STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

May 9, 2016

Opinion No. 16-18

Payment Method to Wholesalers by Retailers (liquor stores) vs. Retailer Food Stores (wine)

Question 1

Tennessee Code Annotated § 57-3-404(i) provides that discounts or pricing that are "made available [by a liquor wholesaler] to a retailer or retail food store wine licensee shall be made available on the same terms and conditions to other retailers and food store wine licensees." Tennessee Code Annotated § 57-3-404(g) allows wholesalers of alcoholic beverages to extend up to ten days' credit to retailers, but Tenn. Code Ann. § 57-3-813 requires retail food store wine licensees to pay wholesalers upon delivery. Do these statutory provisions, when read in conjunction, prohibit a wholesaler from extending credit to retailers other than retail food store wine licensees?

Opinion 1

No. Licensed wholesalers of alcoholic beverages may extend up to 10 days' credit to licensed retailers other than retail food store wine licensees.

ANALYSIS

The question is, in essence, whether a liquor wholesaler must require non-grocery-store liquor retailers to pay on delivery because wholesalers are statutorily prohibited from extending credit to grocery store wine retailers and, at the same time, wholesalers are statutorily required to offer every retail customer—grocery store and non-grocery-store retailers alike—the same discount or pricing on the same terms that it offers any other retail customer in its jurisdiction.

Three statutory provisions are involved in answering the question: Tenn. Code Ann. § 57-3-404(g), Tenn. Code Ann. § 57-3-404(i), and Tenn. Code Ann. § 57-3-813. They are all part of title 57, chapter 3, of the Tennessee Code. They are in pari materia, i.e., they all relate to one another and they all have the same purpose, namely the regulation of traffic in intoxicating liquor permitted by local option. In 2014, certain amendments were made to title 57, chapter 3, in conjunction with the passage of a new law that permitted grocery stores (referred to in the statutes as "retail food store wine licensees") to sell wine. Sections 57-3-404(i) and 57-3-813 are two such amendments.

As was the law before the 2014 amendments and as is still the law, a wholesaler may—but is not required to—sell alcoholic beverages to retailers on credit:

> No holder of a license for the sale of alcoholic beverages for wholesale or retail shall sell, deliver, or cause, permit or procure to be sold or delivered, any alcoholic

> beverages on credit, except that holders of wholesale licenses may sell on not more than ten (10) days' credit.

Tenn. Code Ann. § 57-3-404(g). Thus, wholesalers and retailers are generally prohibited from selling alcoholic beverages on credit, but wholesalers are permitted to sell on credit of up to 10 days.

With the 2014 amendments, the legislature created a specific exception to this 10-day credit provision by amending Tenn. Code Ann. § 57-3-813.[1] As amended, § 57-3-813 prohibits wholesalers from selling "any product to a retail food store wine licensee on credit" and affirmatively requires that "payment for all sales to such licensee by a wholesaler shall be effected upon delivery of the product." Thus, as of 2014, a wholesaler may extend credit for up to 10 days to any retailer other than a grocery store that is licensed to sell wine.

Also as part of the 2014 amendments, a wholesaler is now required to offer all its customers the same discount or pricing on the same terms and conditions that it offers any one customer:

> . . . Any discount or pricing made available [by a wholesaler] to a retailer or retail food store wine licensee shall be made available on the same terms and conditions to other retailers and food store wine licensees within the same jurisdiction.

Tenn. Code Ann. § 57-3-404(i).[2]

The question posed apparently stems from a concern that, (1) because a wholesaler has to offer all of its customers the same discount or pricing on the same terms, and (2) because credit is a term or condition of pricing and may be the functional equivalent of a discount, and (3) because a wholesaler may not extend credit to grocery store wine retailers, it might follow that a wholesaler may not extend credit to any customer at all, since doing so would result in offering more favorable discounts or pricing terms to non-grocery store retailers than to grocery store wine retailers. In other words, the question is premised on the idea that there is a conflict inherent in the three statutory provisions because, in order to comply with the requirement that all customers receive the same discounts and pricing on the same terms, a wholesaler can no longer offer credit to any customer since it cannot offer credit to grocery store customers.

Questions involving statutory construction must be answered in light of reason, bearing in mind the object and policy of the statute. *State v. Netto,* 486 S.W.2d 725, 728 (Tenn. 1972). Statutes, like the three provisions involved here, that relate to the same subject or that have a common purpose are to be construed together, so that one provision may be construed by considering the words and legislative intent indicated by the language of another provision. *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013). As particularly relevant here, a specific statutory provision will control over a more general statutory provision. *Matter of Harris,* 849 S.W.2d 334, 337 (Tenn. 1993).

[1]This amendment to Tenn. Code Ann. § 57-3-813 became law on May 23, 2014, and took effect immediately.

[2] The amendment added subsection (i) to Tenn. Code Ann. § 57-3-404. It was signed into law on March 20, 2014, and took effect on July 1, 2014.

When construing potentially conflicting statutes that are in *pari materia,* one must adopt the most reasonable construction that avoids any statutory conflict and that provides for harmonious operation of the laws. *Johnson v. Hopkins,* 432 S.W.3d 840, 848 (Tenn. 2013). A statute that does not repeal a previous law is cumulative to the previous law.[3] *Id.* The principles of statutory construction also require that every word and phrase be accorded meaning. *United Canners, Inc. v. King,* 696 S.W.2d 525 (Tenn. 1985). Put another way, a statute must be construed so that no part is inoperative, superfluous, void, or insignificant. *Tidwell v. Collins,* 522 S.W.2d 674 (Tenn. 1975).

Application of these principles of construction to the three statutory provisions at issue obviates any potential conflict and allows the provisions to be harmonized in concert with the legislative intent. The 2014 amendments must be read as cumulative to the pre-existing law and to each other. Thus, Tenn. Code Ann. § 57-3-404(i) is cumulative to Tenn. Code Ann. § 57-3-404(g), and Tenn. Code Ann. § 57-3-813 is cumulative to both those provisions. *See* notes 1 and 2, above. No one provision repeals or nullifies any other provision.

The statutory scheme provides as a general rule that wholesalers must offer the same discounts and pricing terms to all customers in their jurisdictions, grocery store retailers and non-grocery-store retailers alike. But the statutory scheme is then more specific with respect to the extension of credit, which it treats separately from pricing terms in general. The legislature specifically permits wholesalers (not retailers) to sell on credit for a very short period of up to 10 days to customers but provides, however, that retail food store wine licensees in particular may not buy on credit. These specific provisions with regard to the extension of credit control over the more general mandate that all customers be offered pricing on the same terms and conditions.

Harmonizing the three provisions in this way avoids any potential conflict, gives each provision meaning, does not read any provision out of the statutory scheme, and comports with the legislative intent that wholesalers may, in their discretion, continue to extend credit to liquor stores even though they may not extend credit to grocery stores that sell wine. Obviously, a wholesaler can refuse to extend credit to any given customer and, in that sense, can require non-grocery store retailers to pay on delivery.

[3] Because the legislature is presumed to know the law and to make new laws accordingly, the courts generally rely only on express repeals and avoid finding repeals by implication. *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013).

In sum, a wholesaler is required to offer the same discounts and the same pricing on the same terms and conditions to all its customers in its jurisdiction, subject to the statutorily permitted exception that the wholesaler, in its discretion, may extend up to 10 days' credit to retailers other than retail food store wine licensees.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

SARA BETH MYERS
Assistant Attorney General

Requested by:

The Honorable Bill Ketron
State Senator
5 Legislative Plaza
Nashville, TN 37243