

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 10, 2012  
REFERRED FROM: COUNSEL'S OFFICE

2012-01093A

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

DELEGATION OF AUTHORITY – COMPLIANCE

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 10, 2012 determined:

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 10, 2012  
REFERRED FROM: SECRETARY'S OFFICE

2012-01093B

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

TASTINGS

(ADVISORY DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 10, 2012 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All manufacturers, importers, wholesalers, and agency staff

SUBJECT: Tastings conducted by manufacturers, importers and wholesalers

The Alcoholic Beverage Control Law ("ABCL") contains various provisions with respect to conducting tastings (or supplying samples) of alcoholic beverages. In addition, through the exercise of its discretion under ABCL §99-b(1)(k), the Authority has expanded the ability of certain manufacturers, wholesalers and importers to conduct tastings of their products.

This advisory is issued to provide guidance to industry members and agency staff with respect to the entities that are allowed to conduct such tastings in this state. The specific statutes referenced in this advisory should be reviewed to ensure that all tastings are conducted in compliance with the ABCL. For purposes of this advisory, the term:

*"Importer"* means an entity, having a basic permit as required by §1.20 of title 27 of the code of federal regulations to import alcoholic beverages. An importer may also be a "licensed wholesaler" if it holds a wholesale license issued by the Authority.

*"Licensed brewer"* means an entity licensed by the Authority under ABCL §51 to produce beer.

*"Licensed cider producer or manufacturer"* means an entity licensed by the Authority under ABCL §58 to produce cider or sell cider at wholesale.

*"Licensed distiller"* means an entity, other than a farm distiller, licensed by the Authority under ABCL §61 to produce liquor.

*"Licensed farm distiller"* means an entity licensed by the Authority under ABCL §61(2-c) to produce liquor.

*"Licensed farm winery"* means an entity licensed by the Authority under ABCL §76-a [farm winery or micro-winery] or §76-d [special farm winery] to produce wine.

*"Licensed winery"* means an entity licensed by the Authority under ABCL §76 [winery] or §76-c [special winery] to produce wine.

*“Licensed wholesaler”* means an entity that holds a license issued by the Authority under ABCL §53 [beer], §58 [cider], §62 [liquor], or §78 [wine] to sell alcoholic beverages at wholesale. A licensed wholesaler may also be an importer if it holds a basic federal permit to import alcoholic beverages.

*“Out-of-state manufacturer”* (or “out-of-state” brewer, winery, distiller, etc.) means an entity that holds a valid license issued by another state to produce alcoholic beverages.

*“Out-of-state wholesaler”* means an entity that holds a valid license issued by another state to sell alcoholic beverages at wholesale. An out-of-state wholesaler may also be an importer if it holds a basic federal permit to import alcoholic beverages.

This advisory shall replace Bulletin 515-a, which is hereby rescinded in all respects. In addition, this advisory shall replace any prior written or verbal directives from the Authority regarding the issuance of permits to manufacturers, importers and wholesalers (whether or not they are licensed in this state) to allow such entities to conduct tastings in addition to any tastings authorized by the ABCL.

Except as provided for in this advisory, no manufacturer, importer or wholesaler of alcoholic beverages may conduct tastings in this state. In addition, except as specifically allowed by the ABCL, no manufacturer, importer or wholesaler can charge a fee to a consumer to participate in a tasting.

### **Beer Tastings**

#### **By licensed brewers:**

- A licensed brewer may conduct beer tastings at its licensed premises [ABCL §51(8)(d)] without obtaining a permit.
- A licensed brewer may obtain a temporary (3 day) or annual brewer tasting permit [ABCL §51(8)(a)]. Such permit allows the brewer to conduct tastings of the beer it produces at: (a) establishments licensed under ABCL §54 or §54-a to sell beer, or beer and wine products at retail for consumption off the premises [a “grocery store” or “drug store” beer license]; (b) County Fairs; and (c) establishments licensed under ABCL §53 to sell beer at wholesale that may also sell beer at retail for consumption off the premises [a “C” licensee].
- A licensed brewer may conduct beer tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By out-of-state beer manufacturers:

