

**TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**AGENDA**

**Tuesday, April 26, 2016**

**1:30 pm**

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**1. APPROVAL OF THE MARCH COMMISSION MEETING MINUTES**

**2. RETAIL MATTERS**

**A. OLD BUSINESS**

**B. NEW BUSINESS**

**1. SONYA'S X-PRESS WINE & LIQUOR (LICENSE NO. 3887)  
PIKEVILLE, TENNESSEE (BLEDSOE COUNTY)**

Applicant: Sonya H. Nale (sole proprietor)

Current location: 1378 US 127 By Pass, Pikeville, TN 37367

New location: 931 US 127 By Pass, Pikeville, TN 37367

Retail licensee no. 3887 is requesting Commission approval to transfer locations as specified above. Ms. Nale has a bank loan to use purchase the real property where the business is being transferred to, but cannot close on the purchase until she receives TABC approval. The TABC staff recommends conditional approval of this request, subject to receipt of the following:

- a. Copy of executed note after closing
- b. Certificate of Occupancy
- c. TABC inspection
- d. Acknowledgment of TABC Rules & Regulations

**2. COLONEL STEVE'S WINE & LIQUOR  
JOHNSON CITY, TENNESSEE (WASHINGTON COUNTY)**

Applicant: Appalachian Basin Assets, Inc.

Shareholder(s): Philip D. Scharfstein, 45%<sup>1</sup>

Rena P. Scharfstein, 45%

Melanie J. Bowman, 10%

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<sup>1</sup> Philip Scharfstein, Rena Scharfstein, and Melanie Bowman are shareholders of One Stop Discount Wine & Liquors, Inc. dba One Stop Wine & Spirits (license no. 1011) doing business at 1735 W. State of Franklin Rd., Johnson City, Tennessee 37604.

Current licensee: Steve Taylor, dba Colonel Steve’s Wine & Liquor (license no. 3090)  
 Proposed licensee: Appalachian Basin Assets, Inc. dba Colonel Steve’s Wine & Liquor

Before the Commission is a request for approval of a complete transfer of ownership regarding the retail store located at 800 W. Market St., Johnson City, TN 37604. Mr. Scharfstein is investing personal funds into the business and the applicant is purchasing the business from the seller for \$30k (plus inventory).<sup>2</sup> Landlord, Steven A. Taylor, is leasing the premises to the applicant for a one year term at a monthly rental rate of \$1500. The TABC staff recommends approval of this request; both outstanding items listed below have been received.

- a. ~~Sales tax number~~- received
- b. ~~License fee~~ – received

**3. M’BORO CITY LIMITS LIQUORS & WINE  
 MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: SUN5353 Inc.  
 Shareholder(s): Sanjaykumar Patel

Before the Commission is a request for licensing of a retail business to be located at 5353 NW Broad St., Murfreesboro, Tennessee 37129. Mr. Patel is investing approximately \$75k of personal funds, as verified by TABC staff. The applicant will lease the premises from JCM Inc. for an initial term of five years at a monthly rental rate of \$2500. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. Acknowledgment of TABC Rules & Regulations
- c. License fee

**4. GOODFELLAS WINE & SPIRITS  
 LOUDON, TENNESSEE (LOUDON COUNTY)**

Applicant: Redskin Café, Inc.  
 Shareholder(s): Jay Alawadi, President 100%  
 Shannon Alawadi, Secretary

Current: 72 Wine & Spirits, LLC (Carolyn James, 100%) d/b/a 72 Wine & Spirits (license no. 3688)

Proposed: Redskin Café, Inc. d/b/a Goodfellas Wine & Spirits

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<sup>2</sup> In accordance with Tennessee law, Sellers are to transfer title and possession of the liquor inventory to the applicant via TABC licensed wholesalers’ involvement.

