



COMMONWEALTH of VIRGINIA

Department of Alcoholic Beverage Control

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Circular Letter 17-01

Issue Date: April 25, 2017
To: Wholesaler Licensees
Purpose: Channel Pricing Clarification

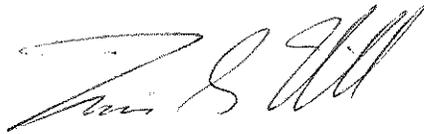
Background: The Virginia Wine Wholesalers Association recently petitioned the Alcoholic Beverage Control Board to consider amending the regulation section 3VAC 5-30-90 to allow for differentiated pricing between off-premises and on-premises accounts. There was no opposition to the petition moving forward. The amended regulation became effective on February 3, 2017. The amendment presents a unique question as to how this change in the regulation would affect retail licensees with both an on- and off-premises license.

Held: Section 3VAC5-30-90 (A) of the Virginia Administrative Code ("VAC") states no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers except where the difference in price charged by such wholesale licensee is due to certain circumstances (those circumstances being the acceptance or rejection by a retail licensee of a term or condition offered on an equal basis to all retailers; a bona fide difference in cost of sale or delivery; or a wholesaler in good faith matching the price of a competitor). Section 3VAC5-30-90 (B) of the VAC states, notwithstanding Subsection A, wholesale wine licensees may differentiate in the pricing between retail purchasers with on-premises and off-premises privileges. However, there shall be no discrimination in pricing among retail licensee purchasers with on-premises privileges and no discrimination in pricing among retail licensee purchasers with off-premises privileges, unless the conditions in subsection A of the same section are present.

The amendments to 3VAC5-30-90 allow a wine wholesaler to offer different pricing to its on-premises retailers than it offers to its off-premises retailers, provided that the same pricing is offered to all the wholesaler's similarly licensed retailers. The newly amended section of the VAC does not address the situation of a retail licensee that has both an on- and off-premises license and how wine wholesalers may establish differentiated pricing amongst those retail licensees. A fair and balanced way to establish price differentiation amongst retail licensees with on- and off- premises privileges is to determine the

types of sales in which the licensee obtains the majority of its business revenue and permit wine wholesalers to restrict pricing based on those sales.

Henceforth, the wholesale price provided for differentiation to a retailer with both an on- and off-premises license shall be based on which privilege generates the majority of the business revenue. For example, if a retailer with both an on- and off-premises license sells more of its wine for off-premises consumption, then that retailer must be treated as an off-premises retailer with respect to the price offered by its wholesale wine company. In order to maintain consistency amongst retailer designations, licensees with both on- and off-premises privileges who choose to accept price differentiations from their wholesalers, shall provide those wholesalers with a written statement declaring which privilege (on or off) generates the majority of their business revenue. Wholesalers will be responsible for maintaining those statements as well as indicating on their sales invoices which privilege the retailer has designated as their major revenue generator. The wholesaler will provide the Board with written substantiation for the price differentiation upon request.

A handwritten signature in black ink, appearing to read "Travis G. Hill". The signature is fluid and cursive, with a large initial "T" and "H".

Travis G. Hill
Chief Operating Officer/Secretary to the Board