- An out-of-state licensed beer manufacturer may obtain a temporary (3 day) or annual brewer tasting permit [ABCL §51(8)(a)]. Such permit allows the brewer to conduct tastings of the beer it produces at: (a) establishments licensed under ABCL §54 or §54-a to sell beer, or beer and wine products at retail for consumption off the premises [a “grocery store” or “drug store” beer license]; (b) County Fairs; and (c) establishments licensed under ABCL §53 to sell beer at wholesale that may also sell beer at retail for consumption off the premises [a “C” licensee].
- An out-of-state beer manufacturer may conduct beer tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By beer importers:

- A beer importer may obtain a temporary (3 day) or annual brewer tasting permit [ABCL §51(8)(a)]. Such permit allows the brewer to conduct tastings of the beer it produces at: (a) establishments licensed under ABCL §54 or §54-a to sell beer, or beer and wine products at retail for consumption off the premises [a “grocery store” or “drug store” beer license]; (b) County Fairs; and (c) establishments licensed under ABCL §53 to sell beer at wholesale that may also sell beer at retail for consumption off the premises [a “C” licensee].
- A beer importer may also conduct beer tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By licensed beer wholesalers:

- The ABCL does not contain any provision that allows a licensed beer wholesaler to conduct beer tastings either at its licensed premises or at any other location. However, a licensed beer wholesaler may conduct beer tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By out-of-state beer wholesalers:

- The ABCL does not contain any provision that allows an out-of-state beer wholesaler to conduct beer tastings.

**Liquor Tastings**

By licensed distillers:

- A licensed distiller may not conduct liquor tastings at its licensed premises.

- A licensed distiller may conduct liquor tastings at establishments licensed in this state to sell liquor at retail for consumption off the premises (a “package store”) [ABCL §63-a]. No permit is needed for the liquor tastings at package stores.
- A licensed distiller may also conduct liquor tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By licensed farm distillers:

- A licensed farm distiller may conduct liquor tastings at the licensed premises of liquor made primarily from New York state products that is produced by the farm distiller or by other licensed distillers and farm distillers [ABCL §61(2-c)(c)].
- A farm distiller may also conduct liquor tastings at a licensed package store [ABCL §63-a]. No permits are needed for any of these tastings.
- A licensed farm distiller may also conduct liquor tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By out-of-state liquor manufacturers:

- The ABCL does not contain any provision that allows an out-of-state distiller to conduct liquor tastings. However, an out-of-state liquor manufacturer may conduct liquor tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By liquor importers:

- The ABCL does not contain any provision that allows an importer to conduct liquor tastings. However, an importer may conduct tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By licensed liquor wholesalers:

- A licensed liquor wholesaler may not conduct liquor tastings at its licensed premises.
- A licensed wholesaler may conduct liquor tastings at package stores [ABCL §63-a]. No permit is needed for the tasting at the package store.
- A licensed liquor wholesaler may also conduct liquor tastings using a supplier/wholesaler permit. Information concerning such permits is provided later in this document.

By out-of-state liquor wholesalers:

- The ABCL does not contain any provision that allows an out-of-state wholesaler to conduct liquor tastings.

By licensed farm wineries:

- A licensed farm winery may conduct tastings at its licensed premises of New York State labeled liquor that is produced by any licensed distiller other than a farm distiller [ABCL §76-a(6)(f)]. No permit is needed to conduct this tasting.
- Since a farm winery may only sell such liquor at retail, it is not eligible to obtain a supplier/wholesaler tasting permit for liquor.

