

**Tennessee Alcoholic Beverage Law:
Termination of
Distribution Contracts**



February 2016

Dear Tennessee Taxpayer,

This publication is designed to help taxpayers better understand the process for terminating an alcoholic beverages distribution contract in Tennessee. This process is a part of the Tennessee tax and regulatory structure associated with alcoholic beverages. Please take time to acquaint yourself with how this process may apply to you. This guide does not have the effect of law but is intended as an informal reference for taxpayers who wish to gain a better understanding of the requirements of terminating contracts to distribute alcoholic beverages in Tennessee. The guide is not intended as a substitute for the statutes or rules and regulations concerning Tennessee taxes, nor is it intended to be a statement of Department of Revenue policy. The information in this guide is current as of the date of publication but could change as the tax laws, their interpretation, and their application do change from time to time because of legislative action, reviews, and court decisions.

Periodically, registered taxpayers may be mailed information letters with updates on tax laws and policies. Be sure to read any letter you receive carefully; this information may save you time and money. Informational publications are also available for specific industries. Contact the Taxpayer Services Division to obtain these publications.

The Department of Revenue offers a toll-free tax information line for Tennessee taxpayers. The number is (800) 342-1003. If calling from Nashville or out-of-state, you may call (615) 253-0600. The Department of Revenue also offers a telecommunications device for the deaf (TDD) line at (615) 741-7398. Online assistance is available through the Revenue Help feature on www.tn.gov/revenue.

In addition, the Department of Revenue offers a miscellaneous hotline, which handles alcohol related questions. The statewide toll-free number is (844) 430-7678. If calling from Nashville or out-of-state, you may call (615) 253-0680.

If you have questions, please do not hesitate to contact any of the offices listed below.

Sincerely,

Taxpayer Services Division

Tennessee Department of Revenue
Taxpayer Services Division
Andrew Jackson Building, 8th Floor
500 Deaderick Street
Nashville, Tennessee 37242-1099

Toll Free: (800) 342-1003
Out-of-State: (615) 253-0600
TDD: (615) 741-7398

Regional Offices

Chattanooga:
1301 Riverfront Parkway
Suite 208
Chattanooga, TN 37402
(423) 634-6266

Jackson:
Lowell Thomas State Office Building
225 Dr. Martin L. King Jr. Drive
Ste. 340
Jackson, TN 38301
(731) 423-5747

Johnson City:
204 High Point Drive
Johnson City, TN 37601
(423) 854-5321

Knoxville:
7175 Strawberry Plains Pike
Ste. 209
Knoxville, TN 37914
(865) 594-6100

Memphis:
3150 Appling Road
Bartlett, TN 38133
(901) 213-1400

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TENNESSEE ALCOHOLIC BEVERAGES

Termination of Distribution Contracts

Summary

A manufacturer or importer may only introduce a brand of alcoholic beverages, as defined by TENN. CODE ANN. § 57-3-301(a) (2013), if there is a written contract between the manufacturer or importer and the Tennessee wholesale distributor who will sell that brand of alcoholic beverages in the State. This contract may not be terminated by the manufacturer or importer without “good cause, asserted in good faith.” The Commissioner of the Tennessee Department of Revenue (the “Commissioner”) determines whether there is good cause, asserted in good faith.

The following is a guide to the laws and procedures related to distribution contract termination requests. The guide is meant to provide an overview of the multi-step process. Manufacturers, importers, and wholesalers with more specific questions or needs are encouraged to contact the Tennessee Department of Revenue’s (the “Department”) Legal Office at (615) 741-2348.

Authority

Please refer to the following authority regarding the termination of alcoholic beverage distribution contracts. Copies may be accessed electronically through the hyperlinks below.

Statutory

[TENN. CODE ANN. § 4-5-301 et seq. \(2013\)](#)

- (To access, click on the hyperlinked code section above, or follow the website below, then click “I Agree,”

and drill down to Title 4, Chapter 5, Part 3).

