

May 24, 2016

Jesse Tyahla
Eight Oaks Craft Distillery Company
VIA E-MAIL

Re: Discounts by Limited Distillery

Dear Mr. Tyahla:

ISSUE: This is in response to your e-mail dated April 1, 2016, wherein you indicate that your company holds a limited distillery license. You ask if the limited distillery may distribute its product directly to licensees. You also ask if the limited distillery may offer promotions, such as giving a licensee that has bought a case of product another bottle at a price that has been reduced by 75%. You further ask if the limited distillery may offer volume discounts, such as a 10% discount for orders of \$50.00 or more. You note your belief that licensees receive a discount of 10% for purchases of \$50.00 or more from Pennsylvania Liquor Control Board (“PLCB”) stores, so in your opinion it seems appropriate that limited distilleries be allowed to offer the same to their licensee customers.

Records of the PLCB indicate that Eight Oaks Craft Distillery Company holds Limited Distillery License No. AL-33 (LID 70352) for the premises at 7189 Route 309, New Tripoli, Pennsylvania.

OPINION: Pursuant to section 305(b) of the Liquor Code, all retail licensees are entitled to a 10% discount on all purchases from the PLCB stores. 47 P.S. § 3-305(b). However, the Liquor Code does not contain a similar provision that would allow a manufacturing licensee, such as a limited distillery, to offer such a discount to a retail licensee.

Please be aware that section 505.4 of the Liquor Code provides that a limited distillery may sell its product as follows:

The holder of the [limited distillery] license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and eleven o'clock postmeridian so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores may

not be offered for sale at a licensed limited distillery location at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce.

47 P.S. § 5-505.4(b)(1).

Further, section 493(24)(i) of the Liquor Code generally prohibits licensees from offering any prize, premium, gift or anything of value to trade (licensed) or consumer (non-licensed) buyers to induce, directly or indirectly, the purchase of alcoholic beverages, except advertising novelties of nominal value. 47 P.S. § 4-493(24)(i). Novelty items bearing advertising matter, such as matches, disposable lighters, bottle or can openers, tee shirts, caps, corkscrews, pens and pamphlets, may be distributed with or without proof of purchase by any class of licensee to trade or consumer buyers. Board Advisory Notice No. 10 (6th Revision). Advertising novelty items are limited to a wholesale cost of \$15.00 each or less. Id.

Section 493(24)(i) also carves out a limited exception allowing any manufacturer or any agent of a manufacturer to offer and honor coupons which provide for monetary rebates on purchases of wines and spirits through the Board's wine and spirits stores. 47 P.S. § 493(24)(i). However, this limited exception does not allow manufacturers to offer and honor coupons on products purchased from their own locations.

With regard to your questions, offering a 75% discount on select merchandise which is contingent upon the purchase of a case of alcohol would not be permissible, as this would constitute an unlawful inducement to purchase alcohol in violation of section 493(24)(i). Likewise, promoting a volume discount on your limited distillery products would not be permissible (i.e., "buy \$50.00 of alcohol and receive a 10% discount").

In the alternative, a limited distillery may establish more than one price for an item. Therefore, you may establish a pricing scheme under which, for example, an item is offered for sale at thirty dollars to non-licensees and twenty-seven dollars to licensees so long as those prices are not lower than the prices the respective buyers would pay if purchasing those items from the PLCB, as explained above in section 505.4(b)(1) of the Liquor Code.

A limited distillery could also establish a pricing policy as follows: a single bottle of X costs \$10.00, six bottles cost \$50.00, and a case of twelve bottles costs one hundred dollars \$100.00. In this hypothetical situation, a pricing policy is implemented which sets, across the board, the cost for various quantities of spirits. Such a practice would be permissible.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB'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 REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Sincerely,



RODRIGO J. DIAZ
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
Ron Murphy, Product Management and Pricing Division

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