**Wine Tastings**

By licensed wineries:

- A licensed winery may conduct tastings of the wine it produces at its own licensed premises without a separate permit [ABCL §80]. The winery may charge a fee to consumers for such tastings.
- It may also conduct tastings of New York state labeled wine at licensed package and wine stores [ABCL §76(3)(a)] as well as at establishments with licenses to sell wine at retail for on-premises consumption [ABCL §76(3)(a-1)] without having to obtain a permit.
- A licensed winery that holds a “satellite store” license issued under ABCL §76(5) may also conduct tastings of New York state labeled wine at the satellite store. The winery may charge a fee to consumers for such tastings.
- A “charitable event” permit is available to licensed wineries under ABCL §76(3)(c). That permit allows a licensed winery to conduct tastings of New York state labeled wine at five events in one year sponsored by charitable organizations. Multiple permits can be obtained each year.
- A licensed winery may also conduct wine tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By licensed farm wineries:

- A licensed farm winery can conduct tastings of the wine it produces at its own licensed premises without a separate permit [ABCL §80]. The farm winery may charge a fee to consumers for such tastings.
- A licensed farm winery may also conduct tastings of New York state labeled wine at licensed package and wine stores [ABCL §76-a(3)(a)] as well as at establishments with licenses to sell wine at retail for on-premises consumption [ABCL §76-a(3)(b)] without having to obtain a permit.

- A licensed farm winery that operates “branch offices” pursuant to ABCL §76-a(7) may also conduct tastings of New York state labeled wine at the satellite store. The farm winery may charge a fee to consumers for such tastings.
- A “charitable event” permit is available to licensed farm wineries under ABCL §76-a(3)(d). That permit allows a licensed farm winery to conduct tastings of New York state labeled wine at five events in one year sponsored by charitable organizations. Multiple permits can be obtained each year.
- A licensed farm winery may also conduct tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By out-of-state wine manufacturers:

- The ABCL does not contain any provision that allows an out-of-state wine manufacturer to conduct wine tastings. However, an out-of-state wine manufacturer may conduct wine tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By wine importers:

- The ABCL does not contain any provision that allows an importer to conduct wine tastings. However, a wine importer may conduct wine tastings using a supplier/wholesaler permit. Information concerning such permits is provided later in this document.

By licensed liquor and wine wholesalers:

- A licensed wholesaler may conduct tastings of the wine it sells at its own licensed premises without a separate permit [ABCL §80].
- The ABCL does not contain any provision that allows a wholesaler to conduct wine tastings at any other location. However, licensed liquor and wine wholesalers may conduct wine tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

By out-of-state wine wholesalers:

- The ABCL does not contain any provision that allows an out-of-state wine wholesaler to conduct wine tastings.

Trade associations

- Wine grape growers or wine producer organizations or associations, incorporated within the state for the purpose of wine or wine grape promotion may hold wine tastings for purposes of education in the production and proper use of wine products. These tastings

are governed by the same provisions that apply to tastings conducted by wineries [ABCL §77(6)(d)].

### **Cider Tastings**

#### **By licensed cider producer or wholesaler:**

- A licensed cider producer or wholesaler may not conduct liquor tastings at its licensed premises.
- A licensed cider producer or wholesaler may conduct tastings of New York state labeled cider at licensed package stores [ABCL §58(2)(a)] as well as at licensed restaurants, hotels and catering establishments [ABCL §58(2)(b)] without having to obtain a permit.
- A licensed cider producer or wholesaler that holds a “satellite store” license issued under ABCL §58(4) may also conduct tastings of New York state labeled cider at the satellite store.
- A licensed cider producer or wholesaler may also conduct cider tastings using a supplier/wholesaler tasting permit. Information concerning such permits is provided later in this document.

#### **By out-of-state cider manufacturers:**

- The ABCL does not contain any provision that allows an out-of-state cider manufacturer to conduct cider tastings. However, an out-of-state cider manufacturer may conduct cider tastings using a supplier/wholesaler permit. Information concerning such permits is provided later in this document.

#### **By cider importers:**

- The ABCL does not contain any provision that allows an importer to conduct cider tastings. However, a cider importer may conduct cider tastings using a supplier/wholesaler permit. Information concerning such permits is provided later in this document.

#### **By out-of-state cider wholesalers:**

- The ABCL does not contain any provision that allows an out-of-state cider wholesaler to conduct cider tastings.

#### **By licensed farm wineries:**

- Although a licensed farm winery may sell cider at retail under the terms of its license [ABCL §76-a(3)], there is no provision in the statute that allows a farm winery to conduct cider tastings.

