

Business Tax Tip #25

Direct Shipments of Alcoholic Beverages to Consumers Are Illegal

Under Alcoholic Beverage 6-327, Annotated Code of Maryland, a person in the business of selling or distributing alcoholic beverages in or from another state may not ship, cause to be shipped, or deliver alcoholic beverages directly to a consumer in Maryland.

What constitutes a direct shipment?

A direct shipment is the sale, distribution, or delivery of alcoholic beverages to a Maryland consumer outside of the three-tier distribution system. Under the three-tier distribution system, alcoholic beverages are manufactured (1st tier), sold and distributed to wholesalers (2nd tier), and then sold and distributed to retailers (3rd tier). Licensed retailers in Maryland are the source of alcoholic beverages for consumers.

Direct shipment of alcoholic beverages to consumers is not permitted from any person, including internet retailers, wine clubs, or mail order businesses. A holder of a Direct Wine Shippers Permit is permitted to ship, by a Common Carrier Permit holder, directly to a consumer of the age of 21. The Direct Wine Shippers Permit holder is responsible for paying the Maryland excise tax on the shipment of Wine.

What is the penalty for direct shipment of alcoholic beverages?

A person in the business of selling or distributing alcoholic beverages who violates this law is guilty of a felony and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 2 years or both.

Under Tax-General Article, §5-103(a), Annotated Code of Maryland, there is a presumption that any alcoholic beverage in Maryland is subject to the alcoholic beverages tax. Thus, alcoholic beverages on which the alcoholic beverages tax has not been paid and are directly shipped in violation of Alcoholic Beverage are "contraband" and are subject to confiscation. Purposeful evasion of the alcoholic beverages tax or willful possession of alcoholic beverages on which the tax has not been paid are violations of the law subject to criminal sanctions.

Why is it illegal?

Because direct shipment occurs outside of the three-tier distribution system, which is designed and intended to accomplish the following legislative objectives: (1) respect and obedience to law; (2) promotion of temperance; and (3) the orderly distribution of alcoholic beverages.

The tax and regulatory accountability that is built-in to the three tiers (manufacturer to wholesaler to retailer) helps to ensure that the State collects the alcoholic beverages tax and has the ability to enforce the alcoholic beverages law.

Is Maryland the only state to ban direct shipment of alcoholic beverages?

No. All states, except Alaska, North Dakota, and Washington, D.C., ban the direct shipment of "distilled spirits." Direct shipment of "beer" is only permitted in Alaska, Virginia, New Hampshire, North Dakota, and Washington, D.C., and direct "wine" shipment is prohibited in the following 12 states: Alabama, Arkansas, Delaware, Kentucky, Massachusetts, Mississippi, Montana, New Jersey, Oklahoma, Pennsylvania, South Dakota, Utah.

How can I legally purchase alcoholic beverages in Maryland?

A consumer at the age of 21 and older may purchase "wine" directly from a winery under "modified" three-tier distribution. Alcoholic Beverage 2-144 provides that a wine manufacturer, may obtain a Direct Wine Shippers permit for an annual fee of \$200.00. A consumer who orders the wine from a holder of a Direct Wine Shippers Permit will receive their order from a holder of a Common Carrier Permit. The wine shipper may ship not more than 18 9Liter cases of wine annually to a single delivery address.

The holder of the Direct Wine Shippers Permit must file a quarterly tax return and pay the alcoholic beverages tax. It is the consumer's responsibility to pay the sales and use tax pursuant to Title 11 of the Tax-General Article.

Except through the Direct Wine Shipper's Permit, all other alcoholic beverages must be purchased from a licensed Maryland retailer.

There is a limited consumer importation exemption under Tax-General Article, § 5-104(c). Under this limited exemption, a consumer, age 21 or over, may bring 1 quart of alcoholic beverages at any one time (not to exceed 2 quarts in a calendar month) from within the United States into Maryland for personal use without paying the alcoholic beverages tax. A consumer may not possess more than 1 gallon at any one time of alcoholic beverages brought into Maryland under this exemption.

A consumer may bring 1 gallon of alcoholic beverages from outside of the United States into Maryland. One quart is tax-free, and the other 3 quarts are subject to the alcoholic beverages tax.

What is the federal government's position on direct wine shipment?

There is no federal prohibition on direct shipment; however, the Bureau of Alcohol, Tobacco and Firearms ("ATF"), predecessor to the Alcohol and Tobacco Tax and Trade Bureau, United States Department of Treasury ("TTB"), issued a ruling in 2000, that was substantially similar to an earlier Industry Circular issued in 1996, concerning the following question posed by states:

Whether direct shipment of alcohol by out-of-state sellers to consumers in a state violated the Webb-Kenyon Act (27 U.S.C. § 122), and if so, whether ATF would take enforcement action? The ATF 2000 Ruling stated that one of the conditions for a federal basic permit under the Federal Alcohol Administration Act, 27 U.S.C. § 204(d), is compliance with the Twenty-first Amendment. Thus, because the Webb-Kenyon Act is a law which enforces the Twenty-first Amendment, a violation of that Act may be a cause for suspension or revocation of a federal basic permit. The Ruling further stated that the ATF would intervene and enforce the Webb-Kenyon Act by taking action against a federal basic permittee if the conduct of the out-of-state seller was continuing, and had a material, adverse impact on the affected state. Since an out-of-state retailer is not issued a federal basic permit, no action can be taken against that type of seller.

In 2000, Congress passed the Twenty-First Amendment Enforcement Act ("Enforcement Act"), which amended the Webb-Kenyon Act by adding 27 U.S.C. § 122a. The Enforcement Act gives the Attorney General of each state the power to bring a civil action in federal court for injunctive relief against an out-of-state supplier who violates state alcohol laws.