Before the Commission is a request for a complete transfer of ownership concerning the retail business located at 12353 Highway 72 North, Loudon, Tennessee 37774. Mr. Alawadi is investing \$350k of personal funds into the business and the applicant is purchasing the business (and inventory) from the seller for a purchase price of \$200k.<sup>3</sup> J and L Properties, landlord, is leasing the premises to the applicant for a term of five years at a monthly rental rate of \$3,000.<sup>4</sup> The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. License fee

**5. GORDINS WINE & LIQUOR SHOPPE (LICENSE NO. 4066)  
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: Gordin LLC<sup>5</sup>

Licensee no. 4066 is requesting approval to expand the premises of the retail package store located at 3234 Thomas Street, Memphis, TN 38127. Applicant recently acquired the business and is making renovations to remodel the store. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. certificate of occupancy (after build-out)
- b. TABC Inspection (after build-out)

**3. WINERY MATTERS -**

**A. OLD BUSINESS - none**

**B. NEW BUSINESS**

**1. GOODWATER WINERY AT HARTFORD  
HARTFORD, TENNESSEE (COCKE COUNTY)**

Applicant: Goodwater Vineyard, LLC<sup>6</sup>

Goodwater Vineyard, LLC is a TABC licensed winery (W-88) in Bybee, Tennessee<sup>7</sup> and is now requesting approval for the issuance of satellite permit to do business at 3112 Big Creek Rd., Hartford, Tennessee 37753. Applicant is leasing the premises for the satellite location from landlords, Gary and Valerie Baxter, for a monthly rental rate of \$1500. All items have been received and completed, including the license fee & TABC inspection, and the TABC staff recommends approval of this request.

<sup>3</sup> In accordance with Tennessee law, Sellers are to transfer title and possession of the liquor inventory to the applicant via TABC licensed wholesalers' involvement.

<sup>4</sup> The applicant will have an option to purchase the real property.

<sup>5</sup> Michael Gordin, 75% and Toby M. Gordin, 25%

<sup>6</sup> Members: Michael Hood, 50% and Family Trust of Carol Hood, 50%.

<sup>7</sup> Goodwater Vineyard is licensed as winery at 1869 Goodwater Rd., Bybee, Tennessee 37713.

**2. HILLSIDE WINERY AT OLD MILL  
PIGEON FORGE, TENNESSEE (SEVIER COUNTY)**

Applicant: Hillside Winery, Inc.<sup>8</sup>

Applicant, Hillside Winery Inc., is a TABC licensed winery (W-66) in Sevierville, Tennessee<sup>9</sup> and is requesting approval for the issuance of a satellite permit to do business at 3331 S. River Rd., Pigeon Forge, Tennessee 37863. Applicant is leasing the premises from Old Mill Winery Inc., for approximately \$8k per month.<sup>10</sup> With the exception of the items listed below the summary all items and requirements have been received, including the license fee, TABC Inspection, and Acknowledgement of TABC Rules. The TABC staff recommends conditional approval, subject to the following:

- a. ~~Certificate of occupancy~~ (received prior to meeting)

**3. SUGARLAND CELLARS  
GATLINBURG, TENNESSEE (SEVIER COUNTY)**

Applicant: Sugarland Cellars, Inc.<sup>11</sup>

Applicant, Sugarland Cellars Inc., is a TABC licensed winery (W-71) at 1333 Parkway, Gatlinburg, TN 37738, and is before the Commission to request approval for the issuance of a satellite permit to do business at 631 Parkway, Gatlinburg, TN 37738. Applicant is leasing the premises from landlord, AJO Enterprise, for a term of five years at a monthly rental rate of approximately \$8,000. The TABC staff recommends conditional approval for this request, subject to receipt of the following:

- a. TABC Inspection and agent report
- b. Acknowledgment of TABC Rules & Regulations

**4. FARM WINERY MATTERS - none**

**5. WHOLESALE MATTERS**

**A. NEW BUSINESS**

**1. VINOSLATE IMPORTS AND DISTRIBUTION, LLC**

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<sup>8</sup> Shareholder(s): Phillip Don Collier, 50% and Kay Collier-Pittman, 50%

<sup>9</sup> Hillside Winery, Inc. dba Hillside Winery (W-66) doing business at 229 Collier Dr., Sevierville, Tennessee 37862.

