

Virginia ABC

Update on Direct Shipment of Beer and Wine - License and Tax Compliance

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Direct Shipping in U.S.

- Direct Shipping – shipment of beer or wine directly to consumer by, or on behalf of, a winery, brewery or retailer.
- 45 States and D.C. allow some form of Direct Shipment.*
- In 2017, 10% of domestic Off-Premise Sales for wine was direct to consumer (\$2.7B); annual growth at 15.5%.*
- Rapid growth creates challenges.
 - Jurisdictional issues – location of sale, out of state licensees.
 - Regulatory constraints – large volume of information, proper use of personnel, capability for private sector compliance.

**Information obtained from the 2018 Direct to Consumer Wine Shipping Report
(shipcompliant.com/dtcreport18)*

Direct Shipping in Virginia

- Authority for Beer and Wine – §4.1-209.1 and 3 VAC 5-70-220.
- No more than 2 cases of either wine or beer per month.
 - Case = 9L of wine or 288 ounces of beer.
- Personal consumption – not for resale.
- Wineries, Breweries or Retailers may obtain the license - \$230 license fee.
- Shippers may only use common carriers approved by Virginia ABC - FedEx and UPS.
- Common carriers submit reports to Virginia ABC.
- Regulations require common carrier to include the shipper's license number on the package.
- Virginia is in top 10 of direct to consumer shipping states for wine - \$67.4M in 2017.*

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Direct Shipping in Virginia

- Direct Shipper Report (monthly):
 - Whether any shipments made;
 - Number of containers shipped;
 - Volume of each container shipped;
 - Brand of each container shipped;
 - Names and addresses of recipients;
 - Price charged.
- Common Carrier Report (quarterly):
 - Whether any shipments delivered;
 - Dates of delivery;
 - Names and address of shippers and recipients for each delivery.

Issues Facing Virginia

- Unlicensed Shippers
- Over-shipment
- Reporting
- Illegal Transportation/Delivery/Receipt

Virginia ABC Response

- In late 2017, Virginia ABC initiated effort to examine direct shipping in response to concerns expressed at state and national levels.
- Efforts include - discussions with alcohol enforcement agencies across the country, members of NABCA and NLLEA, and industry stakeholders who expressed concern to Virginia ABC.

Enforcement Approach

- Phase 1 – Research and Plan Development (Late November 2017- March 2018)
 - Analysis of Common Carrier Reports shows a multitude of violations.
 - Reviewed report process, identifying areas for improvement.
 - Evaluated the resource needs and identified additional resources needed.
 - Virginia ABC receives 3 common carrier reports each month and 120 employee hours are needed to analyze the 3 reports.
- Phase 2 – Initial Implementation (March 2018- Present)
 - Met with Common Carriers (FedEx and UPS).
 - Assigned personnel fulltime including: 1 Senior Special Agent and 1 Auditor. Partial assignments including: 1 Administrative Technician, 1 License Technician, 1 Auditor and Authority Leadership. (Approx. Total Allocation 3 Full Time Employees).
 - Began contact with Unlicensed Shippers (By Letter, Email, and Telephone).
 - Supplied access to application and encouraged voluntary compliance.
 - Provided Common Carriers with List of Unlicensed Shippers.
 - Conducted Additional Parallel Investigations around certain Direct Shippers.
 - Began Identifying Potential Loss of Excise Taxes.
- Phase 3 – Evaluate Initial Efforts and Continue Enforcement Efforts(Spring 2019-TBD).

Background and Analysis

- 187 In State Shippers (Breweries, Wineries, Retailers) as of 1/4/2019.
- 1188 Out of State Shippers as of 1/4/2019.
- Period of June – September 2018:
 - 69,478 shipping transactions between all Common Carriers.
 - 26,963 were **unlicensed** transactions. Resulting in an estimated excise tax loss of \$62,770.
 - Estimated by multiplying tax rate (\$0.40 per liter) by the number of liters identified on the Common Carrier report.
 - Possible that sales tax was also not paid on these shipments.

Compliance Efforts

- Over 650 Unlicensed Shippers contacted by Virginia ABC.
- Since 10/20/2018, 53 Shipper License Applications were received. (35 of those applications were received after 12/01/18 which represents a 50% increase in applications as compared with the period between 10/20 and 12/01.)
- Virginia ABC sharing unlicensed shipper lists with common carriers.
 - UPS began stopping identified unlicensed shippers from shipping into Virginia in December.
 - FedEx is sending cease and desist letters to identified unlicensed shippers.
- Bureau will follow up with common carriers to determine effectiveness of approach.
 - Analysis of 1Q 2019 Common Carrier Reports will result in published report in May 2019.

Further Actions

- Periodic Review of Regulations Underway.
 - Review for effective, reasonable and enforceable rules.
- Explore capability of receiving common carrier tracking numbers.
- Continue sharing unlicensed shipper information with common carriers.
- Monitor common carrier activities.
- Following focus on unlicensed shipments, consider over-shipments and product approvals.