



WILLIAMS
COMPLIANCE

May 17, 2013

Laurie Aldridge, Executive Director
Virginia Wineries Association
701 E. Franklin Street, Suite 809
Richmond, VA 23219

RE: Wine Donations to Festivals

Ms. Aldridge:

It was brought to my attention that a number of festivals in Virginia are requiring a donation of wine from wineries as a condition of participation in the festival. You asked me to address the legalities of such a situation as it bears on a winery's farm winery license.

Pursuant to Section 4.1-325.2(C) of the Code of Virginia and Section 3 VAC 5-70-100 of the Virginia Administrative Code, it is illegal for a winery to make any gift of an alcoholic beverage, except in limited circumstances not applicable to the situation at hand. Copies of the relevant sections are attached to this letter for your convenience. Donations of alcohol to not-for-profit organizations are not permitted, and violation of these sections can subject a winery to penalty and license suspension.

In reviewing the situation with ABC, it was determined that a festival host could require that a winery provide a specific quantity of wine in lieu of a portion of, or as part of, their booth rental fee as opposed to as a donation in addition to their booth rental fee. Such an arrangement would need to be detailed as part of the festival participation contract, and receipt for payment of the booth rental fee should reflect that it included a specific quantity of wine as part of the rental fee itself. Wineries involved in these transactions should keep these receipts for the ABC record retention period of two years as supporting documentation for the disposition of this wine.

Should you have any addition questions or concerns, please don't hesitate to call me.

Yours very truly,

Mary Beth Williams, Esq.
President, Williams Compliance & Consulting

§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.

A. In addition to the provisions of § [4.1-324](#), no retail wine or beer licensee or his agent or employee shall consume any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subsection shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § [4.1-225](#) or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes.

B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not be deemed to be agents of the retail wine or beer licensee.

C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subsection; (iii) pursuant to subsection C of § [4.1-209](#); or (iv) pursuant to subdivision A 12 of § [4.1-201](#). Any gift permitted by this subsection shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subsection.

D. Any person convicted of a violation of this section shall be subject to a civil penalty in an amount not to exceed \$500.

(2002, c. [105](#); 2003, c. [856](#); 2006, cc. [256](#), [826](#).)

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ [4.1-201](#), [4.1-201.1](#), [4.1-209](#), [4.1-325](#), and [4.1-325.2](#) of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer, which such wholesaler otherwise may sell to such retail licensee, provided that in a case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container.

3. Hospitality rooms; conventions. A person licensed to manufacture wine or beer may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including wine and beer tastings; research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer or wines to:

a. A convention, trade association or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism;

d. Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees when conducting a bona fide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by subdivisions 3 b and 4 of this subsection are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a gourmet shop licensee for its

customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

Statutory Authority

§§ [4.1-103](#) and [4.1-111](#) of the Code of Virginia.

Historical Notes

Derived from VR125-01-7 § 10, eff. December 12, 1985; amended, Virginia Register Volume 3, Issue 1, eff. November 12, 1986; Volume 5, Issue 2, eff. November 24, 1988; Volume 6, Issue 2, eff. November 23, 1989; Volume 7, Issue 4, eff. December 19, 1990; Volume 8, Issue 6, eff. January 15, 1992; Volume 9, Issue 6, eff. January 13, 1993; Volume 10, Issue 11, eff. March 23, 1994; Volume 23, Issue 13, eff. May 19, 2007.

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