<sup>10</sup> Old Mill Winery, Inc. agreed for Mountain Valley Vineyards, Inc. (lessee) to assign its lease to the applicant.

<sup>11</sup> Phillip Don Collier, 40%; Sara Ogle Vallentine, 20%; James D. Ogle, 20%; Nickolas Ogle, 10%; Jacob Ogle, 10%

**BLOUNTVILLE, TENNESSEE (SULLIVAN COUNTY)**

Applicant: Vinoslate Imports and Distribution, LLC  
Member(s): Kristen Fields-Reedy, 100%

Current location: 1709 Midpark Drive, Suite B., Knoxville, TN 37921  
Proposed location: 3330 Highway 11W, Blountville, TN 37664

Before the Commission is a request for wholesale licensee no. 85 to transfer locations as specified above. Applicant will lease the premises from Reedy Global Holdings, Family, LLC, for an initial term of two years at a monthly rental rate of \$3,500. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. certificate of occupancy or letter from city/county stating than a c/o will not be issued
- b. amended basic permit

**6. DISTILLERY/BREWERY**

**A. NEW BUSINESS**

**1. BLACKBERRY FARM BREWERY  
MARYVILLE, TENNESSEE (BLOUNT COUNTY)**

Applicant: Blackberry Farm, LLC  
Member(s): Blackberry Hotel Co. 75 %  
Tang Tennessee, LLC 25 %  
Sam Beall IV<sup>12</sup>, President  
Sam Beall III, Secretary  
Matthew Alexander, Vice President

Before the Commission is a request for licensing to manufacture beer at 910 E. Harper Street, Maryville, Tennessee 37804. Financing for the business has been verified by staff and lease is not required as the applicant is the owner of the real property. The TABC staff recommends approval of this request; items (a) listed below is now resolved.

- a. ~~license cannot be issued before SB2396 takes effect~~<sup>13</sup> SB2396 was signed by Governor Haslam on 4.12.16

<sup>12</sup> Mr. Sam Beall IV passed away in early 2016.

<sup>13</sup> SB2396 allows Blackberry Farms to hold a manufacturer's license or nonmanufacturer nonresident seller permit in addition to holding a license for consumption of alcoholic beverages on premise. The bill can be found at <http://www.capitol.tn.gov/>

**7. PRIVATE CLUBS –**

**1. CENTENNIAL CLUB  
NASHVILLE, TENNESSEE 37215**

Applicant: Centennial Club

Officers: Jane B. Corcoran, 0%  
Sarah Ann Ezzell, 0%  
Susan B. Bowen, 0%

Before the Commission is a request for licensing of a not-for-profit private club located at 2805 Abbot Martin Rd., Nashville, Tennessee. The applicant owns the real property where the club is located and is a nonprofit organization organized and existing under the laws of the state of Tennessee. The club - organized and operated exclusively for pleasure, recreation and other non-profit purposes - has 800 members each paying \$575 in annual dues. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC Inspection
- b. Acknowledgment of TABC Rules & Regulations
- c. bond email
- d. liquor price schedule
- e. license fee

**8. RETAIL FOOD STORES**

**1. STEPHERSON INCORPORATED  
5150 American Way, Memphis, TN 38115**

This matter was continued from the March meeting.

TABC staff is recommending conditional approval for the following six retail food stores:

\*Effective date of licenses to be July 1, 2016.

\*All retail food store applicants will need certification of a Responsible Wine Vendor Program, a TABC inspection, Acknowledgment of TABC Rules and Regulations, and all designated managers must be permitted. License fees are required for each

- |                                     |                     |         |       |
|-------------------------------------|---------------------|---------|-------|
| a. Superlo Foods (Superlo Foods #1) | 4744 Spottswood     | Memphis | 38117 |
| b. Superlo Foods (Superlo Foods #2) | 2155 Covington Pike | Memphis | 38128 |
| c. Superlo Foods (Superlo Foods #3) | 3327 N. Watkins     | Memphis | 38127 |
| d. Superlo Foods (Superlo #4)       | 6532 Winchester     | Memphis | 38115 |
| e. Stepherson's (Superlo #5)        | 3942 Macon Rd.      | Memphis | 38122 |
| f. Superlo Foods (Superlo Foods #6) | 4571 Quince Rd.     | Memphis | 38117 |

