

Update on Direct Shipment of Wine to Other States

August, 2006

More than a year has passed since the U.S. Supreme Court ruled on *Granholm v. Heald*. However, there remains much uncertainty as to what wineries can and cannot do with regard to the direct shipment of wine to consumers in other states. The court held that states cannot give preferential treatment to in-state wineries, but left it up to the states to pass legislation regulating the direct shipment of wine.

State legislatures across the country responded to *Granholm* in various ways. In the wake of *Granholm*, 33 states have passed legislation addressing both “Direct-to-Consumer” (DTC) distribution as well as “Self-Distribution” (SD). Other states have reacted in the opposite direction and now do not allow any winery, in-state or out-of-state, to directly distribute wine. Still others have decided to keep in place regulatory legislation they had prior to *Granholm*.

States that have passed DTC or SD legislation have all established a permit and tax system. Under this system wineries are required to apply for a distribution permit and pay applicable taxes. These states include, among others, Arizona, California, Colorado, Connecticut, Idaho, Indiana, Kansas, Maryland, Michigan, New York, Ohio, Texas, Vermont, and Washington. The cost for these permits vary from state to state, as do the amount of applicable taxes.

Wineries that obtain permits from these states must be cautious. Before wine is shipped to out-of-state consumers, permitted wineries must make sure that applicable volume limitations are complied with. For example, while California allows unlimited shipments to consumers by permitted wineries, Idaho limits permitted wineries to 24 cases annually per consumer. Also, some states only allow Self-Distribution by wineries under a certain annual production limit. For example, Maryland only allows Self-Distribution by wineries that produce less than 27,500 gallons per year.

Prior to *Granholm*, some states regulated direct distribution through reciprocity requirements. These states allowed out-of-state wineries into their market provided that their wineries were allowed to do the same. After *Granholm*, many states replaced reciprocity requirements with direct shipment legislation. A few states, such as Wisconsin, still require reciprocity.

Other states reacted to *Granholm*, negatively, and now prohibit all direct distribution within the state. This is regardless of whether the winery is located in-state or out-of-state. Such states include Delaware, Kentucky, Louisiana, Mississippi and Virginia.

Keep in mind that DTC and SD legislation is primarily directed at wineries, not retailers. To date, only 12 states allow retailers to engage in direct distribution to consumers. California, for example, does not allow direct distribution by retailers.

Again, for those of you who are directly shipping around the country, it is important to stay current on the various requirements and restrictions imposed by each of the 49 other states. The U.S. Supreme Court acknowledged that “the current patchwork of laws . . . is essentially the product of an ongoing, low-level trade war.” Since neither the Supreme Court nor Congress has set national standards, it is important that you make sure that you are in compliance with the laws of each state in which you do business.

We would be pleased to discuss the implications of what *Granholm* may have for your business. Please feel free to contact Eric Berg of our Wine Industry Group at (805) 882-1408 or EBerg@HatchParent.com.