- Since a farm winery can only sell cider at retail, it is not eligible to obtain a supplier/wholesaler tasting permit for cider.

### **Brand label registration and price posting**

- Except for tastings conducted pursuant to a supplier/wholesaler tasting permit, alcoholic beverages used at a tasting must be brand label approved in accordance with ABCL §107-a.
- Except for tastings conducted pursuant to a supplier/wholesaler tasting permit, liquor and wine offered at a tasting, must be price posted as required by ABCL §101-b.

### **Removal of product**

- Except for authorized tastings conducted at the licensed premises of the manufacturer or wholesaler, a manufacturer, importer or wholesaler shall remove all remaining product at the conclusion of the event.
- Except with respect to beer tastings as provided for in ABCL §51(8)(f), the manufacturer, importer or wholesaler shall provide all alcoholic beverages used for the samples. In the case of a manufacturer or importer, the alcoholic beverages may come from the inventory of a licensed wholesaler.

### **Supplier/wholesaler permit**

- In addition to the those situations described above where a licensed manufacturer, out-of-state manufacturer or importer can, by statute, conduct tastings, the Authority, pursuant to the provisions of ABCL §80(2), §99-b (1)(k) & §99-d, will issue to manufacturers and importers, as well as wholesalers licensed in this state, permits to hold events to market their products. These permits will allow such entities to provide samples of their products to consumers and, in the case of a supplier, accept orders from licensed retailers on behalf of a wholesaler licensed in this state who is authorized to sell such product at wholesale.
- These permits shall be subject to the following conditions:
  1. Such events may take place at:
    - a. In the case of a licensed wholesaler, at its licensed premises.
    - b. An establishment licensed under the ABCL to sell at retail the alcoholic beverage that will be tasted.

- c. The state fair, recognized county fairs and farmers markets operated on a not-for-profit basis.
  - d. Outdoor or indoor gatherings, functions, occasions or events sponsored by a bona fide charitable organization. For purposes of this advisory, a bona fide charitable organization shall mean and include any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in General Municipal Law §186(5).
  - e. Other indoor or outdoor events specifically approved by the Authority. In deciding whether to approve the use of a permit for a particular event, the Authority shall consider the nature and location of the event, and the plan of supervision submitted by the applicant to insure compliance with the ABCL.
2. Notwithstanding the above provisions, a licensed beer wholesaler may only conduct tastings at its own licensed premises.
  3. Applications may be filed for an annual permit or for an individual function.
  4. The fee for an annual permit shall be \$250 plus \$10 filing fee. The fee for an individual function shall be \$20 plus \$5 filing fee.
  5. An application for an individual function shall be filed at least 15 days before the event.
  6. The holder of an annual permit shall advise the Authority in writing of the date and place of any event being held at an unlicensed location at least 15 days before the event. The Authority retains the power to disapprove the use of the permit at a particular function for good cause. The location for the event shall be deemed approved within 7 days unless the Authority notifies the permit holder of its objection.
  7. The site of the tasting shall be subject to inspection during the tasting by the Authority.
  8. No fee shall be charged by the supplier to a consumer attending or participating in such event.

9. Each sample shall be limited:
  - a. in the case of beer, wine products and cider, to 3 ounces or less;
  - b. in the case of wine, to 2 ounces;
  - c. in the case of liquor, to one-quarter ounce.
10. No tasting shall be held during the hours prohibited by the provisions of ABCL §106(5).
11. The permit holder shall comply with all federal and state tax requirements.
12. The permit holder shall provide all alcoholic beverages used for the samples. In the case of a supplier, the alcoholic beverages may come from the inventory of a wholesaler at the supplier's expense. The permit holder shall remove all remaining product at the conclusion of the event.
13. Liquor and wine used for tastings do not have to be price posted items. All alcoholic beverages used at such events shall be in the original containers and must comply with any one of the following:
  - a. the ABCL and the Authority's regulations pertaining to brand label registration; or
  - b. have received a Certificate of Label Approval (COLA) from the Tax and Trade Bureau (TTB); or
  - c. have an exemption from COLA registration issued by TTB.
14. The permit or a duplicate copy thereof shall be displayed at the location where the event shall be held.
15. The permit holder shall keep and maintain adequate books and records, including a log of all events conducted pursuant to the permit, and make such books and records available for inspection by the Authority.
16. The event shall be conducted by the permit holder or an authorized agent of the permit holder. Provided, however, that with respect to beer tastings, a licensed beer wholesaler shall not serve as the authorized agent for another permit holder, nor shall a licensed beer wholesaler be involved in any manner with a beer tasting conducted by another permit holder. Any liability stemming from a right of action resulting from an event conducted under the permit,

