



Andy Beshear
GOVERNOR
Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Alcoholic Beverage
Control
500 Mero Street, 2NE33
Frankfort, KY 40601
Phone: (502) 564-4850
Fax: (502) 564-1442

Ray A. Perry
SECRETARY
DJ Wasson
DEPUTY SECRETARY
Allyson Taylor
COMMISSIONER

ABC ADVISORY OPINION 2024-001

September 20, 2024

- Question:** “To facilitate safe practices, may distilleries provide individuals serving as a designated driver for distillery patrons, an unopened package or packages of spirits not to exceed a total of 1.75 ounces to be consumed off premises in lieu of providing the designated driver with a complimentary sample that would otherwise be consumed on-premises?”
- Requested by:** Hon. Stephen G. Amato
on behalf of Kentucky Distillers’ Association
- Syllabus:** Distilleries may sell unopened packages of spirits to a designated driver for off-premises consumption as part of the admission price for a designated driver under a Designated Driver Program, so long as the price of the packages is quantified within the designated driver’s admission price, and it is not less than the cost for the distillery to produce the packages.
- Distilleries selling unopened packages to designated drivers in this way must still follow KRS 243.0305, as these sales are retail sales to distillery visitors. These packages must be either the distillery’s own private selection packages or souvenir packages in accordance with KRS 243.0305(3)(b) and must be reported and taxed in accordance with KRS 243.0305(2).
- Statutes construed:** KRS 243.0305, KRS 243.0307, KRS 244.050
- Legal authority:** KRS 241.020; 804 KAR 6:020; KRS 243.0305(2)-(3)

Opinion of the Department of Alcoholic Beverage Control

In an effort “to promote reasonable alcohol use by those participating in distillery tours on Kentucky’s Bourbon Trail,” the Kentucky Distillers’ Association (KDA) has asked the Department for an advisory opinion answering the following question:

To facilitate safe practices, may distilleries provide individuals serving as a designated driver for distillery patrons, an unopened package or packages of spirits not to exceed a total of 1.75 ounces to be consumed off premises in lieu of providing the designated driver with a complimentary sample that would otherwise be consumed on-premises?

The Department exists to regulate alcoholic beverages due to the dangers alcoholic beverages pose to public health and safety. Designated drivers abstain from drinking alcoholic beverages at events in order to ensure their companions get home safely. The Department favors designated driver programs, and no statute precludes our licensees from incentivizing safe drinking practices.

Likewise, no statute or regulation precludes the actions outlined in the Designated Driver Program (“the Program”) the KDA has provided, which directs participating distilleries to identify and monitor individuals who choose to take part in the Program and prevent their employees from serving them. In fact, KRS 244.080 requires that any licensee serving alcohol on its premises ensure that the person they are serving be 21 years of age or older and not intoxicated. Prohibiting the designated driver from drinking alcoholic beverages on the premises is what allows them to be a designated driver, but the Department shall not opine on the sufficiency of the precautions mentioned to ensure that the designated driver does not drink alcohol on the premises beyond what statute requires.

As for the particular incentive involved, the KDA reports that the Program provides “a small package of spirits to an identified Designated Driver for off-premises consumption following [their] services as a Designated Driver.” The “small package” is later described as “a package or

packages of spirits not to exceed a total of 1.75 ounces.”¹ Notably, the Program incentive package is not offered as a complimentary sample. According to the KDA, “Because sampling under KRS 243.0307 is an on-premises experience, the cost of the sample package or packages must be included in the tour price for the Designated driver, which can be discounted, so long as the final cost does not violate the treating statute.”

The Department agrees that sampling is an on-premises experience under KRS 243.0307 and, more specifically, under KRS 243.0305. KRS 244.050 prohibits retail licensees from selling or giving away “any alcoholic beverage at retail in any quantity for less than paid or current wholesale cost.” The sampling statutes create an exception to this proscription that allows properly licensed distilleries to provide to distillery visitors complimentary “samples” of alcoholic beverages totaling no more than 1.75 oz in the aggregate for consumption on the licensed premises. Because the Program’s incentive package is provided unopened and for off-premises consumption, it is not a “sample” and is not excepted from KRS 244.050 under KRS 243.0305. The cost of the incentive package must therefore be paid by the Program participant.²

The Program explains that the cost of the incentive packages “must be included in the tour price for the designated driver, which can be discounted so long as the final cost does not violate the treating statute.” The Department finds this description of the cost to the participant to be ambiguous. The tour price for the designated driver can be discounted, certainly. The designated driver is getting a different experience from the ordinary tour-goers. They are excluded from sampling or drinking alcoholic beverages on premises and have undertaken the responsibility to drive their companions safely to their post-tour destination. However, the question remains how much less value the designated driver receives for the responsibility they undertake, and the

¹ Under KRS 244.230, Kentucky has adopted federal regulations regarding standards of fill of distilled spirits. The smallest container authorized by federal regulations for the retail sale of distilled spirits is 50 ml, which is approximately equal to 1.69 fl oz. See 27 C.F.R. § 5.203(a)(1). There is thus no division of 1.75 ounces that can result in more than one viable package of distilled spirits, and to the extent that the Program offers any packages smaller than 50 ml, it is not viable.

² The incentive package does not therefore need to be “sample” sized. It can be any size, so long as its cost is paid by the Program participant.

limitations on their tour experience. That value must be quantified so that the price paid for incentive package can be assessed if it is included in the designated driver's tour price. So long as the Department can reasonably determine that the price for the incentive package paid by the designated driver is greater than or equal to the cost of producing it to the distillery, the inclusion of the incentive package in the designated driver's admission does not violate KRS 244.050.

Importantly, distilleries selling sample packages to designated drivers in this way must still follow KRS 243.0305, as these sales are retail sales to distillery visitors. KRS 243.0305(3)(b) states, "A distiller may sell its own private selection packages at retail ... [t]o distillery visitors of legal drinking age, in quantities not to exceed an aggregate of nine (9) liters per day." Therefore, these packages must be either the distillery's own private selection packages or souvenir packages. They also must be reported and taxed in accordance with KRS 243.0305(2), which states, in relevant part,

For purposes of all retail drink and package sales that occur pursuant to subsection (3) ... of this section, the distillery shall ... [w]ithout otherwise reporting those sales to a licensed wholesaler, report those retail sales and pay all taxes required to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3).

KRS 243.0305(2)(a)1. & 2. The required taxes include both wholesale sales taxes due under KRS 243.884 and excise taxes in accordance with KRS 243.720 and 243.730. KRS 243.0305(2)(b)1. & 2.



Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control