

Administrative Release



Comptroller of Maryland 1 Alcohol and Tobacco Tax Division 1 Goldstein Treasury Building 1 P.O. Box 2999
Annapolis, Maryland 21404-2999 1 Telephone: 410-260-7314 1 Forms-by-Fax: 410-974-FAXX(3299);
World Wide Web: www.marylandtaxes.com

No. AB-18

October 1, 2001

TO: Licensed Beer Wholesalers and
Non-resident Dealers

SUBJECT: Beer Discounts and Depletion Allowances

This Administrative Release supercedes and replaces Administrative Release No. AB-10 issued May 15, 1997 that clarified and interpreted provisions of Section 12-102 of Article 2B of the Annotated Code of Maryland. This section prohibits a non-resident dealer (supplier) or wholesaler from discriminating directly or indirectly in price, discount, or the quality of merchandise sold. This Administrative Release addresses two separate interpretations of this provision. One deals with depletion allowances offered by suppliers and the other concerns discounts offered by suppliers to wholesalers or wholesalers to retailers.

This Administrative Release also incorporates the information contained in Bulletin No. AB-22 issued August 3, 1998 regarding an amendment to Section 12-102 of Article 2B enacted by the Maryland General Assembly effective October 1, 1998 dealing with depletion allowances. Section 12-102(b) provides: *"A supplier, non-resident dealer, or wholesaler may not make a discount, rebate, or depletion allowance that is offered on a product dependent on the pricing policy or practice of the licensee who is invoiced for the product."*

Definitions

For purposes of this Administrative Release a "depletion allowance" is a cash or credit rebate given by

a beer supplier to a wholesaler based on the wholesaler's cumulative sales to retailers during a specified period. Depletion allowances are *not* based on wholesale purchases from the supplier during the period but are based on depletions from the wholesaler's inventory during the period regardless of when that inventory was acquired. A "discount" is defined as a reduction in the actual invoice price of beer based upon quantities purchased by the wholesaler from the supplier or the retailer from the wholesaler respectively.

Depletion Allowances

A beer supplier may offer a depletion allowance to a wholesaler providing the following criteria are met:

- The supplier concurrently offers the same allowance and conditions (e.g. same sliding scale rebate program etc.) to all of its Maryland wholesalers.
- Suppliers may not require, as a condition of a wholesaler's participation in a depletion allowance program, the wholesaler to share in the cost of the program by offering a certain price reduction to retailers, minimum/maximum purchases by individual retailers, wholesaler participation

For the deaf and hard of hearing: TTY users call via Maryland Relay at 711 in Maryland or 1-800-735-2258 from elsewhere.

If you need a reasonable accommodation for a disability, please contact us before you visit. If you need the information in this publication in an alternate format, contact the Comptroller's Office.

in brand advertising or promotions, or other similar conditions.

- A wholesaler's participation in a depletion allowance program cannot have any effect on the invoice price of purchases made from the supplier by the wholesaler during the same period.
- The allowance may be brand, size and/or package specific.
- No more than one depletion allowance program may be in effect at any given time for a specific brand, size and/or package.
- The allowance is reasonable and attainable by the average wholesaler who makes purchases from the supplier.
- The allowance has a specific beginning and ending date. Open-ended effective dates are not permitted.
- If a depletion allowance is offered, a supplier may suggest, but may not require directly or indirectly, that the wholesaler share in the cost of the program.
- Notice and details of depletion allowance programs are provided to all wholesalers at least 10 days in advance of implementation.
- Depletion allowance notices to wholesalers shall be clearly identified as such. To avoid confusion and the appearance of impermissible links, such notices shall be made separate and apart from other notices regarding suggested pricing or marketing strategies.

Depletion allowances are only applicable from suppliers to wholesalers. A wholesaler to retailer depletion allowance or "rebate" program would not be allowed as it would be deemed contrary to Section 12-104 of Article 2B re a wholesaler providing something of value to a retail licensee.

Discount Programs

A supplier may offer a discount program to wholesalers or a wholesaler may offer a discount program to retailers provided the following criteria are met:

- The discount program has a beginning and ending date. An ending date of "until further notice" would be acceptable for discounts providing advance notice of program discontinuance or alteration is provided to all accounts. "Rain Checks" on discount programs are prohibited and no orders should be taken for products not in inventory.
- A discount plan must be reasonable and attainable by the "average" account who makes purchases from the supplier or wholesaler. For example, a plan that would give a "straight" discount (e.g. \$1.00 off for purchases of 50 cases or more) would be deemed to meet this standard providing the majority of accounts who make purchases from the supplier or wholesaler respectively have the ability to participate in the program.
- A "sliding scale" discount plan is also acceptable if incremental discount levels are established whereby different size accounts along the continuum are able to participate at some level and the different levels are relatively proportional. For example, an acceptable discount plan would be \$.50 per case discount for purchases of 25-100 cases; \$1.00 for purchases 101-500 cases; \$1.50 for purchases 501-1000; \$2.00 for purchases 1001-1500; and \$2.50 for purchases greater than 1500. However, a plan that offered a \$.50 discount for purchases between 25-100 and a \$2.00 discount for purchases of 2,000 or more, with no categories in between, would not be acceptable.

Any discount plan that would be designed in such a manner as to limit participation to one or a limited number of accounts would be deemed

discriminatory under Section 12-102 and is prohibited.

Prior approval of the Alcohol and Tobacco Tax Division of depletion allowances or discount plans for malt beverage products is generally not required; however, it is anticipated that suppliers and wholesalers will design their promotional programs to comply with the spirit and intent of Section 12-102 of Article 2B and this Administrative Release. The Alcohol and Tobacco Tax Division reserves the right to require prior approval by licensees on a case by cases basis should there be evidence of non-compliance or if notices to the trade are unclear or ambiguous. All licensees shall keep complete and accurate records for a minimum period of one year of depletion allowance and discount programs and these records shall be available for inspection or submission to the Alcohol and Tobacco Tax Division upon request.

Depletion allowance, discount, or other promotional plans contrary to this Administrative Release would subject the licensee to appropriate administrative action.

Charles W. Ehart, DPA
Director
Alcohol and Tobacco Tax Division