

Direct to Consumer Spirit Shipment Testimony

Randy Barnhart
Vice President Government Relations
Southern Glazer's Wine & Spirits

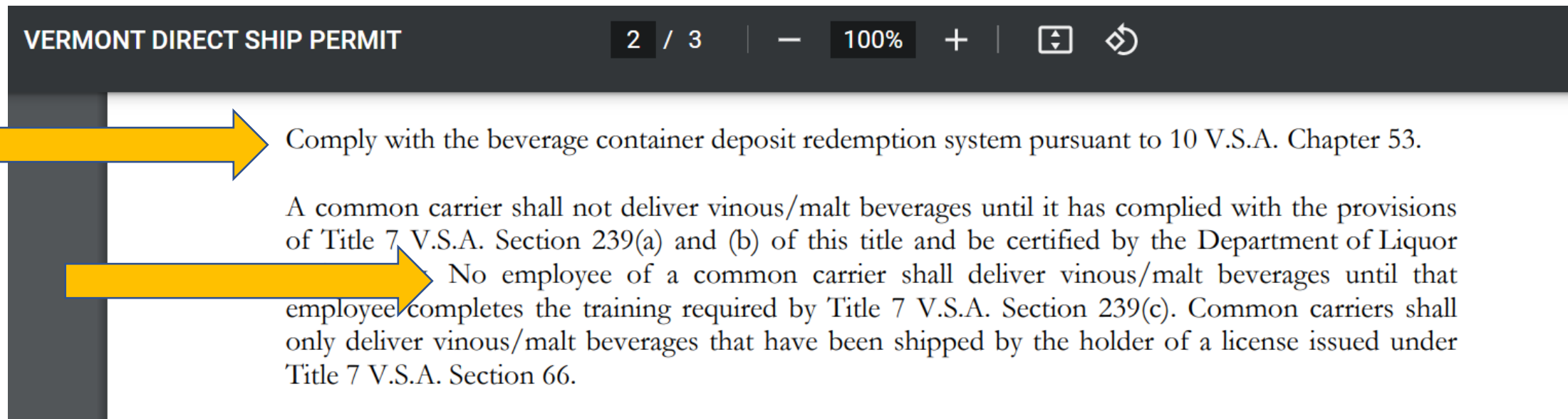
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DTC Underage Access Concerns:

- **DTC directly increases the likelihood of underage access** as there is little to no oversight of the final delivery of the product by a common carrier.
 - In a study published in the Journal of Pediatrics and Adolescent Medicine, **only 12 percent of online alcohol orders placed by underage purchasers were rejected** as a result of age verification and 45 percent of orders placed by underage purchasers were successfully received.
 - In Maine, a local retailer testified that a shipment of **spirits was handed to his five-year-old** “with no signature.”
- **Vermont: Direct to consumer shipping provides out of state entities with an advantage over in state brick and mortar retailer license holders who are subject to store inspections, age verification compliance checks for alcohol and tobacco purchases.**

DTC Underage Access Concerns:

- **No Clear Liability for Underage Deliveries:** DTC introduces questions of liability along the supply chain regarding underage access. Who will be held responsible? The producer? The carrier?
 - Regulators have limited authority to impose penalties on out-of-state entities when the product is received by someone underage unlike the actions they can take against an in-state licensee.



Screen shot of Vermont DLL Direct Shipper Permit Application

DTC in Vermont: what's going on right now?

- **Vermont 2021 Direct to Consumer Wine shipping data**

- Source: Nielsen IQ report for the year 2021 based on DTC Tracking by Nielsen / Ship Compliant
- 14,431 cases of wine were direct shipped to Vermont residents in 2021
 - 90% increase from previous year
- Valued at \$4.2 million in retail sales at an average price \$24.06
- Are the taxes and proper forms being submitted to the DLL and the Tax department as required by law?
- Are these shipments in compliance with the Vermont bottle deposit labelling law?
- Are the employees of the common carrier completing the training as required by Vermont law?
 - Driver shortage?
- Who in the state is ensuring compliance? When was the most recent compliance activity with Wine & Malt DTC?

Vermont: Wine and Malt DTC forms currently required by state law



VERMONT DEPARTMENT OF LIQUOR AND LOTTERY
SEMI-ANNUAL REPORTING FORM – MALT OR VINOUS BEVERAGES SHIPPED TO CONSUMERS

Company Name: _____ License No.: _____
 Address: _____ Date: _____
 _____ Signature: _____

January through June and July through December reporting dates (due by July 15 and January 15 respectively)

| Dates covered MM/YY – MM/YY | Names and address of persons delivered to | Date purchased | Name of Common Carrier Used for delivery | Quantity of Each Shipment in gallons | Monetary value of each shipment | Reason for No Charge for shipment |
|-----------------------------------|----------------------------------------------|-------------------|------------------------------------------------|--------------------------------------------|---------------------------------------|-----------------------------------------|
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TOTAL AMOUNT OF GALLONS AND VALUE OF ALL SHIPMENTS: _____ GALLONS _____ VALUE

Please return form to: Vermont Department of Liquor & Lottery, 13 Green Mountain Drive, Montpelier, VT 05602 or fax 802-828-1031,
 Email to DLC.EnfLic@vermont.gov
 PLEASE NOTE: IF YOU DO NOT HAVE A CHARGE LISTED FOR WINE SHIPPED TO A CONSUMER PLEASE EXPLAIN THE REASON, (i.e. Corked, broken bottle, etc.)

Rev. 05/14/2020

- Audit Trail?
- Do the two state agencies have the resources to verify shipments against taxes paid?

