

Frequently Asked Questions: Private Label Products

The following questions and answers address rules regarding the sale of private label products in Pennsylvania and are intended to correct and clarify any misunderstandings that may have arisen since the passage of Act 39 of 2016.

1. What is a “private label” product?

“Private label” is defined in section 102 of the Liquor Code as “a product made under contract by a manufacturer or the manufacturer's agent for the exclusive right of a retailer.” 47 P.S. § 1-102. Essentially, a product is a “private label” if it is only available to one retailer.

2. May the Pennsylvania Liquor Control Board (“PLCB”) sell private label products?

No. The PLCB is prohibited from selling private label products, except those products still in its current inventory. 47 P.S. § 2-207(b)(9).

3. If a licensed restaurant/hotel holding a wine expanded permit (“WEP”) is interested in selling a “private label” exclusive wine, is that allowable in Pennsylvania?

No. A licensed restaurant/hotel holding a WEP is not permitted to sell “private label” wine for on-premises or off-premises consumption, since a WEP holder is prohibited from selling a private label product. 47 P.S. § 4-415(g).

4. Does the analysis change if a single entity holds multiple restaurant/hotel licenses with WEPs? In other words, can a single entity that holds multiple restaurant/hotel licenses with WEPs, sell a wine product that is not otherwise made available to other retail license holders in Pennsylvania?

No. A product that is available to only one retailer in Pennsylvania would be considered a “private label” product, even if that retailer holds multiple licenses.

5. If a licensed restaurant/hotel that does not hold a WEP is interested in selling a “private label” exclusive wine, is that allowable in Pennsylvania?

Maybe. A licensed restaurant/hotel that does not hold a WEP would not be able to purchase private label wine from the PLCB, because the PLCB is not authorized to sell private label products. 47 P.S. § 2-207(b)(9). However, such a restaurant/hotel could sell private label wine for on-premises consumption only if it purchased the wine from a PLCB-licensed limited winery that produced it.

6. If a licensed restaurant/hotel is interested in selling a “private label” spirit, is that allowable in Pennsylvania?

Maybe. A licensed restaurant/hotel would not be able to purchase private label spirits from the PLCB, because the PLCB is not authorized to sell private label products. 47 P.S. § 2-207(b)(9). However, such a restaurant/hotel could sell private label spirits for on-premises consumption only if it purchased the spirit from a PLCB-licensed distillery or limited distillery that produced it.

7. Can a licensed restaurant/hotel holding a WEP evade the “private label” prohibition by arranging for another retailer to purchase a *de minimis* amount of the item in question?

“Private label” is defined in section 102 of the Liquor Code as “a product made under contract by a manufacturer or the manufacturer's agent for the exclusive right of a retailer.” 47 P.S. § 1-102. If a specific label of wine is made available to only a handful of retailers, there would be a need to further review the situation to see if the private label prohibition is being violated. Factors that would be considered would include but not be limited to whether a particular retailer asked the manufacturer to produce the label, the amount of product each retailer purchased and whether the retailer has made the product available for resale. Ultimately, the matter may be referred to the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), since it is the BLCE and not the PLCB that enforces the Liquor Code.

8. Can a licensed restaurant/hotel holding a WEP run afoul of the “private label” prohibition by purchasing a limited winery’s entire remaining inventory of a specific label?

As noted earlier, if a specific label of wine is acquired by only a handful of retailers, there would be a need to further review the situation to see if the private label prohibition is being violated. Factors that would be considered would include but not be limited to whether a particular retailer asked the manufacturer to produce the label, the amount of product each retailer purchased and whether the retailer has made the product available for resale. A retailer that purchased the last 1,000 gallons of a 2,000-gallon production run will obviously be seen in a different light than one that purchased the last 1,000 gallons of a 1,020-gallon production run. Again, depending on the circumstances, the matter may be referred to BLCE for further investigation.

9. How would the “private label” exclusive wine be handled in a situation where a single entity holds multiple restaurant/hotel licenses and some of the licenses have WEPs and some do not have WEPs?

For the licenses that have a WEP, refer to the response to Question #3 and for the licenses that do not have a WEP, refer to the response to Question #5.