

July 7, 2009

## **POLICY MEMORANDUM 2010 – 1**

### **Subject: Sale of Alcoholic Liquor Inventory by Licensee; Sale by the Director; Sheriff's Sale of Alcoholic Liquor**

1. **Purpose:** The purpose of this memorandum is to provide clarification for the sale of alcoholic liquor in the possession of a licensee who is quitting business, the Director, or Sheriff, on behalf of a creditor.
2. **Applicability:** All licensees under the Liquor Control Act and the Club and Drinking Establishment Act.
3. **Discussion:** This policy creates clear, simple, guidelines for both ABC associates and industry members to follow in determining what alcoholic liquor inventories may be sold, when, and to whom.
  - a. **Sale of inventory by a licensee who is quitting business**
    - Any licensee who is quitting business for any reason, other than a licensee who has been revoked for acquiring its license through fraud or false statement or for acting as the agent of another, may sell its inventory of alcoholic liquor to another licensee.
    - The licensee shall apply to the Director for permission to sell the inventory. The alcoholic liquor shall not be sold or purchased until written permission is granted by the Director.
    - The seller and buyer must complete form ABC-812.
    - In the case of a retailer, alcoholic liquor may be sold back to the distributor from whom it was bought, or may be sold to any Kansas retailer, club, drinking establishment, or caterer.
    - In the case of a club, drinking establishment, or caterer, bulk wine, beer, and cereal malt beverage may be sold back to the distributor from which it was originally purchased; alcoholic liquor in the unopened original container may be sold to any licensed retailer, club, drinking establishment, or caterer.
    - In the case of a distributor, the alcoholic liquor may be sold back to the supplier or manufacturer from whom it was bought, or may be sold to another distributor.
    - Any container of alcoholic liquor that has been opened, is damaged, or is otherwise unfit for human consumption shall not be sold.
    - Such sales are not subject to enforcement tax, gallonage tax, or sales tax.
  - b. **Sale of alcoholic liquor in the possession of the Director**
    - The Director of ABC may sell alcoholic liquor at private or public sale, or may contract with a provider to sell such alcoholic liquor at private or public sale.
    - Alcoholic liquor subject to such sale includes but is not limited to:
      - Alcoholic liquor abandoned by a licensee or former licensee;
      - Alcoholic liquor seized by the Department of Revenue subject to an agreement with the taxpayer;
      - Alcoholic liquor seized as evidence for a criminal or administrative proceeding;
      - Alcoholic liquor seized under a duly executed search warrant
    - ABC shall place a notice of the pending sale on its webpage no later than 30 days before the sale. Such notice shall include the names of all persons or licensees from whom the alcoholic liquor was collected. Creditors wishing to state a claim to any alcoholic liquor or any proceeds of the sale shall present a court order establishing such claim to the Director no less than seven (7) days before the sale.

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- Prior to selling any abandoned alcoholic liquor, ABC shall give written notice to the last known owner at his/her last known address. Last known owner shall then have 15 calendar days in which to notify ABC, in writing, of his/her claim to such alcoholic liquor.
  - The alcoholic liquor may be sold to any Kansas licensee, including distributors, or to any member of the general public who is at least 21 years of age.
  - No order from the Director or any court is required to conduct the sale.
  - Any container of alcoholic liquor that has been opened, is damaged, or is otherwise unfit for human consumption shall not be sold.
  - Such sales are not subject to enforcement tax, gallonage tax, or sales tax.
  - After payment of all costs of the sale, the balance shall be paid to the State General Fund.
- c. Sheriff's sale of alcoholic liquor**
- Any creditor who has an interest in the liquor inventory of a licensee may petition the district court for an order directing the seizure and sale of such inventory.
  - The sheriff of the county in which the action is brought shall execute such order by seizing and selling such inventory in accordance with the court's order.
  - The court order shall set the time and place of sale and the method and manner in which the sale shall be held. The court shall determine what restrictions, if any, apply to potential purchasers.
  - Any container of alcoholic liquor that has been opened, is damaged, or is otherwise unfit for human consumption shall not be sold.
  - Such sales are not subject to enforcement tax, gallonage tax, or sales tax.
  - After payment of all costs, the balance shall be paid to the judgment creditor. If the amount collected by the sale exceeds the debt, then the excess shall be returned to the debtor.
- d. Sale of alcoholic liquor seized subject to tax warrant**
- All alcoholic liquor seized subject to a tax warrant shall be sold in accordance with established law and guidelines.
- 4. Additional Comments:** Alcoholic Beverage Control Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.
- 5. Clarification of Policy:** All clarification requests to this policy should be directed in writing to this office via mail, fax, or submitted to the agency's email at [abc\\_mail@kdor.state.ks.us](mailto:abc_mail@kdor.state.ks.us).
- 6. Effective Date of this policy:** This policy is effective from July 7, 2009 until further notice.

***Original Signed and On File***

Thomas W. Groneman

cc: Assistant Attorney General  
Chief of Enforcement  
Licensing Supervisor  
Compliance Supervisor  
Administration Supervisor  
Enforcement Agents