

November 17, 2015

Riannon Walsh
Brandywine Branch Distillers, LLC
VIA E-MAIL

Re: Delivery for Limited Distillers

Dear Ms. Walsh:

ISSUE: This is in response to your e-mail and letter dated October 19, 2015, which you sent as a follow-up to a telephone conversation with this office. In the telephone conversation, you advised that, although your limited distillery license is not yet finalized, you are working on your website to ensure that customers will be able to order your product online and have it shipped to their homes.

During this process, you have experienced difficulty with convincing Federal Express (“FedEx”) and United Parcel Service (“UPS”) that they are permitted to ship your product directly to consumers. You understand that UPS handles shipping for the Pennsylvania Liquor Control Board (“Board”), but UPS has advised you that it will not ship your product to anyone other than other “licensees, distributors or wholesale brokers.” You are asking for a written explanation of the legality of shipping distilled spirits to Pennsylvania residences.

Records of the Board indicate that Brandywine Branch Distillers LLC has been issued, by prior approval and pending the completion of certain conditions required of the premises, a Limited Distillery License No. AL-40 (LID 70879) for the premises at 350 Warwick Road, Elverson, Pennsylvania.

OPINION: Act 113 of 2011 gave the Board the authority, through the amendment of section 505.4 of the Liquor Code, to issue limited distillery licenses. A limited distillery may produce up to one hundred thousand (100,000) gallons of distilled liquor per year and sell liquors produced on the licensed premises to the Board, licensees **and the public**. [47 P.S. § 505.4(b)(1) (emphasis added)].

On April 5, 2014, the Board published, in the *Pennsylvania Bulletin* (www.pabulletin.com), new regulations that allow limited distilleries to ship product to consumers. These new regulations became effective upon the date of publication.

In the preamble to the new regulations, the Board explained its rationale:

While section 505.4 of the Liquor Code does not explicitly address the issue, legislative staff members have confirmed that **the intent of Act 113 was to enable limited distillery and distillery licensees to have the same privileges as limited wineries.** Toward that end, the licensed limited distillery language was modeled after section 505.2 of the Liquor Code (47 P. S. § 5-505.2), which allows the Board to issue limited winery licenses....Consistent with § 11.111 (relating to sale by limited winery licensees), this final-form rulemaking **allows licensed limited distilleries and distilleries to deliver their products through the use of vehicles properly registered with the Board or through properly licensed transporters.**

[44 Pa. B. 2056 (emphasis added)]. One of the new regulations, section 11.222, provides that “Delivery of products shall be accomplished through the use of vehicles properly registered by the limited distillery or distillery, as provided in section 491(12) of the Liquor Code ... or through a properly licensed transporter-for-hire.” [40 Pa. Code § 11.222(3)]. There is nothing in the Liquor Code or the Board’s Regulations that prohibits the delivery of alcohol, by the limited distillery or distillery or by a licensed transporter-for-hire, to a Pennsylvania residence.

However, please be aware that the law does not require transporters-for-hire to deliver alcohol. A transporter-for-hire is entitled to establish a policy of not delivering alcohol, or of placing restrictions upon such delivery.

Should you have any other questions and/or issues related to the Liquor Code or the Board’s Regulations, please feel free to once again contact this office.

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

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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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY 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

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