



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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November 22, 2011

MARKETING PRACTICES BULLETIN – MPB048

16 TAC 45.121 Credit Law Requirements Update

Dear Alcoholic Beverage Industry Members:

This bulletin is intended to announce recent amendments to 16 TAC 45.121 Credit Law Requirements. The rule became effective November 10, 2011.

In 2009 and in accordance with statutory provisions, the commission implemented significant credit law changes and announced its plan to align the delinquent list publication date with the credit law payment due date. Subsequently, the commission will continue to initiate the rule making process annually in September to reduce the publication date by two days each year over a period of five years. Initial changes to 16 TAC 45.121 were made September 5, 2009.

- Year 1 (2010) changes were adopted on October 26, 2010 and became effective on November 18, 2010 (***from 10 days to 8 days***).
- Year 2 (2011) changes were adopted on October 19, 2011 and will become effective on or about 11/10/2011 (***from 8 to 6 day***). In the spirit of transitioning, we will allow an adjustment period through the December 1-15th delivery period.

Thus, the new publication/effective date for the delinquent list will apply to the delivery period of December 16th - 31st. Therefore, the delinquent list for that delivery period will be effective on January 16, 2012.

Enforcement of Rule 16 TAC 45.121 recent amendments will begin with the December 16th - 31st delivery period and be effective on List #1497. This will enable the industry to make the necessary changes to their business practices.

For initial changes see Bulletins MPB030 & MPB039:

http://www.tabc.state.tx.us/marketing_practices/advisories/MPB030.pdf

http://www.tabc.state.tx.us/marketing_practices/advisories/MPB039.pdf

Payment Calendar

Delivery Date	Due Date	Publication Date
December 16 - 31	January 10	January 16 (Instead of 18 th)
	↓	↓
Payments made between 16 th & 10 th may be by <u>check, cash or other form.</u>		Payments made between 11 th & 15 th must be by <u>cash or cash equivalent.</u>

Delivery Date	Due Date	Publication Date
January 1 - 15	January 25	February 1 (Instead of 3 rd)
	↓	↓
Payments made between 1 st & 25 th may be by <u>check, cash or other form.</u>		Payments made between 26 th & 31 must be by <u>cash or cash equivalent.</u>

We hope this notification will assist you in evaluating your business practices and making necessary changes to adapt to the provisions of the amended rule. 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 phone at 512-206-3302 or by facsimile at 512-206-3212.

Kind Regards,

Dexter K. Jones
Assistant Chief of Field Operations

cc: Alan Steen, Administrator
Executive Management
Regional Personnel

Attachments:
16 TAC 45.121 Credit Law Requirements
Delinquent List Publication Dates

§45.121. Credit Restrictions and Delinquent List for Liquor.

- (a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).
- (b) Definitions.
- (1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.
- (2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including , money order, cashier's check, certified check or completed electronic funds transfer.
- (3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.
- (4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.
- (5) Incident--A single delinquent payment.
- (6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. **For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 for resale to ultimate consumers in unbroken packages.**
- (7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.
- (c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.
- (1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.
- (2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.
- (3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.
- (d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.
- (1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.
- (2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.
- (e) Reporting Violation and Payment; Failure to Report.
- (1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.
- (2) A Seller who cannot access the commission's web based reporting system must either:
- (A) submit a request for exception to submit reports by paper; or
- (B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

- (3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.
- (4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.
- (f) Prohibited Sales and Delivery.
- (1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List or until the Retailer no longer appears on the Delinquent List.
- (2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.
- (g) Prohibited Purchase or Acceptance.
- (1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.
- (2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.
- (h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.
- (1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:
- (A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;
- (B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and
- (C) bank statement or records showing:
- (i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or
- (ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.
- (2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.
- (3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.
- (i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.
- (j) Delinquent List.
- (1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.
- (2) The Delinquent List will be published the **1st** ~~3rd~~ day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of the preceding month. The Delinquent List will be published the **16th** ~~18th~~ day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

- (3) The Delinquent List is effective at 12:01 A.M. on the date of publication.
- (4) The Delinquent List is updated hourly to reflect reports of payments submitted.
- (k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

Delinquent List Publication Dates for 2012

* To avoid unnecessary delays in processing time and to allow retailers adequate time to reconcile delinquencies please report delinquent accounts by date indicated below.

If the due date or publication date falls on a Saturday, Sunday, or a state or federal holiday, the due date or publication date shall be the next regular business day.

As of January 11, 2010 all sellers that have been granted an exception waiver to continue using the paper-based process to submit notices of default and/or cash law affidavits to the Commission, should begin submitting the required documents to the appropriate [district office](#).

Delinquent List Publication Dates for 2012					
Shipping Period	List Number	Due Date	Reporting Date *	Publication Date	Effective Date
December 1 - December 15	1496	Dec. 27	Dec. 29	Jan. 5, 2012	Jan. 5, 2012
December 16 - December 31	1497	Jan. 10, 2012	Jan. 13, 2012	Jan. 18, 2012	Jan. 18, 2012
January 1 - January 15	1498	Jan. 25	Jan. 27	Feb. 1, 2012	Feb. 1, 2012
January 16 - January 31	1499	Feb. 10	Feb. 13	Feb. 16, 2012	Feb. 16, 2012
February 1 - February 15	1500	Feb. 27	Feb. 29	Mar. 1, 2012	Mar. 1, 2012
February 16 - February 28	1501	March 10	March 13	Mar. 16, 2012	Mar. 16, 2012
March 1 - March 15	1502	March 25	March 30	April 2, 2012	April 2, 2012
March 16 - March 31	1503	April 10	April 13	April 16, 2012	April 16, 2012
April 1 - April 15	1504	April 25	April 28	May 1, 2012	May 1, 2012
April 16 - April 30	1505	May 10	May 14	May 16, 2012	May 16, 2012
May 1 - May 15	1506	May 25	May 29	June 1, 2012	June 1, 2012
May 16 - May 31	1507	June 11	June 13	June 18, 2012	June 18, 2012
June 1 - June 15	1508	June 25	June 28	July 2, 2012	July 2, 2012
June 16 - June 30	1509	July 10	July 13	July 16, 2012	July 16, 2012
July 1 - July 15	1510	July 25	July 27	Aug. 1, 2012	Aug. 1, 2012
July 16 - July 31	1511	Aug. 10	Aug. 13	Aug. 16, 2012	Aug. 16, 2012
August 1 - August 15	1512	Aug. 27	Aug. 31	Sept. 5, 2012	Sept. 5, 2012
August 16 - August 31	1513	Sept. 10	Sept. 13	Sept. 17, 2012	Sept. 17, 2012
September 1 - September 15	1514	Sept. 25	Sept. 28	Oct. 1, 2012	Oct. 1, 2012
September 16 - September 30	1515	Oct. 10	Oct. 12	Oct. 16, 2012	Oct. 16, 2012
October 1 - October 15	1516	Oct. 25	Oct. 29	Nov. 1, 2012	Nov. 1, 2012
October 16 - October 31	1517	Nov. 13	Nov. 14	Nov. 16, 2012	Nov. 16, 2012
November 1 - November 15	1518	Nov. 26	Nov. 29	Dec. 3, 2012	Dec. 3, 2012
November 16 - November 30	1519	Dec. 10	Dec. 13	Dec. 17, 2012	Dec. 17, 2012
December 1 - December 15	1520	Dec. 27	Dec. 28	Jan. 3, 2013	Jan. 3, 2013