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Amended February 21, 2013
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MARKETING PRACTICES BULLETIN – MPB044 ***Mixed Beverage Purchasing Requirements***

To: Alcoholic Beverage Industry

This bulletin is intended to clarify industry common practice and agency interpretation of Sections 28.07(a) & 28.07(b) of the Alcoholic Beverage Code (Code) related to malt beverage, wine, and distilled spirit products purchased by mixed beverage retailers (MB). Industry inquiries have emerged in the market as to whether an MB must adhere to in-county restrictions when purchasing malt beverages and wine from a local distributor (LP) or if an MB can travel outside of the county to purchase malt beverages and wine from any holder of an LP permit.

Section 28.07(a) of the Code requires MBs to purchase distilled spirits from an LP in their county. Further, Section 28.07(b) of the Code states that if the holder of an MB is located in a county where there are no LPs, then the MB may purchase alcoholic beverages from an LP in the nearest adjacent county.

~~After careful consideration and discourse with affected industry members the Agency will uphold its historic position on this issue and will require that all malt beverages, wine and distilled spirits when purchased by an MB from an LP be purchased in the county in which the premises of the MB is located.~~

After careful consideration and discourse with affected industry members the Agency will allow the purchase of malt beverages and wine from LPs outside of the county where its premises are located. The county restrictions applied in Section 28.07 will only be applied to distilled spirits purchases by an MB from an LP. All distilled spirits purchased by an MB must be purchased from an LP in the county in which the premises is located. Malt beverages and wine may be purchased by an MB from any authorized source whether in or outside of the county.

If there are no LPs in the county, then an MB choosing to purchase from an LP must purchase from an LP in the nearest adjacent county per Section 28.07(b). Be mindful that nothing statutorily prohibits an MB from purchasing wine or malt liquor from a wholesaler anywhere in the state, as authorized by Section 28.01, or an MB from purchasing beer from a beer distributor anywhere in the state, as authorized by Section 28.01. Additionally, in

accordance with Section 16.01 (a)(4) of the Code, a winery may sell directly to an MB. Further, as authorized by Sections 12.05, and 62.12 of the Code, a brewer whose annual production of ale together with its annual production of beer does not exceed 75,000 barrels, or a manufacturer whose annual production of beer, does not exceed 75,000 barrels, may sell directly to an MB.

~~The Commission recognizes that there has been request by some segments of the industry to change current industry practice and allow the purchase of malt beverages and wine from LPs outside of the county where its premises are located. The agency encourages the affected industry to seek statutory remedy during the 82nd legislative session. After September 01, 2011 the Agency will revisit this issue as necessary.~~

This opinion is of the staff of the Commission. 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 facsimile at 512-206-3349.

Sincerely,



Thomas Graham
Marketing Practices Supervisor

cc: Sherry Cook, Administrator
Ed Swedberg, Asst. Administrator
Emily Helm, General Counsel
Robert Saenz, Chief of Field Operations
Steve Greinert, Director of Tax and Marketing Practices
Executive Management
Regional Personnel