

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE)	
APPLICATION TO RELAX THE)	SPECIAL RULING 2021-07
PROVISION OF N.J.A.C. 13:2-24.11 TO)	GRANTING RELIEF FROM THE
ALLOW FOR ELECTRONICALLY)	MAILING REQUIREMENT AND CASH-
SUBMITTED AND PAID)	OR-CHECK-PAYMENT REQUIREMENT
<u>MANUFACTURERS' REBATES</u>)	FOR MANUFACTURERS' REBATES
		UNDER N.J.A.C. 13:2-24.11

BY THE DIRECTOR:

A request has been made from counsel to a gin wholesaler to the Division of Alcoholic Beverage Control (the "Division") regarding the narrow question of the permissibility of electronic submission and payment of rebates.¹ This electronic method would supplant the use of regular mail to submit a request for a rebate by a consumer and the payment of it by cash or check sent via regular mail by the supplier.

Under N.J.A.C. 13:2-24.11, a "manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of alcoholic beverages directly to consumers." See also N.J.A.B.C. Handbook 62 ("REBATES"). This regulation expressly requires that a "rebate offer shall require a form" that is to be completed and "mailed" by the consumer. In addition, the rebate "shall be mailed to the consumer completing the form at the address shown thereon in the form of cash or check only." See A.B.C. Bull. 2432, Item 1 (1983) ("It should be noted that manufacturers' rebates or refunds may be only in the form of

¹ A rebate is "[a] return of part of a payment, serving as a discount or reduction." Black's Law Dictionary 2019 (11th ed. 2019). Normally, a rebate does not affect the price of an item purchased.

cash or check.”).

The request presented here is limited to a relaxation of the mailing requirement and cash-or-check-payment requirement for rebates. The representations made in this request indicate that a consumer would need to show proof of purchase of a specific item that is the subject of the rebate. (Legal age will of course be verified at purchase, and the consumer will also verify age at submission.) That proof-of-purchase showing would be done, not by regular mail, but by the emailing or the texting of the receipt to the supplier. The rebate would then be honored by the supplier by sending the rebated money to the consumer through an electronic-payment system (e.g., PayPal, Venmo, Stripe, etc.) that transfers the money directly to the consumer rather than being paid through a check sent via regular mail. Neither a wholesaler nor a retailer of alcohol obtains anything in this electronic rebate process.

In accordance with N.J.S.A. 33:1-39, the Director has the authority to make such general rules and regulations and such special rulings and findings “as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages . . . and [to] alter, amend, repeal and publish the same from time to time.” He may relax certain regulations or Special Rulings pursuant to N.J.A.C. 13:2-9.1, provided a licensee makes a showing of undue hardship, economic or otherwise; that the waiver of the rule will not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of the Alcoholic Beverage Control Act (the “Act”).

Based on the factual representations and the applicable legal standard, the Division concludes that the requested relaxation of the mailing requirement and the cash-or-check-payment requirement for manufacturers’ rebates is not inconsistent with the Act and applicable regulation

permitting rebates. To be sure, N.J.A.C. 13:2-24.11 provides for mailing only and the payments of rebates be in the form of cash or check. This regulation has already been amended in light of technological developments to allow for rebate forms to be distributed via an internet site. N.J.A.C. 13:2-24.11(a)(2); 32 N.J.R. 1717(a) (2000). The Division intends to amend this regulation; however, in the meantime, it will exercise its authority to relax the mail-in and cash/check requirement until it is able to complete the rulemaking process.

With the innovation of technology over the more than two decades since this amendment, particularly in the area of financial transactions, continuation of the mailing rule with payment in cash or check is plainly antiquated and constitutes an undue hardship on the consumer seeking the rebate and the supplier in paying the rebate. Electronic transfers of rebate money are substantially more efficient for all parties and do not place an undue burden on anyone. They are also secure, and the electronic method enables the supplier to track electronically all data and steps throughout the process and to document and monitor transactions for any irregularities. Such a relaxation, moreover, does not alter the fundamental structure of rebates in any way (that is, the consumer submits a proof of purchase of an item and the supplier returns part of the payment to the consumer); rather, it adapts the process to technological advances. Consequently, it is consonant with the outline of established rebate practice and the law sanctioning it.

Any entity that engages in electronic rebates must have records of the transaction history that specifically identify the promotion. Moreover, the records must show every individual transaction and rebate paid out to the corresponding name and email address. These records must document the promotion number, rebate recipient, date of the transaction, and amount paid along with a complete transaction history. These records may be retained electronically or printed out and

retained. All such records, whether electronic or paper or both, must be available for the Division to review upon request.

All other requirements of N.J.A.C. 13:2-24.11 are unmodified by this Special Ruling and remain in full effect. The Division reserves the right to revoke or revise this relaxation as necessary and warranted by factual and/or legal developments.


JAMES B. GRAZIANO
DIRECTOR

DATED: July 8, 2021