

MEMORANDUM

To: TABC Commissioners, Management, Staff and Other Concerned Parties  
From: Russell F. Thomas, Director  
Date: March 1, 2024  
Subject: Coupons issued by a retail package store to its customers

This memorandum is the Tennessee Alcoholic Beverage Commission's ("TABC") official interpretation of the current statutes and TABC rules regarding whether a retail package store may offer coupons to its customers. In summary, there is no current statute or rule that prohibits a retail package store from offering discounts in the form of coupons to its customers. However, such coupons or other forms of discounts from a retail package store to its customers are prohibited to the extent that they may not reduce the final price of an alcoholic beverage to a consumer to an amount less than any applicable statutory minimum markup requirements.<sup>i</sup> Thus, a retail package store in Tennessee may offer its own coupon applicable to alcoholic beverages if the final price to the consumer after the coupon is applied is not below the minimum markup required by law.

Tennessee sets the minimum price which an off-premises retailer can charge an end consumer for an alcoholic beverage by statute. Currently, these retailers must charge at least 20% above their wholesale cost for wine and at least 10% above their wholesale cost for spirits to their customers. TABC rules regulate certain coupon practices regarding coupons from a supplier of alcoholic beverages to end consumers but no such rule addresses coupons that originate with retailers. Tennessee Alcoholic Beverage Commission Rule 0100-06-.03(14) reads as follows:

(14) Consumer Promotions - Direct Offerings. **A** manufacturer, **supplier**, importer, non-resident seller, non-manufacturer non-resident seller, distiller, winery, or any representative thereof- e.g. third party marketing entities - **may offer coupons** for refunds and contest prizes, premium offers, and sweepstakes to consumers only **on the following basis:**

(a) A refund coupon may be distributed to a consumer only as an element of the industry member's advertising or marketing program through newspapers or magazines, combination packaging, the internet, any other social media platform, neck hangers (on or in caps, cap liners, corks, containers, labels, cartons, cases, or other materials which comes with a purchased alcohol beverage), other point-of-sale advertising (e.g., tear pads that are part of shelf talkers, and case cards), flyers, and by direct mail. Retailers for on-premise consumption may not participate in such programs.

(b) Contest prizes, premium offers, sweepstakes, and like items may be offered by industry members or any representative thereof - e.g. third party marketing entities- directly to consumers at point-of-sale, via neck hangers (on or in caps, cap liners, corks, containers, labels, cartons, cases, or other materials which come with a purchased alcohol beverage) and other point-of-sale advertising (e.g., tear pads that are part of

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shelf talkers and case cards), through newspapers or magazines, and through the internet, mobile/other electronic communication devices and communications via social media, flyers, and by direct mail in conjunction with combination packaging. Retailers for on-premise consumption may participate in such programs.

(c) Officers, employees, and representatives of wholesalers and retailers are excluded from participation. Nothing of value may be supplied to a trade buyer by an industry member or any representative thereof - e.g. third party marketing entities - to induce or reward participation in any practice allowed hereunder. Industry members or any representative thereof - e.g. third party marketing entities - are prohibited from requiring any retailer to participate in any practice allowed hereunder nor shall a particular retailer or group of retailers be specified by an industry member or any representative thereof - e.g. third party marketing entities - for participation in any practice allowed hereunder.

(d) Notwithstanding subparagraph (c), an industry member or any representative thereof- e.g. third party marketing entities - may award prizes to a retail employee as part of a nationwide or statewide contest, such as a bartender's contest or drink recipe contest, conducted by the industry member or such representative, in accordance with applicable contest rules; provided, that the entry or award is not based upon retail sales of the sponsor's product and the industry member has received advance written approval of the contest by the TABC. Such contest shall be open to all retail licensees of the same type - e.g., "on-premise or off-premise" consumption licensees, or both.

**(e) No coupon shall be permitted for a refund by a retailer at the point-of-sale ("cents-off" coupons).** Refund coupons may be utilized by a manufacturer, supplier, importer, non- resident seller, non-manufacturer non-resident seller, distiller, winery, or any representative thereof - e.g. third party marketing entities - that are redeemable by a consumer's mailing or transmitting directly to such manufacturer, supplier, importer, non-resident seller, non-manufacturer non-resident seller, distiller, winery, or an authorized redemption agent.

(f) No coupon may be redeemed by, or refund sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No contest or sweepstakes prize shall be awarded to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No premium offer shall be sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. *Emphasis added.*

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Some parties suggest reading the first sentence of subpart (e) alone to conclude that a retail package store can never offer a coupon to a customer regardless of whether it is from an alcohol supplier to an end consumer or from the retail package store alone to its customer. In reading the rule as a whole, however, it is evident that the rule only addresses coupons that originate from alcohol suppliers and that it has no applicability to the legality of coupons originating from retailers. Reading the highlighted language above together states: "A...supplier...may offer coupons...on the following basis.... No coupon shall be permitted for a refund by a retailer at the point-of-sale ("cents-off" coupons)." This rule does not address coupons that originate from a retailer.

After the above rule was promulgated, the Tennessee General Assembly passed 2012 Tennessee Laws Pub. Ch. 947 now codified in 57-3-406(b) which states in part: "This chapter does not prohibit a retailer from offering a discount in such manner as the retailer deems appropriate as long as the discount being offered is not below the cost to the retailer." As a general principle a rule may not contradict a statute. This statute indicates that a retailer may offer a discount and such a discount is not limited to any form or manner as long as it complies with minimum markup laws. In summary, a retail package store in Tennessee may offer its own coupon applicable to alcoholic beverages if the final price to the consumer after the coupon is applied is not below the minimum markup required by law.

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<sup>i</sup> TCA §§ 57-3-903 and 57-3-1003 set certain requirements to the pricing of wine and spirits.