

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

IN THE MATTER OF THE FURTHER
EXTENSION OF CREDIT IN SR 2020-02

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SR 2020-11
SPECIAL RULING AMENDING SR 2020-
02 AND SR 2020-07 AND GRANTING
FURTHER EXTENSION OF CREDIT

BY THE ACTING DIRECTOR:

On April 7, 2020, in response to economic conditions brought on by the unprecedented health crisis posed by the novel coronavirus 19 (“COVID-19”), the Division of Alcoholic Beverage Control (the “Division”) issued Special Ruling 2020-02 (“SR 2020-02”). In SR 2020-02, the Division granted, among other things, relaxation of N.J.A.C. 13:2-24.4 pertaining to extension of credit and electronic filing of Notice of Obligations. On May 6, 2020, Governor Murphy executed Executive Order (“EO”) No. 138 (2020) extending the Public Health Emergency declared in EO No. 103 to June 7, 2020. On May 13, 2020, the Division issued SR 2020-07 and extended the previously authorized extension of credit in SR 2020-02 until June 7, 2020 to coincide with the extension of the Public Health Emergency. In EO No. 151, dated June 4, 2020, Governor Murphy extended the Public Health Emergency for another 30 days.

By EO No. 150 (2020), Governor Murphy announced that, given the reduced transmission of COVID-19 outdoors, licensees or permittees with on-premises retail consumption privileges would be permitted to reopen their establishments and serve patrons in outdoor areas, subject to social distancing restrictions, effective June 15, 2020. In anticipation of the reopening of retail licensees’ establishments with limited outdoor seating and the expiration of the June 7, 2020 credit extension provided in SR 2020-07, the Division is now authorizing a further extension of credit to July 15, 2020 for those invoices dated February 23 to March 16, 2020 (e.g., the “quarantined invoices”).

The COVID-19 pandemic is affecting all aspects of society, including the alcoholic beverage industry. One of the Division's statutory mandates is to maintain trade stability, and this goal is especially important as the Governor takes the necessary steps to reopen businesses in a safe and responsible manner. See N.J.S.A. 33:1-3.1(a)(7). Maintaining trade stability requires the Division to balance the interests of the wholesalers and retailers in a manner that will allow each tier to rebound from the economic impacts caused by the pandemic.

The Division is aware of the role of credit in the alcoholic beverage industry. Wholesalers typically extend 30 days of credit on purchases of alcoholic beverages made by retailers. See N.J.A.C. 13:2-24.4(a)(1). As a result of the pandemic and the significant curtailment of business by on-premises retail consumption licensees, the Division authorized wholesalers to extend credit beyond this 30-day period for the quarantined invoices. See SR 2020-02. The Division took this step to maintain trade stability when it was evident that the retailers would be unable to repay these invoices due to severely curtailed revenue caused by the unprecedented closure or reduction of their normal business operations. As the Public Health Emergency continued, the Division authorized a further extension of credit to June 7, 2020. See SR 2020-07.

Now, that public health measures appear to be succeeding and a determination by Governor Murphy to allow holders of liquor licenses with retail consumption privileges to resume outdoor dining with social distancing restrictions by June 15, 2020, the Division created a COVID-19 Expansion of Premises Permit to allow on-premises retail licensees (without already licensed outdoor areas) to expand their licensed premises and to offer outdoor services through the Summer and early Fall.. However, even if these licensees reopen on June 15th with limited seating capacity, it is unlikely that many will be able to generate sufficient revenue to fully pay their quarantined invoices by June 7th, the expiration of the current credit extension.

On the other hand, the Division recognizes that wholesalers have been carrying the debt on the quarantined invoices for several months, and have incurred their own significant expenses. For example, according to the Beer Wholesalers Association of New Jersey, beer wholesalers have incurred great expense in retrieving full kegs of beer from retailers, decanting the kegs, disposing of the expired beer in accordance with environmental laws, and providing credit to the retailers. The wine and spirits wholesalers are also incurring substantial expenses as they continue to provide financial support to their sales representatives, hazard pay, personal protection equipment to their employees, and thorough disinfection of their warehouses. According to the Credit Compliance Corporation, the wholesaler sector has extended approximately \$20 million to the retail sector, which remains unpaid.

