STATE OF NEW YORK
LIQUOR AUTHORITY

To: All licensees

Subject: Donations of alcoholic beverages to charitable and/or not-for-profit organizations

The purpose of this Advisory is to provide guidance to industry members with respect to donations of alcoholic beverages to charitable and/or not-for-profit organizations. For purposes of this advisory, the terms "charitable organization," not-for-profit organization" and "non-profit organization" shall have the same meaning- any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, provided that donations to such organization are deductible for Federal income tax purposes.

Donations to not-for-profit organizations for off-premises sales

Section 99-a of the Alcoholic Beverage Control Law allows the Authority to issue a one day permit (a "charitable permit") to a not-for-profit organization to sell alcoholic beverages for off-premises consumption. Typically these charitable permits are used for auctions but can be used for any type of retail sale. The charitable permit is subject to five conditions: 1) contributions made by an individual donor must be deductible for federal income tax purposes; 2) the funds raised by the sale of alcoholic beverages are used for the organization's non-profit purposes; 3) all the alcoholic beverages are in sealed containers; 4) not more than eighty cases of alcoholic beverages can be sold; and 5) the sales take place during the hours that a retail off-premises licensee in that county can legally sell the alcoholic beverage. Licensees may donate alcoholic beverages to a not-for-profit organization holding a charitable permit.

Donations to not-for-profit organizations for on-premises consumption

There are three ways a not-for-profit organization can sell/serve alcoholic beverages for on-premises consumption: at an event with a temporary beer and wine permit; at its own premises with its own on-premises license; and at an event catered by a business with its own on-premises license, either at the licensee's location or at another site with a caterer's permit.

- Not-for-profit organization holding a temporary beer and wine permit

A not-for-profit organization can obtain a one day permit under section 97 of the Alcoholic Beverage Control Law to sell beer, wine and cider at an indoor or outdoor event. Licensees may donate alcoholic beverages to a not-for-profit organization holding such a permit.

- Not-for-profit organization holding an on-premises license

No donations of alcoholic beverages may be made to a not-for-profit that holds its own on-premises license. Such donations by a manufacturer, importer or wholesaler would be considered a violation of the gifts and services law and, with respect to liquor and wine, a violation of the price posting law. As a licensed retailer, the not-for-profit may not accept alcoholic beverages from another retailer.

- Not-for-profit conducting an event catered by another on-premises licensee.

Licensees may donate alcoholic beverages to a not-for-profit organization that is holding an event that is being catered by an on-premises licensee other than the not-for-profit organization. This is the case whether the event takes place at the caterer's licensed premises or at an unlicensed location when the caterer has obtained a permit for the event. The alcoholic beverages may be delivered to the caterer to be held on behalf of the not-for-profit until the event is held. Any alcoholic beverages remaining after the event must be removed by the not-for-profit or the licensee that made the donation.

Donations are only permitted if attendees at the event are not charged for the alcoholic beverages (an "open bar", for example). If the caterer is going to charge attendees for alcoholic beverages (a "cash bar", for example), the caterer must purchase the alcoholic beverages from a duly authorized licensed wholesaler or manufacturer and may not share profits from such sales with the not-for-profit organization.