

Bulletin



AB - 67

September 12, 2017

TO: All Non-Resident Dealer Permit Holders, Wholesalers and County Dispensaries

SUBJECT: Sales and Discounts to Montgomery County DLC

It has recently come to our attention that some non-resident dealers (suppliers) may be treating the Montgomery County, Maryland, Department of Liquor Control (DLC), differently than other licensed wholesalers or dispensaries to whom they sell the same product(s). It has been the legislative intent of Maryland's General Assembly that this is not permitted under the Alcoholic Beverages Article of the Annotated Code of Maryland. Section 2-217, which concerns discrimination in the sale or distribution of alcoholic beverages, prohibits non-resident dealers or suppliers from discriminating directly or indirectly in price, discounts, or the quality of merchandise.

Further, Section 2-316(c) prohibits dependent discounting - *A supplier, nonresident dealer, resident dealer, nonresident winery permit holder, or wholesaler may not make a discount, rebate, or depletion allowance that is offered on a product dependent on the pricing policy or practice of the license holder who is invoiced for the product.* Simply, in this case, a supplier may not make a depletion allowance based on the DLC's pricing policy for product promotion.

During the conversion of Article 2B to the Alcoholic Beverages Article, specific language prohibiting discrimination between one wholesaler and another wholesaler was left out in Section 2-217(b)(1). This oversight was brought to the attention of the Department of Legislative Services (DLS) who in turn replied that the oversight was in error and that corrective language will be submitted to the General Assembly during the 2018 session. Accordingly, this office will continue to enforce Section 2-217 in the manner so intended by the General Assembly.

And so, the effect of these combined requirements is that you must invoice alcoholic beverages to the Montgomery County DLC at the same price as you invoice the same products to any other Maryland wholesaler and vice-versa. The only exception is when products are shipped from different FOB points, or FOB destinations, in which case the difference can only be that which is justified by the actual difference in transportation costs. In addition to the invoice price, any discount, depletion allowance, or other condition of sale offered to a county dispensary must be simultaneously offered to a wholesaler and vice-versa.

Please be guided accordingly and adjust any current practices in effect that may be contrary to these requirements. Violations of these requirements from this point on will be enforced.

Jeffrey A. Kelly
Director