- <http://www.lexisnexis.com/hottopics/tncode/>

[TENN. CODE ANN. § 57-3-301\(2013\)](#)

- (To access, click on the hyperlinked code section above or follow the website below, then click “I Agree,” and drill down to Title 57, Chapter 3, Part 3, § 57-3-301).
- <http://www.lexisnexis.com/hottopics/tncode/>

[TENN. CODE ANN. § 67-1-1700 et seq. \(2013\)](#)

- (To access, click on the hyperlinked code section above, or follow the website below, then click “I Agree,” and drill down to Title 67, Chapter 1, Part 17).
- <http://www.lexisnexis.com/hottopics/tncode/>

Rules & Regulations

[TENN. COMP. R. & REGS. 1320-4-6-.07\(3\)](#)

- (Local Option Liquor Rules)
- <http://publications.tnsosfiles.com/rules/1320/1320-04/1320-04-06.pdf>

[TENN. COMP. R. & REGS. 1360-4-1](#)

- (Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies)
- <http://publications.tnsosfiles.com/rules/1320/1320-04/1320-04-01.pdf>

Other

[Brown-Forman Distillers Corp. v. Olsen, 676 S.W.2d 567 \(Tenn. Ct. App. 1984\)](#)

- http://www.legale.com/decision/19841243676SW2d567_11233/BROWN-



[FORMAN%20DISTILLERS%20CORP.%20v.%20OLSEN](#)

Tenn. Op. Atty. Gen. No. 90-65 (June 12, 1990)

- (See attached. To obtain your own copy, call (615) 741-2518).

[Tennessee Department of Revenue Alcoholic Beverages and Beer Tax Guide](#)

- <https://www.tn.gov/content/dam/tn/revenue/documents/taxguides/alcbevguide.pdf>

Termination Request Process

Confidentiality

[TENN. CODE ANN. § 67-1-1700 *et seq.*]

As discussed more fully below, the distribution contract termination request process requires that alcoholic beverage manufacturers or importers and wholesalers provide information and documentation in support of their respective positions regarding the termination request. Information and documentation gathered during this process constitutes “taxpayer information,” as that term is defined in TENN. CODE ANN. § 67-1-1701. The Department is required by TENN. CODE ANN. § 67-1-1702 to keep such tax information confidential. The Department will not disclose tax information or other confidential information except as authorized by TENN. CODE ANN. § 67-1-1700 *et seq.* or as required by other law.

Step 1: Initial Termination Request

[TENN. CODE ANN. § 57-3-301;

TENN. COMP. R. & REGS. 1320-4-6-.07(3)]

Termination of a contract to distribute alcoholic beverages within Tennessee may only be allowed for good cause, asserted in good faith. The manufacturer or importer wishing to terminate a distribution contract must submit a written request to the Department (the “Termination Request”). The Termination Request must state specific grounds for termination, as articulated in TENN. COMP. R. & REGS. 1320-4-6-.07(3).

Under TENN. COMP. R. & REGS. 1320-4-6-.07(3)(c)

“Good cause” means:

- + Failure by a wholesaler to comply substantially with the requirements imposed or sought to be imposed upon him by the manufacturer, importer or successor, which requirements are not discriminatory as compared with the requirements imposed on other similarly situated wholesale distributors either by their terms or in the manner of their enforcement, and which requirements are not in violation of any law or regulation;
- + The failure by the wholesaler to act in good faith and in a commercially reasonable manner in carrying out the terms of the contract;
- + Voluntary abandonment of the contract;
- + Conviction of the wholesaler in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one (1) year;
- + Any act by a wholesaler which substantially impairs the manufacturer, importer, or successor’s trademark or trade name;
- + The institution of insolvency or bankruptcy proceedings by or against a wholesaler, or any assignment or attempted assignment by a wholesaler of the contract or the assets of the distributorship for the benefit of creditors;
- + Failure of the wholesaler to pay to the manufacturer, importer or successor within thirty (30) days after receipt of notice any uncontested sums past due the



- manufacturer, importer or successor and relating to the contract; or
- + Failure of the wholesaler to comply with federal, state or local law or regulations applicable and material to the operation of the distributorship, which could reasonably impair the wholesale distributor's continued future performance.

