

The Compliance Corner

By Mary Beth Williams

Direct Shipping Once Again in the Spotlight

A guest in your tasting room asks you to ship wine to Maryland. When you let them know it's illegal to ship to Maryland, they respond with "but the winery down the road does..." It's hard to compete with a neighboring winery that doesn't follow the law. It's even harder to turn down a sizeable sale just because the buyer lives in a state where you're not licensed (or it's prohibited) to ship. However, for the sake of your business and the industry as a whole, it's important to stay compliant with it comes to shipping to consumers in other states.

Most states are using a permit system, requiring your winery to be licensed in that state before you ship to consumers. Remember that most states also have requirements that approved shipping companies report their deliveries of alcoholic beverages, which includes where the delivery came from and to whom it was delivered. States ARE crosschecking this information, and if UPS makes a delivery from your winery and you are not licensed as a direct shipper in that state, you will quickly receive a letter from the state ABC board outlining what statutes your actions violate. Remember as well that violations of other states' alcohol laws can impact your ABC permit or even your federal Basic Permit. TTB Ruling 2000-1 indicates that TTB can take administrative action against your Basic Permit for violations of state law, including direct shipping laws.

Many wineries "roll the dice" with respect to shipping into other states, choosing to take the chance that they won't be caught, hoping to get away with a warning if they get licensed after they've been caught. As you've likely heard, there is federal legislation on the table that was proposed by the beer wholesalers' association (and joined in by the wine wholesalers' association) pushing to force alcohol cases out of federal jurisdiction and back to the states, where the wholesalers' lobbyists have very loud voices. If passed, the states could revert to some of the laws that gave preference to the wineries in their own state, and disallow shipping by out of state wineries to consumers in those states. Worse for the Virginia wineries, this legislation would likely cause some of the states on the cusp of allowing direct shipping (like Maryland) to hold back on those decisions.

Direct shipping works because the wine industry plays by the rules. The states' biggest policy concerns with direct shipping are that it makes it too easy for alcohol to get into the hands of minors, and that it's too difficult for the states to ensure that they're appropriately regulating and collecting taxes from out of state wineries, over which they have significantly less control than their own home state wineries. The legislators will be looking very closely at the number and nature of violations in the states that already allow direct shipping. This is the time for the wine industry to show that it is responsible and compliant with the laws that already exist. Check your sales records; see where you've had sales or have shipped wine but aren't licensed. Think hard about getting licensed in those states. You can see the requirements for licensing and reporting associated with the various states on the resources page of our website,

www.williamscompliance.com, and, as always, contact us with any questions. In an effort to make the decision the process a little less painful, Williams Compliance will be cutting 40% off our fees for direct ship license applications through the end of July.

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