

Administrative Release

Comptroller of Maryland • Field Enforcement Division • Motor-fuel, Alcohol and Tobacco Tax Regulatory Bureau
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AB-41

April 23, 2010

TO: ALCOHOLIC BEVERAGES LICENSED MANUFACTURERS AND WHOLESALERS,
AND COUNTY DISPENSARIES

SUBJECT: PRICE POSTINGS AND VOLUME DISCOUNTS

In a bulletin dated January 15, 2010, we advised you that the decision by the U.S. Court of Appeals for the Fourth Circuit in *TFWS, Inc. v. Comptroller of Maryland* was final. As a result, the following provisions of Article 2B, Alcoholic Beverages, Annotated Code of Maryland and its accompanying regulations are not enforceable:

- (1) The post-and-hold pricing provisions of Article 2B, §12-103(c) and the Code of Maryland Regulations (COMAR) 03.02.01.05(A) through (D), (E)(5),(7), (8); and
- (2) The prohibition on volume discounts of Article 2B, §12-102(a) and specifically COMAR 03.02.01.05(B)(3)(c).

The price discrimination provision of Article 2B, §12-102(a) remains enforceable, which means that while volume discounts are permissible, those discounts must be offered on a uniform, non-discriminatory basis. Complaints about price discrimination in volume discounts will be investigated, and a request made for substantiation of prices. This issue will be handled on a case-by-case basis.

As a general rule, the non-discrimination provision should be clear in its application. However, at a licensee's discretion, a request may be made to the Field Enforcement Division for an evaluation of a proposal for offering volume discounts to determine whether it complies with the price discrimination provision of Article 2B, §12-102(a).

Jeffrey A. Kelly
Director