**2. KROGER LIMITED PARTNERSHIP 1<sup>14</sup>**

Business Address: 1014 Vine St., Cincinnati, Ohio  
 Registered Office in TN: 530 Gay St., Knoxville, TN 37902

Officers: Christine S. Wheatley, President & Secretary; Todd A. Foley, V.P and Treasurer

TABC staff recommends conditional approval of the 85 retail food stores listed below, subject to the receipt/resolution of conditions noted below each in addition to the following conditions:

\*Effective date of licenses to be July 1, 2016. License fees are required are each.

\*All will require certification of a Responsible Wine Vendor Program, TABC inspection, Acknowledgment of TABC Rules and Regulations, and all designated managers must be permitted.

Store#				Additional items/Clarification needed
#288	1977 S. 3RD STREET	MEMPHIS	38109	
#328	1664 EASE STONE DR	KINGSPORT	37660	deed doesn't match landlord
#367	1805 W. STATE OF FRANKLIN	JOHNSON CITY	37604	addendum
#387	240 NEW BYHALIA RD	COLLIERVILLE	38017	certificate of occupancy
#391	1059 MINERAL WELLS	PARIS	38242	certificate of occupancy; addendum
#392	2525 LAKE ROAD	DYERSBURG	38024	
#393	8039 HWY. 51 NORTH	MILLINGTON	38053	addendum; certificate of occupancy
#398	941 N. PARKWAY	JACKSON	38305	
#401	4770 RIVERDALE ROAD	MEMPHIS	38141	addendum
#413	2269 LAMAR AVE.	MEMPHIS	38114	
#415	1366 POPLAR AVE	MEMPHIS	38104	addendum
#419	7735 FARMINGTON BLVD	GERMANTOWN	38138	certificate of occupancy
#430	5540 SOUTH MENDENHALL	MEMPHIS	38117	Phong Vu Questionnaire
#433	11630 HIGHWAY 51 S.	ATOKA	38004	certificate of occupancy
#438	3860 AUSTIN PEAY HIGHWAY	MEMPHIS	38128	
#439	4264 SUMMER AVE.	MEMPHIS	38122	
#440	9025 U S HIGHWAY 64	LAKELAND	38002	
#448	41 STONEBROOK PLACE	JACKSON	38305	
#456	7615 HIGHWAY 70	BARTLETT	38133	certificate of occupancy
#463	11635 HIGHWAY 70	ARLINGTON	38002	
#468	35 W. UNIVERSITY PKWY	JACKSON	38305	
#481	3685 HOUSTON LEVEE ROAD	COLLIERVILLE	38017	
#484	775 PICKWICK ROAD	SAVANNAH	38372	
#486	1212 EAST SHELBY DRIVE	MEMPHIS	38116	
#488	3444 PLAZA AVENUE	MEMPHIS	38111	
#489	2942 KIRBY WHITTEN ROAD	BARTLETT	38134	

<sup>14</sup> KRGP INC. an Ohio Corporation, -the General Partner of Kroger Limited Partnership 1. KRGP Inc. operates as a subsidiary of The Kroger Co.

