



LIQUOR CONTROL DIVISION

Frequently Asked Questions

Beer Wholesale/ Table Wine Distributor Licensees

Q. [May a beer wholesaler or table wine distributor deliver product to a retail licensee at a catered event?](#)

A. Yes. For the purposes of a catered event, the location of the event is considered an extension of the licensee's premises for that event only. (MCA, 16-3-219)

Q. [Are copies of beer wholesaler agreements with a brewer or beer importer, and table wine distributor agreements with a winery or wine- importer, required to be filed with the Liquor Control Division?](#)

A. Yes. The initial agreements, as well as any amendments, must be reviewed and approved by the department prior to shipment and receipt of product. In the event an agreement is ever disputed, a court will not consider the agreement to have any force or effect if it is not on file with the department. (MCA, 16-3-226)

Q. [What are the requirements for beer wholesaler and table wine distributor agreements?](#)

A. The agreements must state the territory agreed upon, the brands to be distributed, wholesalers/distributors right to manage their business in the manner they consider best, procedure for review of wholesaler's alleged deficiencies, termination clause and any dispute arising shall be held in a Montana Court, unless doing so would create an unnecessary burden on either party, as well as recognizing the constitutional right to a jury trial.

Q. [What are the limitations, if any, in regard to the supply of beer and wine outside designated territories?](#)

A. Beer wholesalers may only sell in their designated areas as agreed upon with the manufacturer or importer. However, different wholesalers may be appointed in the same area to distribute different products. Table wine distributors may have overlapping areas; however, the supplier must provide the same price, promotional support and terms to each distributor. (16-3-221 & 16-3-418, MCA)

Q. [Can any beer wholesaler either inside or outside Montana ship to a licensed retailer in Montana? Are there limitations?](#)

A. Yes and No. A licensed beer wholesaler or table wine distributor may use a common carrier to deliver beer and wine in limited quantities. Limited to three cases a

day to each licensed retailer. A retailer must only receive beer and wine from a licensed brewery, winery, beer wholesaler, or table wine distributor. Out of state entities that ship into Montana are considered importers and may not ship directly to retailers. (ARM 42.13.222)

Q. Can a beer wholesaler or table wine distributor allow credit to a retailer?

A. Yes. A retail licensee must pay for product within seven days of delivery. An extension or acceptance of credit longer than the seven days is considered as giving or receiving financial assistance, which will be considered a violation of undisclosed financial interest. (16-3-243, MCA)

Q. If a license is transferred or foreclosed, is the subsequent licensee responsible for the debt of the former licensee under the seven day credit limit?

A. Yes. The debt becomes the obligation of the new licensee. A beer wholesaler and table wine distributor cannot deliver product to the new licensee until the debt is paid in full. (ARM, 42.13.109)

Q. Can beer wholesalers and wine distributors provide samples to retailers?

A. Yes. A beer wholesaler/ table wine distributor can provide up to 3 gallons of beer and 3 liters of wine to a retailer who has not purchased the specific sample product from the beer wholesaler or table wine distributor in the previous 12 months.

Q. Who pays the tax on products distributed within the state of Montana?

A. The beer wholesaler, table wine distributor, brewery or winery that delivers products to retailers is required to pay the tax on such products.

Q. Are beer wholesalers and table wine distributors required to report the products they deliver in the state of Montana to the Liquor Control Division?

A. Yes. Every beer wholesaler and table wine distributor licensed to do business in the state shall, on or before the 15th day of the month, make an exact return to the department of the amount of beer and table wine purchased, sold, and/or delivered during the previous month.

Q. If a product delivered to retailers, by a beer wholesaler or table wine distributor, is recalled by the manufacturer, can the beer wholesaler or table wine distributor request a refund of the tax paid?

A. Yes. The beer wholesaler or table wine distributor can amend the prior BET return and request a credit be applied to their account or a refund be remitted. BET forms can be located at <https://www.revenue.mt.gov>

Q. Is a brewery or winery required to ship their product(s) to wholesalers and distributors for delivery to licensed retailers within the state of Montana?

A. No. A brewery or winery licensed to do business in the state of Montana can ship the product(s) they manufacture to licensed retailers. However, the brewery or winery would then be required to pay the tax on all product(s) shipped to licensed retailers.

