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**To: Wine Manufacturers located in States other than New York State**  
**Subject: Direct Shipment of Wine to New York State Resident Customers for Personal Use and Not for Resale**

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Chapters 210<sup>1</sup> and 184<sup>2</sup> of the Laws of 2005 make a number of changes to the New York State Alcoholic Beverage Control Law (“ABCL” or “ABC Law”). The changes made by Chapters 210 and 184 go into effect on August 11, 2005.<sup>3</sup> Among these changes is the addition of a new section 79-c to the ABC Law.

The newly added ABCL § 79-c authorizes the New York State Liquor Authority (the “Authority”) to issue an Out-of-State Direct Shipper’s License (“Direct Shipper’s License”) to a wine manufacturer located outside of New York State.

As used in the new provisions concerning the direct interstate retail sale and shipment of wine, “out-of-state” refers to a wine manufacturer located in a state other than New York State.

Before the Authority may issue a Direct Shipper’s License to an out-of-state wine manufacturer, the Authority must make sure that the out-of-state applicant satisfies the requirements set forth in ABCL § 79-c:

- To be eligible for a Direct Shipper’s License, the applicant out-of-state wine manufacturer must be located in a state that affords to New York State wine manufacturers substantially similar direct shipping privileges.
- The applicant for a Direct Shipper’s License must present proof of receipt of a New York State Certificate of Authority under New York State Tax Law § 1134 and registration as a New York State alcoholic beverage distributor under New York State Tax Law §§ 421 and 422.
- The applicant must file a consent to New York State jurisdiction as part of the application.
- The applicant must pay a \$125 license fee in connection with the application for the Out-of-State Direct Shipper’s License.

The out-of-state wine manufacturer must also affirm a commitment to comply with New York State statutory provisions governing the direct interstate retail sale and shipment of wine to New York residential customers for personal use and not for resale:

- The out-of-state wine manufacturer may sell to New York residential customers only wine that is *produced* by the out-of-state wine manufacturer;
- The holder of a Direct Shipper’s License must require the prospective New York purchaser to represent his or her age as 21 years or more, and to represent that the wine being purchased is for personal use and not for resale.
- Shipping containers used to deliver wine to New York residents must be conspicuously labeled with the words: “Contains Wine – Signature of Person Age 21 or Older Required for Delivery – Not for Resale”, or with other language specifically approved by the Authority.

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<sup>1</sup> Chapter 210 of the Laws of 2005 came into existence on July 12, 2005, when Assembly Bill 7379-C was signed into law.

<sup>2</sup> Chapter 184 of the Laws of 2005 also came into existence on July 12, 2005, when Senate Bill 5925 was signed into law. Senate Bill 5925 amends the text of Assembly Bill 7379-C.

<sup>3</sup> Section 11 of Assembly Bill 7379-C originally directed that the provisions of Assembly Bill 7379-C should go into effect on the one hundred twentieth day after it shall have become a law. Senate Bill 5925 amended section 11 of Assembly Bill 7379-C to direct that its provisions should go into effect on the thirtieth day after it shall have become law. The thirtieth day after July 12, 2005 is August 11, 2005.



- The holder of a Direct Shipper's License must require the common carrier delivering the wine (i) to verify the identity and age of the recipient by means of photographic identification, (ii) to obtain the signature of the recipient on an "acknowledgment of receipt" form approved by the Authority,<sup>4</sup> and (iii) to refuse delivery where the prospective recipient unreasonably refuses to present proof of age.
- Information regarding wine sales to New York residents must be periodically reported to the Authority.<sup>5</sup>
- The holder of an Out-of-State Direct Shipper's License must file tax returns and pay State and local sales taxes and State excise taxes. Delivery of a shipment in New York State by the holder of an Out-of-State Direct Shipper's License is deemed a sale in New York at the place of delivery.
- Records regarding wine sales to New York residents must be kept for a period of three years, and the holder of an Out-of-State Direct Shipper's License must permit the Authority or the Department of Taxation and Finance to perform audits upon request.
- The license must be annually renewed.

### **Reciprocal Shipping Privileges and Quantity Limits**

The newly enacted ABCL § 79-c indicates that the holder of a Direct Shipper's License may ship up to ("no more than") 36 cases of wine (no more than 9 liters each case) per year directly to a New York resident of legal age, "provided \*\*\* that the state in which such out-of-state winery is located affords to New York State winery and farm winery licensees reciprocal shipping privileges, meaning shipping privileges that are substantially similar to the requirements of this section" (emphasis added).