#491	799 TRUSE PARKWAY	MEMPHIS	38117	
#502	800 MONROE STREET	NASHVILLE	37208	
#503	1840 DECHERD BLVD.	DECHERD	37324	
#506	2217 N. BROADWAY STREET	KNOXVILLE	37917	
#514	200 GALLATIN PIKE SOUTH	NASHVILLE	37115	
#519	170 E. MAIN STREET	HENDERSONVILLE	37075	
#521	1622 MIDDLE TENNESSEE BLVD	MURFREESBORO	37130	site plan
#523	143 HENSLEE DRIVE	DICKSON	37055	deed
#525	9501 NORTHSORE DR	KNOXVILLE	37922	
#526	2020 MALLORY LANE	FRANKLIN	37067	addendum; certificate of occupancy
#529	1776 W. NORTHFIELD BLVD	MURFREESBORO	37129	addendum
#533	3930 CLARKSVILLE PIKE	NASHVILLE	37218	certificate of occupancy
#534	301 S. ELLINGTON PKWY.	LEWISBURG	37091	
#537	5713 EDMONDSON PIKE	NASHVILLE	37211	
#539	2325 MEMORIAL BLVD	MURFREESBORO	37129	
#540	2100 LOWES DRIVE	CLARKSVILLE	37040	
#541	123 NORTHCREEK BLVD.	GOODLETTSVILLE	37072	Discrepancy-owner of prop. listed on app diff. than deed
#542	61 EAST THOMPSON LANE	NASHVILLE	37211	
#543	2946 S. CHURCH STREET	MURFREESBORO	37127	
#544	1489 MADISON STREET	CLARKSVILLE	37042	
#545	510 HWY 76	WHITE HOUSE	37188	
#547	5705 CHARLOTTE PIKE	NASHVILLE	37209	certificate of occupancy
#549	6702 CLINTON HIGHWAY	KNOXVILLE	37912	addendum
#550	8141 STATE HIGHWAY	NASHVILLE	37230	Discrepancy-deed says Trace Crk., app says comp. owned
#553	463 SAM RIDLEY PKWY WEST	SMYRNA	37167	
#558	4414 ASHEVILLE HIGHWAY	KNOXVILLE	37914	
#559	1010 NORTH MAIN STREET	SHELBYVILLE	37160	
#562	702 WINFIELD DUNN PARKWAY	SEVIERVILLE	37876	
#564	2050 LASCASSAS PIKE	MURFREESBORO	37130	deed says owned by city-need clarification
#567	2201 21ST AVE SOUTH	NASHVILLE	37212	addendum; certificate of occupancy
#569	2011 NASHVILLE PIKE	GALLATIN	37066	certificate of occupancy
#570	3054 COLUMBIA AVE	FRANKLIN	37064	
#571	1010 GLENBROOK WAY	HENDERSONVILLE	37075	
#578	401 S. MT. JULIET RD, STE 200	MOUNT JULIET	37122	
#582	110 DOVER CROSSING RD	CLARKSVILLE	37042	addendum-shopping center; lease
#588	4726 TRADERS WAY	THOMPSON STATION	37179	
#589	6690 NOLENSVILLE RD	BRENTWOOD	37027	certificate of occupancy
#596	210 FRANKLIN ROAD, STE 100	BRENTWOOD	37027	addendum; certificate of occupancy
#599	265 HIGHLAND SQUARE	CROSSVILLE	38555	addendum-shopping center; deed
#628	1820 ROAN STATE HIGHWAY	HARRIMAN	37748	
#683	507 N. FOOTHILLS PLAZA	MARYVILLE	37801	
#684	9225 KINGSTON PIKE	KNOXVILLE	37922	
#690	1550 OAK RIDGE TURNPIKE	OAK RIDGE	37830	
#698	5201 NORTH BROADWAY	KNOXVILLE	37918	

#843	4560 HARDING RD	NASHVILLE	37205	deed
#862	244 S. HALLS ROAD	ALCOA	37701	addendum-shopping center; lease
#866	4400 LEBANON RD.	HERMITAGE	37076	addendum-shopping center
#870	4440 WESTERN AVE	KNOXVILLE	37921	
#880	711 GALLATIN AVE	NASHVILLE	37206	cert. of occupancy; deed
#884	3410 GALLATIN PIKE	NASHVILLE	37216	
#893	445 SOUTH JEFFERSON AVE	COOKEVILLE	38501	cert. of occ.
#897	845 NASHVILLE PIKE	GALLATIN	37066	
#518	5544 OLD HICKORY BLVD	HERMITAGE	37076	landlord affidavit
#530	9161 MIDDLEBROOK PIKE	KNOXVILLE	37923	addendum
#532	2449 OLD FORT PARKWAY	MURFREESBORO	37128	
#561	1905 N. JACKSON ST., STE. 500	TULLAHOMA	37388	
#451	2835 KIRBY PARKWAY	MEMPHIS	38119	
#557	1418 W. MAIN ST., SUITE A	LEBANON	37087	
#536	220 WEARS VALLEY RD.	PIGEON FORGE	37863	