Q. Can a beer wholesaler or table wine distributor exchange or accept return of product?

A. Yes. If the reason constitutes an ordinary and usual commercial reason such as: defective product, error in delivery, product unlawful to sell, termination of retail business, or wholesale franchise, change in product, discontinued product or seasonal business. Product that is overstocked, slow moving or seasonal does not qualify for exchange or return. (ARM 42.13.305)

Q. What types of advertising can be supplied by a beer wholesaler or brewer to a retail licensee?

A. A beer wholesaler or brewer is prohibited from supplying a retailer with advertising in the form of radio, posters, or paying for promotional fees with the exception of a few items and dollar limitations. A beer wholesaler or brewer may provide functional advertising materials such as bottle openers, trays, tap handles, menus, apparel, coasters, glassware, cups or napkins that do not exceed \$300 in value. (MCA, 16-3-241)

Q. What can a winery or table wine distributor provide a retail licensee in the form of product displays, carton wine displays, etc.?

A. There are no specific restrictions in this area. However, a winery or table wine distributor shall be deemed to have a financial interest in a retailer if they furnish to any retail licensee furniture, fixtures, or equipment to be used in the dispensation or sale of table wine. (MCA, 16-3-406)

Q. Is it permissible for a beer wholesaler to sell or repair tapping equipment or portable coolers?

A. A beer wholesaler may sell draft systems and portable cooling devices to licensees at not less than the cost to the beer wholesaler. A beer wholesaler may provide portable cooling equipment for special events at a location other than licensed premises. A beer wholesaler may provide maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition. ((16-3-241, MCA and ARM 42.12.323)

Q. Can a beer wholesaler sell product to a retail licensee with the privilege to return?

A. During normal retail trade, the answer is no. However, there is an exception if the retail licensee is going out of business, or if a one-time special event is rained out then, yes, the buyback of this product is permissible.

Q. Can a beer wholesaler or table wine distributor provide cold storage at a special event?

A. Yes. A beer wholesaler or table wine distributor can maintain a refrigerated truck at a special event, for example a rodeo, sporting contest, or wedding reception. Sales cannot happen directly from the truck.

Q. Can a beer wholesaler or table wine distributor assist a special permittee or retail licensee with a catering endorsement in selling beer and/ or table wine at a special event?

A. No. However, a beer wholesaler or table wine distributor may assist in setting up equipment for sale and service of beer and/or table wine.

Q. Is it necessary for a retail licensee to provide verification of a license?

A. Yes. The beer wholesaler or table wine distributor can sell and / or deliver only to a licensed retailer. It is the wholesalers' or distributors' responsibility to obtain verification such as a copy of the license, approval of licensure from the Department of Revenue, issuance of temporary operating authority from the Department of Revenue or by contacting the Department of Revenue.

Q. Distributors view beer or wine tasting events for profit, non-profit conducted at a licensed premises and non-profit special permits, differently with regard to permissible and non-permissible practices. Are there differences?

A. There is not a distinction between non-profit or non-profit event being sponsored by a wholesaler or distributor. The rules are the same.

Q. Liquor Control recently notified beer and wine distributors that they are "precluded from assisting a retail licensee, special permittee or catering permittee in selling, serving or pouring beer and wine at any event." But went on to say that breweries and wineries may serve and pour. I would have thought that brewers/wineries and distributors would all fall under the same general guidelines principally separation of tiers and/or 16-3-242, 16-3-406 Financial Interest Prohibited. Why then are manufacturers allowed to serve and pour and distributors are not? It is a usual and customary practice for distributor personnel, especially with winery personnel, to work side by side in wine event tastings and restaurant wine/dinners.

A. There are exceptions to the above statement where a beer wholesaler or table wine distributor may pour and serve products

- To promote samples to a retail licensee
- Trade events

In addition, the law is very clear that wholesalers/ distributors may not sell and serve the public.

Q. Beer Festival Tastings. Are brewers, both in-state and out-of-state brewer representatives are allowed to give beer, for free, to a licensed on premises account, catering licensee or special permittee and pour or serve their product at the event? No distinction between profit or non-profit?

A. If a distributor, wholesaler, or manufacturer sponsors a public beer or wine tasting, they must purchase the product from a retail licensee at the ordinary retail price. The only distinction between the manufacturer's involvement at the event and the wholesaler/ distributor is that manufacturers are allowed to assist in pouring and serving the wine. This is regardless of whether the event is for-profit or non-profit.