Considering these competing interests and the Division's goal to restore trade stability during these uncertain times, the Division has determined that the previously authorized extension of credit authorized by SR 2020-02 and SR 2020-07 for the quarantined invoices should be extended to July 15, 2020. In authorizing this further extension of credit, the Division acknowledges that the July 4th holiday will occur. The Division is also aware that the credit regulation does not require any wholesaler to extend credit to the retail trade. The credit regulation requires that, if credit is to be extended, it must be extended equally "unless different terms to individual retail accounts are justified by the financial or credit history or risk of the particular accounts." See N.J.A.C. 13:2-24-4(a). Thus, wholesalers will have to make their own determinations as to whether to extend additional credit to retailers who have quarantined invoices for new purchases of alcoholic beverages that may be needed to reopen on June 15th.

Recognizing the unprecedented circumstances presented, the Division strongly encourages wholesalers and retailers, through their respective associations, to work together to develop a payment plan that will facilitate the repayment of the quarantined invoices. The payment plan should address, at a minimum, the following issues and concerns:

1. Create a method for determining the total amount due on the quarantined invoices and how much is owed to each wholesaler, taking into account returns, credits, etc. How will disputes between a retailer and wholesaler be handled if there is disagreement on the total amount due?
2. Determine a weekly amount due on the quarantined invoices until the balance is paid off (e.g., 10%, 15% or 20% to be paid per week). If one payment is missed, will the retailer be put on C.O.D. status? What is the mechanism for notifying Credit Compliance Corporation of such default? How N.J.A.C. 13:2-24.4(h) will apply?
3. The payment plan should define what is meant by “payment” (e.g., made by retailer or received by wholesaler)? How is interest to be calculated on the amount due and how will that be communicated to the retailer?
4. Will capacity restrictions placed on a retail consumption licensee’s business by current or future Executive Orders be a factor in determining the payment plan? If so, would the payment plan need to be modified as permissible capacity increases or decreases?
5. How will the debt and payoff be reflected by Credit Compliance Corporation, such that all wholesalers are aware of the credit status of each retailer?

If consensus on a payment plan is reached by July 1, 2020, the industry representatives shall notify the Director and the Division will evaluate the proposed plan. If no consensus is reached by July 1, the matter will be set down for a conference with wholesale and retail representatives before the Director on July 8, 2020 at 10 AM pursuant to N.J.A.C. 13:2-24.4(f). Further Special Rulings extending credit or authorizing a payment plan or other issues related to the relief granted herein may be issued in the future.

Please note that the extension of credit to July 15, 2020 authorized herein applies only to the quarantined invoices. Further, this relief is available only to those on-premises retail consumption licensees that were not on C.O.D. status as of February 23, 2020, and must be made available to all on-premises retail consumption licensees on a non-discriminatory basis. The usual credit rules in N.J.A.C. 13:2-24.4 apply to all other purchases made outside of the quarantine window, including those purchases that may be needed to replenish inventory in anticipation of limited outdoor seating capacity being allowed. Of course, as noted above, a wholesaler may decide not to extend credit to certain retailers if

they have a justification based on financial or credit history or risk and are not acting in a discriminatory manner.

In addition, as provided for in SR 2020-02, the Division continues to permit wholesalers to send Notices of Obligation to defaulting retailers by electronic mail for the duration of the State of Emergency, or until restrictions are otherwise lifted, whichever is earlier. All other provisions in N.J.A.C. 13:2-24.4 shall continue to apply unless circumstances arise warranting further relaxation.

Nothing in this Special Ruling Amending SR 2020-02 and SR 2020-07 is intended to alter any other relief granted in SR 2020-02, and any relaxation of rules or the June 2015 Special Ruling, as set forth therein, shall remain in place.

The relief provided herein is based on information provided by licensees in the wholesale and retail tiers of the industry. The Division will continue to monitor the economic impact of the COVID-19 pandemic on the alcoholic beverage industry and will consider modifications to this Special Ruling as conditions warrant. Should the underlying facts and circumstances and/or general State of Emergency change, the Director reserves the right to make modifications to this Special Ruling in the exercise of his discretion.

A handwritten signature in black ink, appearing to read 'James B. Graziano', is written over a horizontal line.

JAMES B. GRAZIANO
ACTING DIRECTOR

DATED: June 7, 2020