Distributor License No. ID-1194 (LID 8751).

OPINION: As set forth in Advisory Opinion No. 98-203, section 493(2) prohibits licensees from selling or offering to sell malt or brewed beverages for credit, other than the exceptions listed therein. [47 P.S. §4-493(2)]. The instances that concern you are those in which a simple error is made in pricing at the distributor, either by the order-taker or by the person maintaining the pricing database, requiring either additional monies to be paid to you by the licensee or a credit to be given to the licensee. The underpayment or overpayment would then be reflected on a subsequent invoice.

As the practice that you mention would be a record-keeping error and not an actual sale for which credit was extended, this conduct would not violate the Liquor Code. It would be advisable, however, to generate an invoice reconciling the record-keeping error immediately upon determining that an error had been made, which invoice would then be kept for two (2) years in order to protect both you and the other licensee.

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. 15-249