**3. FOOD LION, LLC<sup>15</sup>**

Address: 2110 Executive Dr., Salisbury, NC 28145  
 Registered Tennessee office: 500 Tallan Building, Two Union Square, Chattanooga, TN 37402

Officers: Margaret Miller Ham, President; Gerald Linn Evans, SVP/Secretary; Greg Amoroso, SVP Treasurer; Gregory Finchum, VP Retail Operations

\*Effective date of licenses to be July 1, 2016.

\*All retail food store applicants will need certification of a Responsible Wine Vendor Program, a TABC inspection, Acknowledgment of TABC Rules and Regulations, and all designated managers must be permitted. License fees are required for each

TABC staff is recommending conditional approval for the following three retail food stores:

- a. Food Lion #218 3120 Bristol Hwy Johnson City 37601
- b. Food Lion #886 329 Colloredo Blvd. Shelbyville 37160
- c. Food Lion #874 2304 Madison St. Clarksville 37401

**9. INITIAL ORDERS TO BE REVIEWED BY THE COMMISSION – none**

**10. SERVER APPEALS - none**

**11. MISC – 1. REQUEST ON BEHALF OF GROCERS – submitted by Matthew J. Scanlan of GSRM Law**

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<sup>15</sup> Delhaize America, LLC – 100%

Before the Commission is a request for the Commission to delegate its authority to approve retail food store licenses to the Executive Director and direct the Executive Director to issue pre-approval letters to those who have complete and approved applications.

Mr. Scanlan “proposes that the Executive Director of the TABC be given authority to issue all complete, uncontested, and undisputed license applications received by the Commission [and] would request that the Executive Director exercise his or her discretion on whether an application should be referred to the Commission for further inspection.” Per the request, “we are very concerned that some completed applications will not make it onto the agenda for the May and June meeting [and] further, waiting until the June meeting for regular approval by the board would not allow those applicants to benefit from the pre-stocking legislation as they would not get their approval until late June.” The requestor submits that allowing the Director to approve the applications would allow the Commission to focus on the applications needing further review.

**4. IN RE: DIEGO AMERICAS SUPPLY, INC. DBA GEORGE A. DICKEL, & CO. PETITION FOR DECLARATORY ORDER**

On December 15, 2015 a Petition for Declaratory Order was submitted to the TABC to request that the TABC “provide a declaratory order as to the interpretation, applicability, and validity of Tenn. Code Ann § 57-2-104 (the “Storage Statue”)” On February 23, 2016 the TABC staff filed a Notice of Hearing Regarding the Petition for Declaratory Order with the Secretary of State’s Office to be posted to the Administrative Register. The Notice (with Petition included) is published at the following web address: <http://tnsos.org/rules/Announcements.php>, and a copy is attached to this agenda.

**12. NEXT MEETING – Tuesday, May 24, 2016 at 1:30 p.m.**

**12. UPCOMING MEETINGS**

- Tuesday, May 24, 2016 at 1:30 p.m.
- Tuesday, June 28, 2016 at 1:30 p.m.
- July date (TBD)

Attachment to Follow

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN RE: )  
 DIAGEO AMERICAS SUPPLY, INC. )  
 d/b/a GEORGE A. DICKEL, & CO. ) Docket # 33.03-135867A  
 )  
 Petitioner. )

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NOTICE OF HEARING REGARDING PETITION FOR DECLARATORY ORDER

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Comes now the Tennessee Alcoholic Beverage Commission ("TABC" or "Commission"), by and through counsel and gives notice that a Petition for Declaratory Order, attached hereto as Exhibit A, has been received from Diageo Americas Supply, Inc. d/b/a George A. Dickel, & Co. requesting that the TABC declare that the storage requirements of T.C.A. § 57-2-104 do not apply to Petitioner or do not apply to the alcoholic beverages stored by Petitioner outside of the state of Tennessee.

