UNCORKED: ACT 39 OF 2016 EXPANDS WINE SALES IN PENNSYLVANIA

Date: 19 August 2016

Pennsylvania Public Policy Alert

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Pennsylvania wine enthusiasts rejoiced when, on June 8, 2016, Governor Tom Wolf signed into law PA House Bill 1690, now known as Act 39 of 2016 ("Act 39"). Act 39 made sweeping changes to Pennsylvania's Liquor Code, loosening restrictions on alcohol sales in the Commonwealth and, in the Governor's words, bringing "Pennsylvania's wine and spirits system into the 21st century." [1] Among the most prominent changes to the Code are amendments that enable licensed wine producers to sell and ship wine directly to Pennsylvania residents and amendments that enable licensed restaurants and hotels to make "wine-to-go" sales to consumers.

DIRECT WINE SALES

Act 39 amended the Liquor Code to authorize the Pennsylvania Liquor Control Board ("Board") to issue "direct wine shipper" ("DWS") licenses. The Board may issue a DWS license to anyone who it or another state or country has licensed as a wine producer. The license authorizes its holder, in a given calendar year, to ship up to thirty-six cases of wine (up to nine liters per case) to a Pennsylvania resident for personal use.

In order to acquire a DWS license, a wine producer must provide the Board with the following items:

- A written application,
- A $250 application fee,
- A copy of its wine-producer license,
- Documentation that the Pennsylvania Department of Revenue has provided it with a sales-tax license, and
- Any "other information that the Board deems necessary and appropriate." [2]

After acquiring a DWS license, a wine producer must meet a number of obligations. It must, for example, report to the Board on the total amount of wine that it ships to Pennsylvania residents in each calendar year. It must also require proof of the recipient's age before shipping wine to a Pennsylvania resident. It must ensure that all boxes of wine that it ships to Pennsylvania residents are conspicuously labeled with the phrase "Contains Alcohol: Signature of Person 21 Years of Age or Older Required for Delivery." It must collect sales tax, along with a $2.50 per gallon "wine excise tax," in connection with the wine that it ships to Pennsylvania residents. And it must pay an annual license-renewal fee of $250.

In delivering wine to Pennsylvania residents, moreover, a DWS licensee must use licensed transporters for hire, who must keep certain records regarding the shipments.

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On August 8, 2016, the Board began to accept applications for DWS licenses.

WINE-TO-GO SALES

Act 39 also amended the Liquor Code to authorize the Board to issue "wine expanded permits." The Board may issue a wine expanded permit to anyone—including any grocery or convenience store—that holds a valid Pennsylvania restaurant or hotel liquor license. The permit authorizes its holder to make "wine-to-go" sales to consumers from 7:00 a.m. until 11:00 p.m., Monday through Saturday, and during limited hours on Sundays if it holds a "Sunday sales permit." It may sell up to three liters of wine in a single transaction.

In order to acquire a wine expanded permit, the holder of a restaurant or hotel liquor license must provide the Board with a written application and a $2,000 application fee.

Each recipient of a wine expanded permit must ensure that wine-to-go sales occur at a "specifically designated area" on its restaurant or hotel premises. The sales must occur at a designated register, staffed continuously by a cashier who is at least 18 years old, and cannot occur through a "self-checkout" device. The permit holder must use a "transaction scan device" to verify the age of anyone "who appears to be under thirty-five years of age before making a sale of wine." It cannot sell wine-to-go for a price that is lower than the one at which it purchased the wine from the Board and cannot sell "private label wine." It must pay sales tax in purchasing the wine from the Board and, in turn, collect sales tax from consumers in selling the wine to them in wine-to-go transactions. It may then obtain reimbursement from the Department of Revenue for the sales tax that it paid. And, it must pay an annual permit-renewal fee of two percent "of the cost of wine purchased from the Board" for use in wine-to-go sales.

As with applications for DWS licenses, the Board began to accept applications for wine expanded permits on August 8, 2016.

CONCLUSION

To the delight of wine producers, sellers, and consumers, Act 39, in allowing for DWS licenses and wine expanded permits, makes it significantly more convenient to sell and purchase wine in Pennsylvania. The Act, by the same token, is expected to benefit the Commonwealth by enhancing its tax revenues. As businesses acquire the new licenses and permits, they should be sure to comply with all of the Act's requirements for applying for and conducting operations under them.

Notes:

[1] Pennsylvania Office of the Governor, *Governor Wolf Signs Historic Liquor Reform Bill* (June 8, 2016), available at https://www.governor.pa.gov/governor-wolf-signs-historic-liquor-reform-bill/.

[2] The application form, for example, calls for the applicant to supply the Board with information about the premises where it produces wine and indicate whether "any license or permit issued to [it] by any other state or country" has been "revoked, cancelled or voided by that licensing authority."

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