

# Administrative Release

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No. AB-20

April 26, 2002

**TO:** All Alcoholic Beverages Wholesalers, Suppliers, and Non-Resident Dealers

**SUBJECT:** Advertising and Promotional Contracts Related to Retail License Premises

From time to time, wholesalers or suppliers may enter into contracts for advertising and promotional services in exchange for a “sponsorship” fee. While there is nothing inherently wrong with such arrangements, which can be considered a legitimate promotional activity, whom the wholesaler or supplier enters into the contract with, and where the advertising or promotional activities will take place, could impact their legality under the law.

One of the basic premises of Maryland’s alcoholic beverage law is that it is illegal for a supplier, including non-resident dealers and manufacturers, or a wholesaler to provide “something of value” to a retail licensee (re Section 12-104 of Article 2B of the Annotated Code of Maryland). Sponsorship fees in exchange for certain considerations in almost all cases could be considered providing something of value. Moreover, the Attorney General in a published Opinion a number of years ago ruled that providing advertising items to a retail licensee in excess of permitted dollar limitations, even if considered at “fair market value”, was not permitted under the law.

In recent months, we have been made aware of a number of arrangements whereby a supplier or wholesaler entered into a promotional or sponsorship contract with an entity closely related or affiliated with another entity which actually held the retail alcoholic beverage license. These relationships included common ownership, parent companies, common employees, dual management, etc. In such cases we viewed these activities as tantamount to providing the retail, licensee with something of value.

Advertising contracts entered into by suppliers or wholesalers involving a premise where there is a retail alcoholic beverage license may be permitted. However, it must be demonstrated that there is a complete separation between the entity which holds the retail license and the entity which enters into the promotional agreement with the supplier or wholesaler. To assure compliance in the future and to avoid potential problems, effective May 15, 2002, before a supplier or wholesaler enters into *any* contractual agreement involving sponsorship or similar activities that will occur on the premises of a retail licensee, even if it appears that there is a

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separation between the entities as noted above, a copy of the contract with supporting documentation should be submitted for review to Mr. Stephen G. Taylor, Deputy Director, by fax or mail. Allow at least 10 days for the review and approval process. Mr. Taylor, or his designee, will advise if the arrangement is approved or, in some cases, he may ask for additional information and clarification.

Your cooperation in this matter is appreciated and anticipated. Questions pertaining to these requirements may be directed to Mr. Taylor at 410-260-7313.

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