This matter shall be heard on April 26, 2016 at 1:30 p.m., or as soon thereafter as the TABC may take up this matter, at 500 James Robertson Parkway (Davy Crockett Tower), Third Floor, Nashville, TN 37243. By agreement of Petitioner, the costs of this cause shall be taxed to the Petitioner.

SUMMARY OF PETITION

On December 15, 2015, Petitioner, Diageo Americas Supply, Inc. d/b/a George A. Dickel, & Co. ("Petitioner" or "George Dickel"), by and through counsel, lawfully filed a petition for a declaratory order to be issued by the TABC pursuant to T.C.A. § 4-5-223 and Tenn. Comp. R. & Regs. 0100-04-.04. The Petition asks the Commission to interpret T.C.A. § 57-2-104 (also referred to as "the Storage Statute") in relation to its applicability to Petitioner. The statute authorizes "the holder of a license issued pursuant to § 57-2-102, or the authorized agent of such licensee, to possess, store or transport the products of the manufacturing plant within, over and across the state; provided that any alcoholic beverages or wine produced at a plant located within this state shall be stored by the licensee only within the county authorizing the operation, or in a county adjacent to the county authorizing the manufacturing operation, and such possession shall be limited to storage facilities of such manufacturer, provided that such licensee may also possess such alcoholic beverages or wine while being transported, whether within or outside of the state.

Specifically, the Petitioner requests "that the Commission issue a declaratory order interpreting the Storage Statute, Tenn. Code Ann. § 57-2-103, to be inapplicable to the storage of Distilled Spirits outside the State of Tennessee" by Petitioner.

Entered this 12<sup>th</sup> day of February, 2016.

  
\_\_\_\_\_  
Joshua Stepp, BPR# 026615  
Staff Attorney  
Tennessee Alcoholic Beverage Commission  
Davy Crockett Tower  
500 James Robertson Parkway, 3rd Floor  
Nashville 37243  
615.741.1602

RECEIVED  
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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the Notice of Hearing was sent by U.S. Certified Mail, Return Receipt Requested, to Attorney Will T. Cheek, III, of Bone Mcallester Norton, PLLC located at 511 Union Street- Suite 1600 Nashville, TN 37219, on this 12<sup>th</sup> day of February, 2016.

  
\_\_\_\_\_  
Joshua Stepp, Staff Attorney

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN RE: )  
 )  
DIAGEO AMERICAS SUPPLY, INC. )  
d/b/a GEORGE A. DICKEL & CO., )  
 )  
Petitioner. )

Docket No. \_\_\_\_\_

DEC 15 2015

PETITION FOR DECLARATORY ORDER

Pursuant to Tenn. Code Ann. § 4-5-223 and Tenn. Comp. R. & Regs. 0100-04-.04, Diageo Americas Supply, Inc. d/b/a George A. Dickel & Co. ("Petitioner"), by and through counsel, respectfully petitions the Tennessee Alcoholic Beverage Commission ("the Commission") for review of Tenn. Code Ann. § 57-2-104 (the "Storage Statute").

Petitioner requests the Commission provide a declaratory order as to the interpretation, applicability, and validity of the Storage Statute. Petitioner seeks a declaratory order from the Commission finding that the Storage Statute does not apply to the storage of alcoholic beverages outside the State of Tennessee, consistent with the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl. 3.

**BACKGROUND FACTS**

1. Diageo Americas Supply, Inc. d/b/a George A. Dickel & Co. is a New York Corporation with its principal place of business in Norwalk, Connecticut.

2. Petitioner owns and operates the George Dickel Distillery, which has manufactured George Dickel® Tennessee Whisky in Cascade Hollow, near Tullahoma, Tennessee for more than 130 years. The George Dickel Distillery also manufactures other distilled spirits (George Dickel and other spirits are collectively referred to as "Distilled Spirits") in addition to its signature line of George Dickel® Tennessee Whisky products.