and in accordance with the provisions of General Obligations Law §11-100 and §11-101, shall accrue to the permit holder.

**Temporary Beer & Wine permit**

- Except as specifically provided for in ABCL §97, temporary beer and wine permits are not available to any manufacturer, wholesaler or importer. The issuance of such a permit would violate the provisions of ABCL §101(1) that prohibit a manufacturer or wholesaler from having an interest in a premises where alcoholic beverages are sold at retail.

**Organizations sponsoring tasting events**

- An organization that does not hold a license to traffic in alcoholic beverages may sponsor an event at which manufacturers, importers and/or wholesalers are conducting tastings.
- However, if that organization charges a fee to those attending the event, the organization must obtain a “special events” permit from the Authority. Charging a fee to persons to sample alcoholic beverages is considered a “sale” and requires the appropriate license or permit.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 10, 2012  
REFERRED FROM: SECRETARY'S OFFICE

2012-01093C

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

BRAND LABEL REGISTRATION  
FOR BEER

(ADVISORY DRAFT)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 10, 2012 determined:

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF APRIL 10, 2012  
REFERRED FROM: ADMINISTRATION

2012-01093D

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

TEQUISHA JENKINS

SECRETARY 1  
COMPLIANCE – COUNSEL'S OFFICE

LOCATION: NYC/ZONE 1

(APPOINTMENT)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on APRIL 10, 2012 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All beer manufacturers, importers, wholesalers and agency staff

SUBJECT: Brand label registration fees and excise tax exemptions for beer

The resolution of a lawsuit brought by an out-of-state beer distributor against the State Liquor Authority and the Department of Taxation and Finance has resulted in a change in the way certain fees and taxes are imposed on brewers.

Section 107-a of the Alcoholic Beverage Control Law governs the process for registration and approval of brand labels. The statute also sets the fee that must be paid for each brand label registration. The fee for the registration of a beer brand label is currently \$150. However, the law provides an exemption from the fee for beer produced in small batches by New York State brewers. That exemption is found in subdivision 4, paragraph g of the statute.

Section 424 of the Tax Law provides for an excise tax on alcoholic beverages. The tax is imposed on the distributor of the product. The current excise tax on beer is fourteen cents per gallon. However, as with the brand label registration fee, the law provides an exemption for beer produced in this state. Specifically, the first 200,000 gallons of a brewer's beer that is produced, sold and used in this state is exempt from the excise tax. That exemption is found in subdivision 6 of the statute.

As part of the resolution of the lawsuit, the State Liquor Authority and the Department of Taxation and Finance conceded that that the two exemptions discussed above are unconstitutional. The agencies' decision was based on a long line of United States Supreme Court decisions that prohibit a state from giving preferential treatment to items produced in the state. These two exemptions treat beer produced in this state differently than beer imported into the state. According, a court order has been issued declaring that both exemptions are no longer in effect.

As a result of this court order, brewers licensed in this state will have to pay the same fee as out-of-state brewers for all brand label registrations submitted to the State Liquor Authority. Similarly, all beer produced by those brewers will be subject to the excise tax. The lawsuit also challenged ABCL sections 107-a(4)(c)(3) and 107-a(4)(d), which waive all registration requirements and fees for wine labels, regardless of the state of origin, if they are approved by TTB. The plaintiffs, as part of the settlement, agreed to drop those claims.

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