



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB027 ***Refunds, Credits or Exchanges***

To: Alcoholic Beverage Industry

The Texas Alcoholic Beverage Commission (TABC) has received inquiries concerning the exchange of or refund for alcoholic beverages between retailers and distributors, wholesalers and wineries under certain circumstances. This bulletin is intended to clarify statutory and common practices related to distributors, wholesalers and wineries issuing refunds, credits and exchanges for products, with legitimate business justification.

The Alcoholic Beverage Code states that a distributor, winery or wholesaler cannot refund or exchange products sold to a retailer, with the exception of the circumstances listed in Section 104.05(d) and (e). See relevant sections of the Alcoholic Beverage Code below.

In accordance with §104.05(d), alcoholic beverages may be replaced with like product, provided the product was damaged upon or prior to delivery or was unfit for consumption upon delivery, or is determined to be a consumer safety issue caused during the manufacturing process. (Wholesalers, distributors or wineries shall notify TABC immediately regarding any consumer safety issues that result in an exchange.)

In accordance with §104.05(e), malt beverages that have not passed their expiration date may be replaced with like product, as long as the amount does not exceed 25 cases of 24 12-ounce containers.

In addition, we will not consider the following a violation of the Alcoholic Beverage Code: Within 48 hours time after delivery to a retailer, a refund or credit may be provided for a delivery that was inconsistent with the order originally placed by the retailer. Distributors, wholesalers or wineries should provide retailers with a credit memo or exchange receipt stating the reason and date of the exchange. This document shall be kept on the retailer's premises for inspection by authorized Texas Alcoholic Beverage Commission employees and peace officers.

We will not consider the above actions to be a violation of the Alcoholic Beverage Code. However, we will be compelled to take regulatory action against all involved parties in cases where the distributor's, wholesaler's or winery's actions relating to Section 102.07 (a)(4) allow a retailer to exchange product or obtain a refund or credit for reasons other than those stated above.

Section 1.04. Definitions. In this code:

(2) "Consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

Section 101.68. Consignment Sale Prohibited.

A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

Section 102.07. Prohibited Dealings With Retailer Or Consumer.

(a), no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment.

Sec. 104.05. Sale In Original Packaging.

(d) Nothing in this code prevents a retailer from making a claim for the replacement of alcoholic beverages delivered to the retailer by a wholesaler or distributor in a damaged condition. A wholesaler or distributor may not give a refund for or replace alcoholic beverages that were damaged while in the possession of the retailer.

(e) To assure and control product quality, the holder of a distributor's license, wholesaler's permit, or class B wholesaler's permit, at the time of a regular delivery, may withdraw, with the permission of the retailer, a quantity of beer, ale, or malt liquor in its undamaged original packaging from the retailer's stock, if:

(1) the distributor, wholesaler, or class B wholesaler replaces the stock with beer, ale, or malt liquor of identical brands, quantities, and packages as the beer, ale, or malt liquor withdrawn;

(2) the stock is withdrawn before the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(3) the quantity of stock withdrawn does not exceed the equivalent of 25 cases of 24 12-ounce containers.

(f) A consignment sale of an alcoholic beverage is not authorized under Subsection (e) of this section.

This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by fax at 512-206-3349.

Sincerely,



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