

# Direct Shipping: No 50 Lane Super-Highway Yet

*The good old days... when things were simpler*



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**W**e all hoped it would be simple—the wine industry would win in the Supreme Court and that victory would open up the whole nation for direct shipping. Well, win we did. But unfortunately, the legal arguments that struck down our opponent have wounded us too.

For example, reciprocal shipping, our comfortable old standby, has fallen prey to the criticism that it is a discriminatory privilege. Although not yet extinct, it is certainly on the endangered list.

And, while the states, one by one, are giving wineries the right to get direct shipping permits, the wineries' close cousins in the wine industry are getting shut out.

Négociants, brand builders or virtual wineries that have relied on reciprocal state privileges for retailers, or that have taken advantage of lax enforcement in those wine-friendly states, are now finding that the new direct shipping permits exclude them.

So today, a year down the road from the Supreme Court decision, we don't have the nationwide interstate highway for direct shipping that we dreamt of. Instead, each state is paving its own separate road, full of speed bumps, potholes, and toll booths. Even states that have allowed liberal direct shipping for

## SHORT COURSE

- ▶ Direct shipping today has more markets—and much more complexity.
- ▶ Major markets, including Texas, New York, and Florida, have opened up.
- ▶ Privileges come with a price tag—lots of requirements for licensing.
- ▶ Reciprocal shipping is an unexpected casualty of the Supreme Court decision.
- ▶ More changes may be coming, including—possibly—direct shipping to retailers.

years are now rethinking the privilege.

Confronted by a confusing array of new requirements and costly permits to ship wine, many vintners are rightfully nostalgic for the “good old days” when things were—well, simpler.

In this installment of Compliance Watch, we tour the new direct shipping landscape with particular emphasis on the process of obtaining direct shipping permits in three important states, Texas, New York, and Connecticut. We'll also cover the new Michigan direct shipping law and courtroom defeats in Florida and

Ohio that have finally opened those major markets to direct shipping. Finally, we'll look down the road at what may lie ahead.

## THE BIG THREE

Our nominee for the most improved state in the direct shipping game would be Texas. Years ago the Texas ABC (TABC) declared full-scale war on direct shipping, and if that didn't stop you, Texas' bewildering minefield of dry areas added an unmanageable level of risk. (Dry areas are scattered pockets where Prohibition is alive and well, and in Texas, they can be as small and randomly scattered as individual neighborhoods or voting precincts.)

Recently, with the nationwide tide

of public sentiment turning, Texas wineries finally convinced the state legislature to create a permit system that allows direct shipping up of to three gallons of wine per month per Texas consumer, up to a grand total of 35,000 gallons (or 14,721 cases) into the state per year.

Texas gets credit for opening its doors to direct shipping, but you've still got to jump through a few hoops to get in. To exercise this privilege, a winery must obtain a Texas sales tax account, post a tax security bond, and obtain a Texas direct shippers permit.

The first step is to apply for your Texas sales tax account with the Texas Comptroller of Public Accounts, which you can do on-line at [www.window.state.tx.us/taxpermit/](http://www.window.state.tx.us/taxpermit/). If you prefer you can download the form AP-201 and fill it out the old-fashioned way.

Plan ahead: It takes two to three weeks to get your account number after filing, and you must have this account number before you file your application with the TABC for the direct shipping permit.

The second step is to get the Liquor Tax Bond [Form 2-51.3] issued by your surety company. (The same company that issued your TTB Wine Bond.) The bond form and instructions are on the TABC's Web site at <http://www.tabc.state.tx.us/>. The initial amount of the bond is \$1,000, but if your sales are high enough you may have to increase the bond amount later. If getting a bond is a problem, other forms of security are accepted.

Once you have those steps underway, you can start on the Out of State Winery Direct Shipper Permit application [Form L-106]. The application and

were fairly sure that person did not like you." Again, probe for details: Why did she think the other didn't like her; what was the task to be accomplished; how did she go about getting it done?

"Have you ever had to go above and beyond the call of duty to get a job done?" What was the task, what obstacles had to be overcome, what sacrifices were necessary?

"Describe a time when you were faced with a work situation so stressful it truly challenged your coping skills." Get as much detail as you can. If the job requires substantial organizational skills, ask for past examples of project planning and completion. Ask about working on multiple projects at the same time. If the job requires excellent interpersonal skills, find out what types of personalities they find easiest to work with and difficult to work with. Ask if others have given them feedback on how they are to work with.

In assessing attitudes toward management, ask about some areas when perhaps they didn't agree with the supervisors. How did they handle it? Was there any fallout in the relationship? If the job for which you are hiring is a management job, ask about unpopular decisions the candidate has had to make. Find out how they came to the decision, who it affected and what the outcome was.