"Good faith" means:

- + Honesty in fact in the conduct or transaction concerned.

In addition to providing a statement of "good cause," the Termination Request should include documentation and other evidence in support of termination that the manufacturer or importer wants the Commissioner to consider.

Finally, a carbon copy of the Termination Request and all evidence as submitted to the Department must be sent concurrently to the wholesaler in whose name the brand is then registered. This can be readily evidenced by placing a copy "cc" line on the Termination Request indicating that the wholesaler was concurrently copied on the request and any evidence sent with the request.

Send Termination Requests to:

Tennessee Department of Revenue
Legal Office
Andrew Jackson Building, 11th Floor
500 Deaderick Street
Nashville, Tennessee 37242

Step 2: 30-Day Letter and Opportunity to Cure

**[TENN. CODE ANN. § 57-3-301;
TENN. COMP. R. & REGS. 1320-4-6-.07(3)]**

Under TENN. CODE ANN. § 57-3-301(e), a manufacturer or importer may not seek

termination of a distribution contract unless it gives the affected wholesaler a reasonable opportunity to cure any deficiency it alleges as a basis for contract termination (the "Opportunity to Cure"). The Opportunity to Cure period shall be no less than thirty (30) days.

After receiving a Termination Request, the Department will send written notification (the "30-Day Letter") to the requesting party and the wholesaler. The letter will state that the Department has received a Termination Request and that the parties have at least 30 days from the date of the 30-Day Letter to cure any alleged deficiencies.

The 30-Day Letter is sent Certified U.S. Mail to each party.

Step 3: Second Written Termination Request - "Request to Proceed"

**[TENN. CODE ANN. § 57-3-301;
TENN. COMP. R. & REGS. 1320-4-6-.07(3)]**

If the manufacturer or importer wants to pursue its Termination Request following the Opportunity to Cure period, it must notify the Department in writing that it wishes to proceed with the Termination Request (the "Request to Proceed"). The manufacturer or importer may, at its discretion, submit additional evidence supporting its stated basis for contract termination. The Request to Proceed must include a description of the steps taken in attempt to cure the alleged deficiencies.

Send Requests to Proceed to:

Tennessee Department of Revenue
Legal Office
Andrew Jackson Building, 11th Floor



500 Deaderick Street
Nashville, Tennessee 37242

A carbon copy of the Request to Proceed and all evidence as submitted to the Department must be sent concurrently to the wholesaler in whose name the brand is then registered. This can be readily evidenced by placing a copy "cc" line on the Request to Proceed indicating that the wholesaler was concurrently copied on the request and any evidence sent with the request.

The Department recommends that the manufacturer or importer use certified mail or a similar service that provides receipt confirmation for mailing its Request to Proceed packet to the Department and to the wholesaler.

It is important to remember that the Commissioner is unable to consider evidence that is not submitted. A requesting manufacturer or importer is encouraged to submit with its Request to Proceed any and all supporting evidence it has not previously submitted, including evidence, if any, supporting the requester's position that the Opportunity to Cure did not result in a satisfactory outcome.

Step 4: Wholesaler Response

The affected wholesaler may (but does not have to) respond to the manufacturer or importer's request to terminate its distribution contract. The wholesaler has thirty (30) days from its receipt of the Request to Proceed to mail to the Department its response and any evidence it wants the Department to consider.

Send Wholesaler Responses to:
Tennessee Department of Revenue
Legal Office
Andrew Jackson Building, 11th Floor
500 Deaderick Street
Nashville, Tennessee 37242

A carbon copy of the Wholesaler Response and all evidence, as submitted to the Department, must be sent concurrently to the manufacturer or importer that is requesting termination. This can be readily evidenced by placing a copy "cc" line on the Wholesaler Response, indicating that the requesting manufacturer or importer was concurrently copied on the request and any evidence sent with the request.

