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DECLARATORY RULING

WW and IL licenses in same premises

Agenda # 2022-00652A

Introduction

The State Liquor Authority (SLA) has received a request for a declaratory ruling on behalf of a wine wholesale (WW) licensee that it may obtain an importer's license (IL) at the same office/address. The WW license allows a person to import wine into New York and sell it to licensed wholesalers and retailers. The IL license allows a person to import alcohol into New York and sell it to NYS licensed wholesalers.

Question Presented

Does the Alcoholic Beverage Control Law (ABCL) prohibit a wholesale licensee from also holding an importer's license at the same office location?

The Relevant Statutory Provisions and Prior SLA Guidance

ABCL § 104 contains multiple provisions governing wholesalers and sets forth a number of obligations and restrictions. Relevant here is the provision in ABCL § 104(1)(a), which states, "No wholesaler shall be engaged in any other business on the premises to be licensed. . ." and then contains a list of exceptions that are not material here. The law also contains a requirement that each wholesaler maintain adequate books and records, with detailed requirements. ABCL § 104(10).

SLA's Bulletin 254, issued in 1953, sets forth "minimum office requirements" for wholesalers and has been generally followed by the SLA in most respects for many decades. Most of the requirements in the Bulletin mirror, or relate to, the provisions of ABCL §104 (10). Relevant here, Bulletin 254 contains the provision, "The licensed premises [of a wholesaler] must be physically separated from any other premises." This "physical separation" requirement is not expressly contained in the ABCL.

In or around 2016, the legislature established the importer's license – ABCL 61-b. The IL allows a business to import alcoholic beverages into the state and sell them to licensed wholesalers. As the bill jacket accompanying the statutory change sets forth:

Small businesses that import products into the state to be wholesaled by other entities must currently choose between: (i) obtaining a costly wholesale license; or (ii) moving their business outside of New York State. The importers license will enable them to stay in New York State and operate with an inexpensive license.

Analysis

The statutory language of the ABCL does not contain an express prohibition on either a wholesaler or an importer from having more than one license at a single location. The SLA has historically interpreted the “physical separation” language of its own guidance, Bulletin 254, as requiring separate locations for any wholesale tier license. However, Bulletin 254 pre-dates the law creating the importer’s license (ABCL §61-b) and the SLA Board has never expressly addressed – in an Advisory or another Declaratory Ruling – whether an importer license cannot be issued at a location where there is also a wholesale license.

The question for the Board is whether to simply follow guidance issued in the 1950’s on physical separation or to look more closely at how the law should be applied now, especially given the legislature’s intent to facilitate commerce through the addition of the importer’s license. There was arguably a need for separate locations for each wholesale business in the 1950’s, likely tied to the need to ensure the maintaining of separate records for inspection and other purposes. Given the volume of records a wholesaler is required to maintain, and that such records were all kept in hardcopy, without photocopying, etc., physical separation made sense. But given technology advances and the ease of maintaining separate records for separate businesses at the same address, this is less of a concern today.

The legislative intent of the importer’s license was to allow a person to import alcohol into the State without incurring the prohibitive entry cost of a wholesaler liquor license (LL). In exchange for the reduced fee, the IL holder can only sell to wholesalers, not to retailers. This encourages new businesses to test the market to see if they can make a go of it without incurring the expense of getting licensed as a wholesaler. Requiring a small wholesaler to sign a new lease, pay more rent and hire new employees for a separate office appears to be inconsistent with the stated legislative purpose. Allowing the licensee to hold two licenses at the same location would be an important cost-savings. The licensee would still be responsible for having two separate telephone lines, two sets of books and records, and separate invoices for the businesses.

The Authority already permits the issuance of multiple manufacturing licenses for the same location (Advisory #2012-10). The Authority also permits manufacturers and wholesalers holding multiple licenses to deliver those products in the same vehicle (Advisory #2014-12). While the considerations in those Advisories are not identical to the issue presented here, they are instructive.

Given the absence of an express restriction in the ABCL, the changed circumstances in the way offices are maintained, and the apparent legislative purposes in adding the importer's license to the group of licenses available in New York, we do not see a good reason to apply the "physical separation" language of guidance from the 1950's to this question.

Determination

The Members declare that the ABC Law does not prohibit the issuance of an importer's license to a wine wholesaler utilizing the same office location.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on March 30, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written ruling was approved by Chairman Bradley on behalf of the Members on April 8, 2022.

Dated: 04/08/22



Donald Roper
Secretary to the Authority