Q. What about mail-in payments regarding the seven-day credit limitation as stated in 16-3-243, MCA? It is not uncommon for local accounts to have their payments generated from out-of-town or out-of-state and as a result, checks are often not received until 1-3 days following the due date. In the past, Liquor Control instructed us that so long as the postmark date of the envelope containing the check was postmarked no later than the 7th day, that we were allowed to deliver the account even though the check, due to normal postal cycles but post marked on the due date, arrived 1-3 days after the due date. We were also instructed to keep copies of the envelopes reflecting the postmark. Is this still the position of the Liquor Control Division?

A. ARM 42.13.109 is clear and concise that the seven day credit period begins at 8 a.m. on the day after the delivery. If the payment envelope is postmarked on the 7th day, both parties would be in compliance. For this type of situation where the payment is not actually received within the 7-day period, keep the envelope.

Q. Copies of wholesale/distributor agreements with a brewer or beer-importer are required to be filed with the Liquor Control Division. Is the brewer or beer-importer primarily responsible? Other than violating MT law by not filing an agreement, is a wholesale/distributor better off not having an agreement on file that conflict with MT law or signing and having one on file that clearly conflicts with state law?

A. 16-3-416, MCA states that a supplier or table wine distributor must have a written agreement of distributorship. Subsection (3) states that a supplier shall file a copy with the department within 60 days of entering into an agreement. 16-3-221, MCA state that a brewer or beer importer may not sell its products within the state without a written contract with each appointed wholesale distributor.

Q. What is the difference between a registered and licensed winery?

A. A registered winery may only ship to licensed table wine distributors or licensed connoisseurs in the state. A licensed winery may ship to licensed table wine distributors, licensed connoisseurs, and licensed retailers. If wineries ship to retailers, they are required to pay tax on the products and report whom they are shipping to on a monthly basis.

Q. Can registered and licensed wineries donate directly to non-profit entities? What if the winery ships the donation to the distributor and asks the distributor to give to the non-profit?

A. Wineries can make monetary donations to non-profit entities. A winery, licensed or registered cannot give product to retailers. 16-3-411, MCA states "sell and deliver to licensed retailers" if they meet or follow certain criteria. However, if the

winery ships the products through a distributor, (1) the distributor or wholesaler may not sell to the retailer for less than what the supplier charges, and (2) the distributor or wholesaler must sell the product to the retailer for some consideration. This could be for \$1.

Q. A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of beer to a special permittee or a retailer for use: (a) in catering an event that is off the permittee's or retailers regular premises. Define premises? The patio, deck, parking lot, alley adjacent to the retail licensee? Banquet, meeting rooms in hotels, convention centers?

A. For a special permittee or catered event, the premises cannot be licensed and must be completely enclosed. ARM 42.12.323 defines premises as a booth, stand, or other fixed place of business within the exhibition enclosure, confined to a specific premises or designated areas, described in the application and approved by the department. A holder of any such permit, or his agents or employees may also sell and serve beer in the grandstand or bleacher area. The special permittee can have multiple locations where beer and wine is sold within the enclosed area.

Q. Define furnish or clarify sell in regard to 16-3-241, MCA, as it would relate to a distributor selling draught equipment for \$1.00 to get around "furnish".

"Furnish" according to 16-3-241, MCA means for use in catering an event off the permittees or retailers regular premises or up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours. The equipment may not be sold to the permittee or retailer; it can be furnished for temporary use only. To sell draught equipment for \$1.00 to a retailer might be seen as an inducement, as well as put retailer independence at risk.

Q. There have been numerous wineries changing distributors in recent years without cause or non-renewal of a one year term. Are these violations of 16-3-416?

A. Yes.

Q. Are distributors allowed writing checks directly to licensed retailers for teams that the retailer and the distributor are sponsoring; for example bowling teams, softball teams, dart leagues, etc.?

A. Yes.

Q. Are beer distributors allowed to furnish display racks to retailers for use in their stores?

A. Yes. (CAFR 6.83) Federal law states an industry member may give or sell product displays to retailers. Certain conditions do apply as stated below:

§ 6.83 Product displays. (A) *General.* The act by an industry member of giving or selling product displays to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met. (b) *Definition.* "Product display" means any wine racks, bins, barrels, casks, shelving, or similar items the primary

function of which is to hold and display consumer products. (c) *Conditions and limitations.* (1) The total value of all product displays given or sold by an industry member under paragraph (a) of this section may not exceed \$300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of \$300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded. (2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays. (3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

Q. How does a Duty Free store get its beer delivered and why doesn't it have to comply with the three tier system?

A. A duty-free store is defined as a retail outlet that does not apply local or national taxes and duties. Shoppers may still have to pay duties in their home county on items purchased from a duty-free store.