Although a wholesaler is not required to provide a response, it is important to remember that the Commissioner is unable to consider evidence that is not submitted.

Step 5: Preliminary Determination [TENN. COMP. R. & REGS. 1320-4-6-.07(3)]

Upon the earlier of the Department's receipt of the Wholesaler Response or the expiration of the 30-day period in which the wholesaler may respond, the Commissioner will make a Preliminary Determination as to whether sufficient evidence has been offered to establish a prima facie case of "good cause, asserted in good faith," to terminate the distribution contract.

The Department shall notify the parties by certified mail of the Commissioner's Preliminary Determination.



Step 6: Appeal of Preliminary Determination

[TENN. CODE ANN. § 4-5-301 et seq.]

Parties may request an administrative hearing to challenge the Preliminary Determination under the Uniform Administrative Procedures Act ("UAPA") by submitting a written request for a hearing within ten (10) days of the date on the notice of the Commissioner's Preliminary Determination.

To request an administrative hearing, parties must submit a written request to:

Tennessee Department of Revenue
Hearing Office
Andrew Jackson Building, 11th Floor
500 Deaderick Street
Nashville, Tennessee 37242
Fax: (615) 741-6463
DORConference.Request@tn.gov

If a hearing is not requested in a timely manner, the Preliminary Determination becomes final upon the expiration of the 10-day period to request the hearing.

If a hearing is timely requested, the Hearing Office will initiate the administrative hearing process under the UAPA on the issue of whether the manufacturer or importer has established "good cause, asserted in good faith." During the UAPA hearing process, termination of the contract will not take effect unless and until the Hearing Office approves the termination.

If the Hearing Office determines that the manufacturer or importer has failed to establish "good cause, asserted in good faith" as required, the provisions of the contract will remain in full force. Failure by the manufacturer or importer to ship to the

wholesaler a reasonable amount of the brand at issue is grounds for revocation of the manufacturer or importer's license.

Step 7: Final Determination

[TENN. CODE ANN. § 4-5-301 et seq.]

The time at which the Preliminary Determination becomes the Final Determination depends on whether a UAPA hearing to challenge the Preliminary Determination is requested. As stated above, if a UAPA hearing is not timely requested, the Preliminary Determination becomes final after ten (10) days from the date of the Preliminary Determination. If a hearing is timely requested, the resulting order issued by the Hearing Office on whether the manufacturer or importer established "good cause, asserted in good faith" becomes the Initial Order of Final Determination.

Pursuant to TENN. CODE ANN. § 4-5-317, parties may seek the Department's reconsideration of the Initial Order of Final Determination within fifteen (15) days after its entry. If reconsideration of the Initial Order of Final Determination is not requested at that time, the initial order becomes final after the fifteen (15) day period ends. Under TENN. CODE ANN. § 4-5-317, parties have a second opportunity to seek reconsideration of the final order. Reconsideration of a final order may be requested within fifteen (15) days after the initial order becomes final.



Step 8: Appeal of Final Determination
[TENN. CODE ANN. § 4-5-322]

Under TENN. CODE ANN. § 4-5-322, parties have sixty (60) days from entry of the Final Determination to file an appeal in Chancery or Circuit Court.

The judicial review is confined to the record. The reviewing court may affirm the decision of the Department or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petition have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- + In violation of constitutional or statutory provisions;
- + In excess of the statutory authority of the agency;
- + Made upon unlawful procedure;

- + Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- + Unsupported by evidence that is both substantial and material in the light of the entire record.

The UAPA hearing process is not required to appeal a Final Determination. It may, however, allow the parties to build a more complete record on which to base an appeal of a Final Determination.

Parties may want to consider relevant standard(s) of review and the circumstances of their specific Termination Request proceeding when deciding on whether to challenge a Preliminary Determination through a UAPA hearing and/or appeal a Final Determination in Chancery or Circuit Court.

BRAND TERMINATION REQUEST PROCESS