I like to hear from a candidate on the topic of an occasion when performance or conduct was criticized. Did she think it was deserved or not? Why? Get the details to help you make an assessment of the candidate's maturity relevant to the job you need filled.

And, I'd like to hear about times the candidate truly was excited about work. What was the project? Why was it so interesting?

#### SUMMARY

Behavioral and competency-based interviewing is a results-oriented discussion. You have to learn enough from the candidates to assess whether their previous job performance and conduct apply to the job under discussion.

Hiring employees is an important performance management function and a source of potential employment risk. Lower the risk. Prepare for the interview, and turn your interviews into high-quality information-gathering discussions

which lead to effective hiring and to retention of outstanding performers. ❁

#### RESOURCES

1. Behavioral Interviewing, Behavioral Technology, Inc. 1992.
2. Webster, Eleanore W., CMC, SPHR, "Interviewing Techniques," training materials, 2002.
3. Wood, Mark G., SPHR, "Interview-

ing and Selecting Exceptional People," supervisor training materials for the City of Surprise, AZ, 2005.

#### Questions or Comments?

Please send your replies to [feedback@vwm-online.com](mailto:feedback@vwm-online.com).

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the other required forms are available on the TABC's website.

Read and follow the instructions carefully—for instance, when listing the names of people, make sure to follow the order specified on the forms (Last, First, Middle). There's extra incentive to do it right the first time: Texas requires any corrections to be done by notarized affidavit.

You must enclose copies of your winery's TTB Basic Permit and your state winery license. If your winery is operated by a business entity, you will also need to submit a copy of your filed Articles of Incorporation, Articles of Organization, or Certificate of Formation for the entity. Fortunately, you do not need to qualify your entity with the Texas Secretary of State to get a direct shippers permit.

Finally, your completed application, the issued bond, your supporting documents, a list of brands and products you propose to ship to Texas consumers, copies of the approved Certificates of Label Approvals (COLAs), and a \$75 check should be sent to TABC headquarters for processing. If your filing is complete and correct, you can have your permit in two to three weeks. The TABC is e-mail friendly, so we recommend giving them your e-mail address to speed communications about your application.

#### THE NY RECIPROCAL RULING

In New York, another direct shipping newcomer, the permitting process is even more complex. New York added a unique and daunting requirement: The New York State Liquor Authority (SLA) requires the submission of a "reciprocity ruling" from your state's ABC. This requirement has stymied wineries in many states; if you can't get it, the party's over.

We suggest you contact your state ABC or a winery trade organization in your state before starting the process to see if such a ruling has been issued. If your winery is located in California, you can go straight to the following link to obtain a copy of California ABC's reciprocity ruling, which paradoxically satisfied New York even though California is now a "permit" state for direct shipping: [www.abc.ca.gov/BP/NY%20Wine%20Reciprocity.pdf](http://www.abc.ca.gov/BP/NY%20Wine%20Reciprocity.pdf).

The reciprocal provision of the New York law limits the amount you can

ship into New York, based on what your state allows to be shipped to its residents. While the New York law permits wineries to ship up to 36 cases per year to a New York resident, if your state law allows a lesser amount to be shipped to consumers in your state, then you may not ship more than that to New York consumers. (See sidebar, A Word About Reciprocity.)

If you can satisfy the reciprocity requirement, you're ready to rumba.

#### THE TWO-STEP TAX DANCE

Like Texas, New York requires tax registrations for direct shippers. The good news is that a bond or other security is not required and the tax applications can be processed concurrently with your direct shipper's application. The bad news is the New York Two-Step requires some fancy footwork.

To get your direct shipping license, you will need a Certificate of Authority to Collect Sales Taxes issued. But wait! The New York Department of Taxation and Finance (DTF) will not issue the

Certificate unless the SLA approves your application for a direct shipper's permit.

That sounds like a Catch-22, but here's how you can handle it: You wait for the SLA to tell the DTF that it has "conditionally approved" your direct shippers license. Then, DTF issues your tax certificate and you send a copy of the tax certificate to the SLA to complete the process of getting your direct shippers license issued. Needless to say, if you want to get your license quickly you should facilitate the communication between the SLA and DTF.

#### YOUR MOVES IN THE DANCE

Out-of-state wineries file an Application for Registration as Sales Tax Vendor [Form DTF-17] and an Application for Registration as a Distributor of Alcoholic Beverages [Form TP-215] with the DTF. The forms are available on-line at [www.tax.state.ny.us/](http://www.tax.state.ny.us/); use the "Locate Forms by Number" feature to find the forms. The Application for Registration as a Distribu-



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