

February 8, 1999

John Weygandt
Stargazers Vineyard
1024 Wheatland Drive
Coatesville, PA 19320

Dear Mr. Weygandt:

ISSUE: This office is in receipt of your January 26, 1999 letter in which you request an interpretation of the language "purchased in bulk in bond" in section 505.2(2) of the Liquor Code. Specifically, you ask:

(1) If you sell (in bond) bottled wine bearing your label to another limited winery, may the purchasing winery resell to individuals, either at the winery or in one of its additional Board-approved locations?

(2) If you sell (in bond) to another limited winery bottled wine bearing no label, may the purchasing winery label those bottles and resell them to individuals, either at the winery or in any of its additional Board-approved locations?

(3) If you bottle wine, apply the label of another limited winery and sell those bottles to it in bond, may the purchasing winery resell those bottles to individuals, either at the winery or in any of its additional Board-approved locations?

We are to assume in the case of questions 2 and 3, that the labels comply with BATF regulations pertaining to wine produced and bottled by another.

In addition, you request confirmation that no state taxes are due from the seller upon such transaction i.e., the buyer pays the state volume and sales taxes when the wine is sold or taken out of bond. You also seek to obtain an updated copy of "Selected Sections of the Liquor Code and Title 40, Pennsylvania Code pertaining to Limited Wineries." The copy you have was last revised November 8, 1995.

OPINION: As you have noted in your letter, Pennsylvania limited winery licensees are permitted to sell wine produced by the limited winery or purchased in bulk in bond from another limited winery. [47 P.S. §5.505.2(2)]. The phrase "in bulk in bond" under section 505.2(2) of the Liquor Code is interpreted by this office as describing wine in containers, such as kegs, on which no taxes have been paid. Because that interpretation does not include wine sold in bottled form, you would not be permitted to sell bottled wine bearing your label, no label or the label of another limited winery to another limited winery.

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You have argued that section 505.2(3) contemplates that bottled wines bearing labels of different wineries may be sold side by side at additional Board-approved-locations and, thus, sales by one limited winery of wine bearing the label of another would be consistent with that section. Please be advised that, while 505.2(3) states that holders of limited winery licenses may "[s]eparately or in conjunction with other limited wineries, sell...wine...produced by the limited winery on no more than five (5) board-approved locations other than the licensed premises...", this provision contemplates two licensed limited wineries placing their own wine side by side in shared Board-approved locations. It does not contemplate the sale by one limited winery of wine bearing the label of another.

With regard to your question about state taxes due from the seller upon such a sales transaction, please contact the Department of Revenue. And, finally, with regard to "Selected Sections of the Liquor Code and Title 40, Pennsylvania Code pertaining to Limited Wineries" (revised 11/08/95), be advised our Special Services section does not have a more current copy of that item at this time. You are, however, encouraged to contact our Licensing Information Center at 717-783-8250 in the future to obtain an updated copy should one be released.

Please do not hesitate to contact this office if you have any further 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

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 99-038