Language in the Bill Summary of S.5925 provides guidance with regard to the manner in which the Legislature intended the "reciprocal shipping privileges" requirement to be construed (emphasis added): "[I]f a winery is located in a state that has limitations on wine that can be shipped to that state, *such winery shall be subject to the same limitations*; providing that such limitation does not exceed the limitations set forth in the state of New York".

An out-of-state winery applying for a New York State Out-of-State Direct Shipper's License is required – at Questions 37-38 of the application – to provide advice regarding the quantity limits imposed by the applicant's state upon New York State wine manufacturers seeking to directly sell and ship wine to resident customers of the applicant's state.

An out-of-state wine manufacturer may not be issued a New York State Out-of-State Direct Shipper's License unless such out-of-state wine manufacturer agrees to limit the quantity of his wine shipments into New York to the maximum number of cases per month and per year that the applicant's state allows New York wine manufacturers to directly sell and ship to a resident customer of the applicant's state. (Question 39)

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<sup>4</sup> A link to an Advisory directed to Common Carriers, and a link to a format "Acknowledgement of Receipt of a Wine Delivery" for use by Common Carriers are found on the Authority's web site.

<sup>5</sup> Required information regarding the amount and value of wine being shipped directly from wine manufacturers to New York resident customers for personal use and not for resale may be submitted to the Authority by using the following forms:

- Form: Wine Manufacturer's Report of all Wine Produced by the Manufacturer that was Directly Sold and Shipped to New York State Resident Customers for Personal Use and Not for Resale – Part 1
- Form: Wine Manufacturer's Report of all Wine Produced by the Manufacturer that was Directly Sold and Shipped to New York State Resident Customers for Personal Use and Not for Resale – Part 2 [Legal Size Page]



**Requirement that the Applicant submit a Ruling of the Applicant's State with regard to Reciprocal Shipping Privileges for New York State Wine Manufacturers**

An out-of-state winery applying for a Direct Shipper's License must submit in support of the license application a ruling from the applicant's state that a New York State wine manufacturer may directly sell and ship (or may apply for a license to directly sell and ship) wine produced by such New York State wine manufacturer to a resident customer of the applicant's state for personal use and not for resale. (Application for a New York State Out-of-State Direct Shipper's License, p.3, Questions 35-36; p. 4, Item H.)

The Authority may not issue a Direct Shipper's License to an out-of-state winery in the absence of written advice from the appropriate regulatory office in the applicant's state that the applicant's state "affords lawful means for shipments of wine to be received by a resident thereof [of the applicant's state] who is at least twenty-one years of age, for such resident's personal use and not for resale, from a person licensed in [New York State] as a [wine] manufacturer" [ABCL § 79-c.(1)].

It is hoped that the following links on the Authority's website will provide regulatory offices of other states the information needed to issue an advisory ruling assuring that the applicant's state affords reciprocal shipping privileges to New York State wine manufacturers.

- Advisory to Wine Manufacturers located in States other than New York State regarding the direct interstate retail sale and shipment of wine to New York State resident customers for personal use and not for resale
- Form: Application for a New York State Out-of-State Shipper's License
- Advisory to Wine Manufacturers located within New York State regarding the direct sale and shipment of wine to New York State resident customers for personal use and not for resale
- Advisory to Common Carriers regarding the form of the receipt to be used when delivering a wine shipment sent directly from a wine manufacturer to a New York State resident customer for personal use and not for resale
- Form: Acknowledgment of Receipt of a Wine Delivery
- Form: Wine Manufacturer's Report of all Wine Produced by the Manufacturer that was Directly Sold and Shipped to New York State Resident Customers for Personal Use and Not for Resale – Part 1
- Form: Wine Manufacturer's Report of all Wine Produced by the Manufacturer that was Directly Sold and Shipped to New York State Resident Customers for Personal Use and Not for Resale – Part 2 [Legal Size Page]
- Chapter 184 of the Laws of 2005 (Senate Bill 5925) – Chapter, Memorandum, History, Bill Summary, Bill Text
- Chapter 210 of the Laws of 2005 (Assembly Bill 7379-C) – Chapter, Memorandum, History, Bill Summary, Bill Text