According to 19 U.S.C. Sec 1555, State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation. Merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprises demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

If a duty-free store wishes to buy beer and wine from licensed Montana Wholesalers and Distributors they must obtain the appropriate licensing.

Q. Can a small local brewpub sell kegs to-go to the public?

A. Yes. A brewery can sell kegs for off premises consumption to the public. In addition, breweries may sell and refill growlers of their product they manufacture on the premises. (16-3-303, MCA) A growler is any refillable, resealable, container that a brewer fills on the brewery premises for off-premises consumption.

Q. Could you please clarify the wording in 16-3-214, MCA in regard to selling to "(iii) the public"?

A. This means the brewer, under the sample room exception, can sell products they manufacture to the public for on-premises consumption at the brewery. The brewer can also sell and deliver to the public at the purchaser's desired location. (ie. their home, wedding, etc.) The statute does not allow the brewer to go to any desired

location to serve and sell their products.

Q. Can a beer distributor that also sells non-alcoholic products give non-alcoholic redemption coupons to an account to reduce the beer price to consumers? These are coupons the retailer turns in to get money back from the non-alcoholic supplier.

A. (6.96) Federal law states that industry members can furnish coupons to consumers but they must be redeemable at all retail locations within the market where the coupon is offered. The industry member may not reimburse a retailer for more than the face value plus a usual and customary handling fee. (6.93) it further states that combination packaging with other nonalcoholic items does not constitute a means to induce.

Q. Can a beer distributor that also sells non-alcoholic products give non-alcoholic product(s) free of charge to an account to secure draft handles, displays, etc.?

A. No. This would be an indirect means to induce and also puts retailer independence at risk.

Q. Is it legal to split the cost or any amount with a retailer for a billboard, radio ad, TV ad, print ad or any other advertising to get beer logo on ad?

A. It is unlawful to pay for premises advertising.. Functional advertising matter that does not exceed \$300 in value can be furnished to a retail licensee.

Q. A bar manager (who is the son of the owner of the bar, but has no ownership interest) has a promotional company and approaches a beer distributor with the following idea. You write a check to my promotional company for \$1200.00 and I will go out and purchase a trip for two with airfare and hotel accommodations. I will then take that trip to the bar, owned by my father, and that I manage and develop a contest in the bar that might last a month so that I can build up some traffic and I will give it away to one of my lucky customers. If this promotion works as well as I think that it will I would like to do this at least two to three times a year. Is this legal for a beer distributor to participate in?

A. No. This would be an indirect means to induce.

Q. What do usual and ordinary commercial reasons for return include? Does this include out-of-date product? Does this include close to out-of-date product? How and when can I exchange for different sizes? Can I remove for resets?

A. Usual and ordinary commercial reasons for return include:

- *Defective product:* Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper

Evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness. *This includes close-to-date or out-of-date products (i.e. freshness dates); however, the supplier must have a system in place to track freshness date, the pulled product cannot reenter the market place and the decision to pull the product must come*

from the supplier not the wholesaler/distributor. In regard to close-to-date or out-of-date products, the wholesaler/distributor is not required to take back the product but they are allowed to within the above parameters.

- Error in products delivered: Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.
- Products which may no longer be lawfully sold: may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.
- Termination of business: Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown.
- Termination of franchise: When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated. Stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.
- Change in product: A retailer's inventory of a product which has been changed in formula, proof, label or container (subject to 27 CFR Sec. 11.46) may be exchanged for equal quantities of the new version of the product.
- Discontinued products: When a producer or importer discontinues the production or importation of a product. A retailer's inventory of that product may be returned for cash or credit against outstanding indebtedness.
- Seasonal dealers: Industry members may accept the return of products from retail dealers who are only open a portion of the year. If the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

- Overstocked and slow-moving products: The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."
- Seasonal products. The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles. This does not constitute a return for "ordinary and usual commercial reasons."

