

FAQs: Act 39 Revisions

Shipping/ Taxes:

Do limited wineries need to register for the \$250 shipping permit annually?

Yes. Need to do so on or after Aug 8th. License applications may be completed online via plcb.pa.gov.

Limited wineries who apply for the license and pay the \$250 annual fee in Calendar Year 2016 will not need to pay another \$250 for use of the license in Calendar Year 2017, but will need to pay the recurring \$250 annual fees for use in subsequent calendar years.

When will licenses/applications coming out?

License applications may be completed online via plcbplus.pa.gov on or after August 8th. Filing may begin August 8, 2016. Please note new PLCB+ users must complete a registration process prior to filing for the new license. To reiterate, effective August 8, 2016, you may no longer direct ship without obtaining a direct wine shipper license. We anticipate posting additional information on our website, www.lcb.state.pa.us.

Should mechanism not be out by Aug 8, can they continue business at that point?

PLCB is currently testing the online application system, and limited wineries should be able to apply on August 8th.

Are PA wineries subject to the \$2.50 and 6% per gallon tax?

A "direct wine shipper" is defined as any person inside or outside the Commonwealth, including limited wineries, licensed as a producer of wine either by the Pennsylvania Liquor Control Board ("PLCB") or by another state or country that accepts orders placed for wine from within Pennsylvania. Act 39 of 2016, H.B. 1690 P.L. 273, No. 39 § 102. Direct wine shippers may ship up to thirty-six (36) cases of wine, up to nine (9) liters per case, in a calendar year to a Pennsylvania resident. Id. § 488(b). Wine shipped by direct wine shippers is subject to both Pennsylvania Sales and Use Tax imposed by the Tax Reform Code of 1971 ("TRC") as well as the Wine Excise Tax. Id. § 488(d)(7).

Therefore, sales by any winery licensed by the PLCB as a direct wine shipper, including Pennsylvania wineries, are subject to both the Sales and Use Tax as well as the Wine Excise Tax. Sales Tax is imposed at the rate of six percent (6%) of the purchase price on the sale at retail of wine by direct wine shippers as defined in the TRC. 72 P.S. §§ 7201(g), 7202(a). The Wine Excise Tax is imposed at the rate of \$2.50 per gallon on all wine sold and delivered by direct wine shippers. Act 39 of 2016 § 488(J).

Will the sales and use tax have to be reported separately from the report used for on premise wine sales?

Section 488(J) of Act 39 of 2016 states that the Wine Excise Tax is to be assessed, collected, and enforced by the Department of Revenue in the same manner as the Sales and Use Tax under Article II of the TRC. The Wine Excise Tax takes effect August 8, 2016; before that time, the Department will establish a method for reporting the tax.

On page 141 at line 18, there is a reference to wine excise tax imposed under subsection (J). What is this excise tax? Is it a new tax? Does this refer to the \$2.50 and 6% per gallon?

The Wine Excise Tax referred to in Section 488(d)(7)(iv) of Act 39 of 2016 is a tax upon the sale and delivery of wine to Pennsylvania residents by direct wine shippers. The Wine Excise Tax is imposed under Section 488(J) of Act 39 of 2016 and is in addition to the Sales and Use Tax. It is assessed at the rate of \$2.50 per gallon of wine sold and delivered by direct wine shippers, who are required to collect both the Wine Excise Tax and the Sales Use Tax from the purchaser when delivery is made to a location in the Commonwealth. The Wine Excise Tax takes effect August 8, 2016.

Reciprocity

What is a portion of distilled spirits/beer for on premise consumption?

There are no specific serving restrictions for on-premises consumption except that limited wineries may not sell to minors or visually intoxicated persons and they may not permit someone to take any alcohol purchased for on-premises consumption home with them.

Can it be a bottle or is a serving amount specified?

It can be in any container you want (e.g., by the glass or by a full bottle), but the beer or spirits must be consumed on the licensed premises

Who qualifies as PA Brewery and PA distillery?

Licensed limited wineries may sell products produced by licensed breweries, limited distilleries and distilleries. This means that the products offered for sale must come from breweries, distilleries and limited distilleries that have a license issued by the PLCB. For a list of licensed breweries, distilleries and limited distilleries (production cap of 100,000 gallons of spirits per year) whose products you are able to sell at your licensed locations, you may conduct searches of those specific license classifications at www.lcb.state.pa.us.

Are wineries in Dry Towns able to sell PA Wine and PA Distilled products for consumption on site?

There is no specific ballot question related to limited winery licenses in section 472 of the Liquor Code. As a result, the PLCB has taken the legal position that nothing in the Liquor Code would prohibit sales by a limited winery within a community which has otherwise voted itself “dry” for the sale of beer or liquor under section 472.

After Aug 8, do wineries have to file an intent to sell?

No – limited wineries simply have the privilege to sell these additional products starting on August 8th.

Can Wineries buy directly from producers?

Yes. Wineries can purchase from PA brewers and PA distillers. Some breweries may require purchases from a distributor.

Do Limited Wineries buy at wholesale or retail from the PLCB?

Retail. Under section 305 of the Liquor Code, only sales made to hotels, restaurants, clubs and public service license holders can be at wholesale.

Can Limited Wineries purchase from distributors and importing distributors?

The Board is still considering this question and we will get back to you when they make a decision. PA wineries can purchase PA beer from a distributor as well.

Does the reciprocity carry through to satellite locations?

The PLCB interprets the Act to allow for on-premises sales of products of licensed breweries, distilleries and limited distilleries at the limited winery's licensed winery location and at its Board-approved additional ("satellite") locations, but not at farmers markets or festivals at which permits are utilized.

If PA Wineries sell beer, do they need to send Malted Brewed Beverage tax?

No, the tax is collected from the producer.

Does a winery need to charge tax for PA beers and PA distilled spirits sold?

No, wineries are charged a state sales tax by the distributor or producer that sells the product to the winery. There are no sales taxes required to be charged to the consumers for consumption on premise. An exception would be if a local municipality charges extra tax, such as Allegheny County (10% tax). Please be advised to check with your local municipality regarding taxes and alcoholic beverages.

Can a manufacturer own two different kinds of manufacturer licenses (brewery/distillery/winery)?

Yes.

R Licenses in reference to Restaurants and Grocery Stores that have an R License:

Can wineries directly distribute to the R licenses?

Yes – they can now. And continue to do so.

Should a winery charge sales tax to an R licensee?

Yes.

Grocery stores that have an R licenses are able to sell wines. Can six pack stores sell?

R and H license holders may already sell beer, wine and spirits for consumption on the premises and may sell up to 192 fl. oz. (two 6-packs) of beer "to go." Under Act 39, R and H license holders may apply for a permit that will allow them to sell up to 3 liters of wine "to go." E license holder may not sell wine. However, E license holders ("beer only" licensees) are able to convert their licenses to an R license (except in Philly) for a \$30,000 fee.

A permit holder cannot sell a private label wine, defined as "a product made under contract by a manufacturer or the manufacturer's agent for the exclusive right of a retailer."

R, H, and E license holders may sell up to 192 fl. oz. (two 6-packs) of beer "to go" in a single transaction, however there is no limit on the number of transactions.

B&B

Can PA wineries sell directly to B&B?

Yes.

Baskets:

Can wine for gift baskets be purchase directly from a PA winery?

Wine for baskets must be purchased from the PLCB. Wine for baskets cannot be purchased directly from a PA limited winery. The language of section 491(1) is specific: "...no more than

one bottle of wine which has been lawfully purchased from the Board, so long as that wine is produced by a licensed limited winery as provided for under section 505.2...”