DEPARTMENT OF TAXES

myVTax Guide: How to Submit a Malt & Vinous Beverage Return

Filing Vermont business tax forms online can save labor and time and improve accuracy. This guide provides step-by-step instructions on how to submit a Malt & Vinous Beverage Return through myVTax, whether or not you have a myVTax account. We will show you how to log in with or without an account.

STEP 1: Find “File a Return” on myVTax

Go to www.myVTax.vermont.gov. If you have an account, log in from the myVTax homepage **1** and skip to Step 3. If you do not have a myVTax account, click **File a Return 2** and continue to Step 2.



MALT AND VINOUS BEVERAGE TAX RETURN
MVB-612

[Click here for full form instructions](#)

2. Are you an out-of-state winery making direct-to-consumer or direct-to-retailer shipments of wine? No Yes

3. If you are no longer in business, enter your final date of operation: _____

MALT BEVERAGE TAX CALCULATION

| | |
|------------------------------------------------------------------------|--------|
| 4. Enter the number of gallons of taxable malt 6% or less alcohol sold | 150.00 |
| 5. Multiply Line 4 by the tax rate of \$0.265. | 39.75 |
| 6. Enter the number of gallons of taxable malt over 6% alcohol sold | 100.00 |
| 7. Multiply Line 6 by the tax rate of \$0.55. | 55.00 |
| 8. Total Malt Beverage Tax Due (Add Lines 5 and 7). | 94.75 |

VINOUS BEVERAGE TAX CALCULATION

| | |
|--------------------------------------------------------------------------|--------|
| 9. Enter the number of gallons of taxable wine (from grapes) sold | 500.00 |
| 10. Multiply Line 9 by the tax rate of \$0.55. | 275.00 |
| 11. Enter the number of gallons of taxable hard cider (from apples) sold | 500.00 |
| 12. Multiply Line 11 by the tax rate of \$0.55. | 275.00 |
| 13. Enter the number of gallons of taxable mead (from honey) sold | 500.00 |
| 14. Multiply Line 13 by the tax rate of \$0.55 | 275.00 |

Loss of State Tax Revenue

- States have discovered significant noncompliance with DTC laws; forced to spend enormous resources to identify and enforce against illegal DTC shipments.
- New Hampshire's 2021 state **audit was highly critical of the Direct Shipper Program.**
 - “The division could not determine what type and amount of alcoholic beverages were being directly shipped to in-state consumers — including licensees, unlicensed businesses, and individual citizens — and consequently **had no way to verify whether direct-shipper taxes paid reflected actual shipments.**”
- In 2018, 77,000 shipments of “hard to find” alcohol brands — worth \$23 million — came in from outside New Hampshire.
- The audit found **significant noncompliance with the 60 bottle per year limit:**
 - One consumer received at least **563 bottles in 2018.**
 - 1,425, or **4% of all customers received over the legal limit.**
 - Ten direct shippers illegally shipped nearly 5,000 bottles during 2018, four had already listed as shippers not allowed to do business due to prior violations or improper practices.

Loss of State Tax Revenue continued:

VIRGINIA

- The Virginia Alcoholic Beverage Control Authority found that from June to September of 2018, **39 percent of all shipments were from unlicensed entities.**
- In the 2021 budget, the Virginia ABC received an **additional \$1 million per year for 10 new DTC enforcement** positions including four auditors, three non-sworn compliance agents, two special agents, and one license technician.

OHIO

- In a recent suit brought against some of the country's largest online wineries and wine retailers (e.g., Wine.com, Winc), the Ohio Attorney General found that the defendants alone were **responsible for over 40,000 illegal shipments of wine and spirits in 2019** and circumvented the payment of state excise tax, general sales tax and most likely Ohio's commercial activity tax.

ILLINOIS

- A December 2013 carrier report revealed that **two carriers alone accounted for nearly 85,000 unlicensed shipments.** Wine & Spirits Wholesalers of Illinois estimated state **tax loss as high as \$20 million per year.**

Local concerns:

- **DTC of spirits would not benefit Vermont's in-state distillers.** Vermont's distilleries can already ship their spirits to states that permit direct-to-consumer (DTC) shipments. Instead, the large spirit companies that have the infrastructure and can afford to ship across the country will take sales away from Vermont's distillers and retailers.
- Conflicts with 802 Spirits agency liquor stores: loss of commissions for store owners.
- Impact on local brokers who represent the distillers. Shipments coming in from out of state distillers by pass the brokers reducing sales commissions received by in state employees.
- Impact on DLC staff: Retail price would be based on DLC pricing. What if the product is not listed with the state? Legwork involved to track down pricing.
- On premise licensees: Potential access to ordering spirits. Audit trail?
- Impact on bars and restaurants: DTC would provide yet another reason for a consumer not to visit an on-premise establishment. Lost sampling opportunity for the licensee.
- Bottle deposit stickering requirements?
- Fiscal impact of DLL Enforcement: proper enforcement of DTC would require additional FTE's at DLL
- New Hampshire is gearing up for E-Commerce both in and out of state.

DTC in Vermont: closing thoughts

- SGWS has established a Craft Spirits Division dedicated to working with craft spirit producers
 - This division is in our headquarters, and we are happy to consult with craft producers with no requirement that they appoint us as a distributor
 - We recognize that Craft Distillers put care into making a hand-crafted product and they know their products. We as distributors put the same care into distribution and logistics and can help them navigate market expansion.
- Vermont craft websites feature Reserve Bar, Drizly and other three tier compliant websites that permit consumers to order distilled spirits through retail platforms in other states.
- Unintended consequences: federal law requires equal treatment of in state and out of state producers. DTC of spirits in Vermont would provide a greater advantage to out of state distillers than would accrue to in state distillers.
- DTC of spirits appears to be a simple issue on the surface but there are significant legal, health and fiscal concerns that need to be considered.