

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**



December 8, 2015

Mr. John J. Manfreda
Administrator
Tax and Trade Bureau
Department of Treasury
1310 G Street, N.W.
Washington, D.C. 20005

Re: Legal Status of National Retailer Program

Dear Mr. Manfreda:

We, the undersigned trade associations representing the wine and distilled spirits industry, are writing to advise you of concerns about the legal status of the “category management” program recently announced by Kroger.

As we understand, Kroger, one of the nation’s largest retailers operating a national grocery store chain in over 30 states, plans to establish a “Planogram Center of Excellence” team. This team, which is the Southern Wine & Spirits Kroger Center of Excellence for job postings and hires, is to provide, among other things, analytic support, planogram process execution with in-store shelf layouts and arrangements of wine, beer and distilled spirits, including which products will be carried, and in-store set-ups and resets that will occur on a continuous, daily basis. Kroger has selected Southern Wine & Spirits to establish and manage this team, and they are asking industry members to fund the costs associated with the program.

The new Kroger program raises serious issues regarding compliance with the requirements of the Federal Alcohol Administration Act and applicable TTB regulations, as well as state laws. It appears, among other things, to run afoul of the prohibitions related to providing items of value to a retailer either directly through payments or through indirect inducements, such as paying for arrangements with Kroger’s merchandising companies. In particular, it does not appear permissible for a supplier or a wholesaler to fund the costs of a “category management” program implemented by a retailer pursuant to the federal statutory and regulatory scheme under which industry members operate.

Our members are very concerned about this program since producers and distributors hold TTB basic permits required by the FAA Act. As you know, these permits are conditioned upon compliance with all federal and state laws governing beverage alcohol. Our members have

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sought our advice about the legal status of the Kroger program and we have advised that the program may put their basic permit at risk given that adherence to both the provisions of federal and state laws is required for their continued business operations.

Before proceeding with the requests from Kroger and Southern Wine & Spirits to participate in the program, there must be assurances that the Kroger program and its funding mechanism do not violate the FAA Act and TTB regulations. We have similar concerns regarding this program in terms of its compliance with the requirements of state statutory/regulatory schemes that also must be addressed.

Unless these determinations are made, we cannot in good faith advise our members to give further consideration to a program of this kind. We greatly appreciate your immediate attention to this serious matter.

Please let us know if you have any questions and we are reachable at all times.

Sincerely,



Dr. Peter H. Cressy
Distilled Spirits Council



Mr. Robert P. Koch
Wine Institute



Ms. Lynne J. Omlie
Distilled Spirits Council



Mr. Wendell Lee
Wine Institute

cc: Mr. Mark J. Mazur
Assistant Secretary for Tax Policy
Department of Treasury

Mr. Timothy Skud
Deputy Assistant Secretary for Tax, Trade and Tariff Policy
Department of Treasury