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## STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

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TO: Retail Licensees  
FROM: Jerry Van Ackeren, Compliance Auditor  
DATE: February 27, 2012  
SUBJECT: Regulation Advisory

Please be advised that the Nebraska Liquor Control Commission (NLCC) will be increasing their scrutiny concerning "Returns from Retailers" to Nebraska wholesalers beginning April 1, 2012. When a return of wine or spirits is planned or created, a formal credit form must be completed to support this transaction. The form must be completed by both the retailer and wholesaler. **A copy of this completed form must be retained on the premise by the retail licensee for twelve months and shall be available for audit inspection.** Included with this advisory, please find an example of the type of retail return form. This form, or one similar to, will be presented by the wholesaler at the time of transaction.

The NLCC would like to remind you the reason for the return of alcoholic beverages must fall into the legal acceptable reasons for the return. Carefully review the attachment outlining acceptable and unacceptable reasons for returns.

Reference: Federal Alcohol Administration Act and Title 27, Code of Regulations Part 11:32 to 11:46 and the Nebraska Liquor Control Act, Chapter 53, Liquors.  
(See TTB attachment)

Also be advised that you are responsible to educate all approved corporate managers along with your appropriate retail employees dealing with alcoholic beverages. Failure to comply with regulations on returns can leave your license open to possible citation by the NLCC. The NLCC will be conducting random field audit compliance checks at retail and wholesale levels concerning the fully completed form and merchandise involved in the return itself. Because wine and spirit returns from retailers deals with adjustments to state excise taxes remitted by the reporting respective wholesale licensee, any falsification or returns allowed outside the acceptable reasons can result in an additional tax assessment, fines and penalties. Review the attachments carefully outlining acceptable and unacceptable reasons for returns.

For any questions you may have about this advisory, please feel free to contact Jerry Van Ackeren by email at [jerry.vanackeren@nebraska.gov](mailto:jerry.vanackeren@nebraska.gov).

**Janice M. Wiebusch**  
Commissioner

**Robert Batt**  
Chairman

**William F. Austin**  
Commissioner

# RETURN FOR CREDIT

Cust No.:		Retailer Name (DBA):		Pick-up Date:
Address:		City:		Retailer Lic No.:
Sales Rep Name & Number:			Date & Invoice #:	Sales Rep Signature:

**PLEASE COMPLETE ALL INFORMATION BELOW**

Product #	Case	Bottle	Size	Gallons	Description	Reason	Reason Code

All Credits must be picked up and submitted within 30 days of sale. No returns will be processed without a reason code assigned for the return and the customer information completed below. (Retailer's Printed name, retailer signature and the date it was signed).

\_\_\_\_\_  
Retailer Name (please print)

\_\_\_\_\_  
Retailer Signature

\_\_\_\_\_  
Date

## **Subpart D – Rules for the Return of Distilled Spirits, Wine, and Malt Beverages**

### **§11.31 General.**

- (a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer, or contract to sell products with the privilege of return for any reason, other than those considered to be “ordinary and usual commercial reasons” arising after the product has been sold. Sections 11.32 and 11.39 specify what are considered “ordinary and usual commercial reasons” for the return of products, and outline the conditions and limitations for such returns.
- (b) An industry member is under no obligation to accept the return of products for the reasons listed in §§11.32 through 11.39.

### **Exchanges and Returns for Ordinary and Usual Commercial Reasons**

#### **§11.32 Defective products.**

Products which are unmarketable because of product deterioration, leaking containers, damaged labels, or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

#### **§11.33 Error in products delivered.**

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

#### **§11.34 Products which may no longer be lawfully sold.**

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in law or regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has not control, a particular size or brand is no longer permitted to be sold.

#### **§11.35 Termination of business.**

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see §11.39).

#### **§11.36 Termination of franchise.**

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

**§11.37 Change in product.**

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to §11.46) may be exchanged for equal quantities of the new version of that product.

**§11.38 Discontinued products.**

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

**§11.39 Seasonal dealers.**

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

**Exchanges and Returns for Reasons Not Considered Ordinary and Usual**

**§11.45 Overstocked and slow-moving products.**

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

**§11.46 Seasonal products.**

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."