According to the federal code, 27 CFR 11.23), exchange of one product for another is prohibited. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size (12 pack of 12 oz. cans for 12 pack of 16 oz. cans) is not prohibited as long as there was no direct or

implied privilege of return extended when the product was originally sold. (27 CFR 11.23)

Q. What are considered quantity discounts? Are these allowed? Do I need to offer the same price to all retailers?

A. It is considered a quantity discount to offer a price reduction to customers who purchase beer and /or wine in large quantities. Quantity discounts are not provided for in statute and therefore are not allowed.

Q. What is the federal definition of advertising?

A. There is not a specific definition in federal statute of advertising; however, there are several guidelines. (1) General guidelines - The act by an industry member of paying or crediting a retailer for any advertising, display, or distribution service constitutes a means to induce within the meaning of the Act, whether or not the advertising, display, or distribution service received by the industry member in these instances is commensurate with the amount paid. This includes payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party. (2) *Cooperative advertising* is an arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act. (3) *Advertising in ballparks, racetracks, and stadiums* - The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act. (4) *Advertising in retailer publications*. -The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

Q. What is the definition of seasonal business? Do golf courses fit into this category?

A. Seasonal business includes golf course licenses or seasonally designated businesses by our department. The department's website, <http://www.revenue.mt.gov> is a great tool to help you with your business. Our on-line license search can be used to determine whether a license is either a golf course or seasonal business. Seasonal status will show under Special Restrictions and a golf course license will end in -313 or -331.

Q. Promotional Items: Can I offer free ice with keg purchases? What are the limits?

A. Wholesalers and distributors are allowed to provide or furnish items of value to retailers not to exceed \$300 annually.

Q. We cannot ship within the state to retailers via Common Carrier. What is the definition of common carrier?

A. According to ARM 42.13.222, a beer wholesaler or table wine distributor may use a common carrier to deliver beer or wine to a retail license in limited

quantities. The department may inspect the books and records of the common carrier regarding the conveyance of alcoholic beverages within the state. Quantity is limited to three cases a day for each licensed retailer. A common carrier is an individual or company which is in the regular business of transporting freight.

Q. For subcontract situations for importing product, who designates the territory?

A. The manufacturer must designate the territory which will be memorialized in the agreement with the subcontractor.

Q. What is the definition of a seasonal account?

A. A retail establishment that is closed for a period greater than 90 days that meets the criteria of a dude ranch, resort, park hotel, tourist facility, or like business.

Q. Can a retailer require a distributor to pay \$50 per handle for beer the wholesaler has on tap at that particular account with the understanding that the money will be used to type up a description of the beer and commit to keeping it on tap for a year?

A. No. This would be considered inducement by paying the retailer to carrying a particular brand of beer as well as paying their advertising.

Q. Is the holder of a liquor store license considered an all beverage license for the purpose of dock sales of wine under 16-3-418, MCA or 16-3-219, MCA?

A. No. Agency liquor stores do not have a license. They are issued on contract. Agency stores cannot purchase wine as a dock sale.

Q. When are dock sales allowed?

A. An all-beverage licensee is allowed to purchase an amount of beer and wine agreed upon between the wholesaler and distributor. An off-premises licensee or on-premises beer, beer and wine, or restaurant beer and wine licensee may purchase 3 gallons of beer directly from a beer wholesaler. Dock sales of wine are only permitted by an all-beverages licensee.

Q. Who or what kind of account is the sacramental wine license intended for?

A. A sacramental wine license can be issued to an establishment located in Montana that sells sacramental wine at retail to rabbis', priests', pastors, ministers, or other officials of churches or other established religious organizations exclusively for their off-premises use as a sacramental wine for other religious purposes.

Q. In regard to special events, if the wholesalers are selling product from a draft trailer, is it still the property of the wholesaler until the product is sold? At the end of the event, the wholesaler bills the retail license for the amount of product sold to them from that trailer. In some locations, the product is invoiced to get it out of the warehouse and onto the trailer, but that invoice is an internal document. The retail license is only billed for what is taken from the trailer. Is that legal? Is it okay for two

or more wholesalers to share trailers, so long as the retail license is only charged from beer actually taken from the trailer?

A. This is legal within the following parameters: (a) the wholesaler or distributor may have a draft trailer at the event to deliver product to the retailer from in order to maintain the integrity of the product. (b) The product may not be invoiced to the retailer from the main warehouse and then credited back for the amount of product not used from the trailer. (c) The retailer must be invoiced each time the product is taken from the trailer, rather than one invoice at the end of the night.