3. The Storage Statute provides as follows:

It is lawful for the holder of a license issued pursuant to § 57-2-102, or the authorized agent of such licensee, to possess, store or transport the products of the manufacturing plant within, over and across the state; *provided, that any alcoholic beverages or wine produced at a plant located within this state shall be stored by the licensee only within the county authorizing the operation or in a county adjacent to the county authorizing the manufacturing operation, and such possession shall be limited to storage facilities of such manufacturer;* and further provided, that such licensee may also possess such alcoholic beverages or wine while being transported, whether within or outside of the state. It is lawful for common carriers to transport the products of such manufacturing plant only pursuant to an agreement or contract with a licensee under this title.

Tenn. Code Ann. § 57-2-104 (emphasis added).

4. Petitioner has at all relevant times held “a license issued pursuant to § 57-2-102” that authorizes Petitioner to operate the George Dickel Distillery in Cascade Hollow, Tennessee.

5. Petitioner manufactures various Distilled Spirits at the George Dickel Distillery. Each of those Distilled Spirits meets the definition of an “alcoholic beverage” under the Tennessee Code.

6. Petitioner stores most Distilled Spirits manufactured at its George Dickel Distillery on site in Cascade Hollow. This currently includes all products sold as George Dickel® Tennessee Whisky.

7. Petitioner has transported some Distilled Spirits manufactured at its George Dickel Distillery (other than George Dickel® Tennessee Whisky) to a company-owned distillery in Kentucky and stores those Distilled Spirits there. Petitioner has not transported any product labeled Tennessee Whisky outside the State of Tennessee.

8. Under the Commerce Clause, Congress has the sole power to “regulate Commerce with foreign Nations, and among the several States.” U.S. Const. art. I, § 8, cl. 3.

9. State laws may not have extraterritorial effects. Under the Commerce Clause, a “state law that has the ‘practical effect’ of regulating commerce occurring wholly outside that State’s borders is invalid.” *Healy v. Beer Inst.*, 491 U.S. 324, 332 (1989). The Supreme Court summarized its cases on the extraterritorial effects of state economic regulation in the following three propositions: (1) the “Commerce Clause ... precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State,” (2) “a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State’s authority and is invalid regardless of whether the statute’s extraterritorial reach was intended by the legislature,” and (3) “the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if” other states passed similar laws. *Id.* at 336.

10. In order to be constitutional under the Commerce Clause of the U.S. Constitution, the Storage Statute cannot: (1) regulate transactions occurring out of state, (2) treat the interstate transportation and storage of Distilled Spirits manufactured in Tennessee differently than the intra-state transportation and storage of such products, (3) discriminate against out-of-state facilities and storage services, (4) force manufacturers to store their products in-state, or (5) provide economic protection to in-state storage services.

11. Under the canon of constitutional avoidance, a “statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.” *See, e.g., Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (citing *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916)). The Petitioner requests that this Commission avoid a statutory interpretation that would create serious constitutional issues.

12. The Tennessee legislature would not intend to create an unconstitutional statute. The canon of constitutional avoidance “allows courts to *avoid* the decision of constitutional questions” and provides a “tool for choosing between competing plausible interpretations of a statutory text,” with the presumption that the legislature did not intend the interpretation that raises constitutional concerns. *Clark v. Suarez Martinez*, 543 U.S. 371, 381 (2005) (emphasis in original); see *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring) (“When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.”). The Commission accordingly should determine that the legislature intended that the Storage Statute should be narrowly construed. Petitioner respectfully requests that the Commission issue an order finding that the Storage Statute does not apply to the storage of alcohol outside the State of Tennessee, consistent with the Commerce Clause, as the Tennessee Legislature would have surely intended.

#### CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Commission issue a declaratory order interpreting the Storage Statute, Tenn. Code Ann. § 57-2-104, to be inapplicable to the storage of Distilled Spirits outside the State of Tennessee.