

**ATTORNEY GENERAL'S REPORT REGARDING
LARGE VOLUME CASH SALES BY THE
NEW HAMPSHIRE STATE LIQUOR COMMISSION**

MARCH 25, 2022

Executive Summary

Following a report of a large cash sale of liquor on February 3, 2018, the Office of the Attorney General (AGO) reviewed whether the New Hampshire State Liquor Commission's (SLC) practices and policies for handling large volume cash sales (LVCS) violated federal law's requirements for reporting such sales. Specifically, the AGO determined that the SLC's policies complied with applicable state and federal law. In addition, the AGO and SLC obtained a ruling from the Internal Revenue Service that the State, the SLC and its employees are exempt from the reporting requirements under Section 6050I of the Internal Revenue Code. The AGO also confirmed that SLC consistently trains and implements its LVCS policies, including taking appropriate employment action in the event of a violation of SLC policies. This report contains the AGO's findings and conclusions with respect to the events of February 3, 2018 and the results of the private letter ruling submitted by the State.

Background

By letter dated February 13, 2018 addressed to the Governor and Attorney General, former Executive Councilor Andru Volinsky reported that on February 3, 2018, he observed a LVCS of liquor at the State Liquor and Wine Outlet in Keene, New Hampshire. That sale was also observed by Richard Gulla, the State Employees' Association President. As a result, Councilor Volinsky raised numerous concerns with the SLC's practice and policies concerning LVCS.

By letter dated April 12, 2018 addressed to the Governor and Executive Councilor Volinsky, the AGO provided an update on its review of Councilor Volinsky's concerns. By letter dated November 29, 2018, the AGO provided a further update on the status of its inquiry. In that letter, we stated: "[i]t is clear that there is a long overdue need for finality and certainty with respect to certain issues presented by LVCS. To that end, we are engaging with the Internal Revenue Service to confirm the appropriateness of SLC's policies and procedures under Section 6050I of the Internal Revenue Code. When that process is completed, we will provide the details as well as the complete results of the review we have conducted."

The engagement with the Internal Revenue Service culminated in a formal request for ruling that the State of New Hampshire and the SLC, as an agency of the State and integral part of the State, and its employees are exempt from filing information returns and cash receipts under Section 6050I. On November 19, 2020, and further supplemented on February 8, 2021, this Office received a ruling from the Internal Revenue Service that the State, the SLC and its employees are exempt from the reporting requirements under Section 6050I.

Applicable Laws and Regulations

A. New Hampshire law

The Twenty-First Amendment to the U.S. Constitution, ratified in 1933, repealed the Eighteenth Amendment (which had established Prohibition) and expressly granted to States broad authority regarding the regulation of alcohol. U.S. Const. amend. XXI. That same year, the New Hampshire Legislature established the State Liquor Commission. 1933 Laws of N.H., ch. 99. New Hampshire is a so-called "control state," meaning that the government directly controls the distribution and sale of liquor. See, e.g., RSA chapters 175-178. The Legislature has

authorized the SLC to engage in the wholesale and retail sale of liquor and wine. See RSA chapter 177. The SLC also has significant enforcement responsibilities. See RSA chapter 179. Pursuant to RSA 176:3, the primary duties of the SLC are to: 1) optimize the profitability of the commission; 2) maintain proper controls; 3) assume responsibility for the effective and efficient operation of the commission; and 4) provide service to the customers of the commission, pursuant to RSA 176.

New Hampshire law does not impose any limit on the amount of cash that the SLC may accept as part of a transaction. Further, the Legislature has not imposed any limits upon the amount of liquor that a person or business can purchase in a single transaction. In 2012, a special legislative committee appointed by Speaker William O'Brien and chaired by Representative Lynne Ober conducted an extensive review of SLC operations. In November 2012, the special committee issued a lengthy report. *See* Final Report of the Special Committee to Evaluate the New Hampshire Liquor Commission and to Recommend Structural and Oversight Reforms, dated November 13, 2012 (2012 Special Legislative Report). That report contained a detailed discussion of "Large Volume Sales." *Id.* at pp. 21-24. The Special Committee, however, did not make any recommendations that, if adopted, would have limited the SLC's authority to engage in such large volume transactions.

B. Federal law

Federal law does not impose any restriction on the amount of cash that can be accepted in a retail transaction. However, in the event that a person engaged in the course of a trade or business accepts a cash payment of more than \$10,000, Section 6050I of the Internal Revenue Code requires that trade or business to report the payment using IRS Form 8300. The form has four parts: 1) information about the identity of the individual from whom the cash was received;

2) information about the identity of the person/organization on whose behalf the transaction was conducted; 3) a description of the transaction and method of payment; and 4) information about the business that received the cash. The information is used to enable the IRS to detect non-filing of tax returns, unreported income, and money laundering.

The requirement to file a Form 8300 applies whenever a “person” who, in the course of a trade or business, receives over \$10,000 cash in a single transaction or in related transactions. 26 CFR §1.6050I-1(a). The regulation provides that the term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. 26 CFR § 7701(a)(1). A government entity is not included in this definition.

There are both civil and criminal penalties for failing to file a required Form 8300. *See* IRS Form 8300 Reference Guide. A business that intentionally disregards its obligation to timely file a complete and accurate form can be fined either \$26,600, or the amount of cash received in the transaction, not to exceed \$106,000. *Id.* Additionally, this penalty applies to each failure to file. *Id.* A person, including a business, may be subject to criminal penalties for willfully failing to file a form, or willfully filing a false or fraudulent form, stopping or trying to stop a form from being filed, or setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file a form. *Id.* Sanctions include a fine of up to \$25,000 (\$100,000 in the case of a corporation) and/or imprisonment for up to 5 years, plus the cost of prosecution. *Id.*

In addition to the required filing of Form 8300, the Form may be voluntarily filed to report “suspicious” transactions even if the total amount does not exceed \$10,000. According to IRS guidelines, a transaction is suspicious if: 1) it appears that the person is trying to prevent a

business from filing a Form 8300; 2) it appears the person is trying to cause the business to file a false or incomplete Form 8300; or 3) there is a sign of possible illegal activity. *Id.*

SLC's policies and procedures regarding large volume cash sales

Since 2006, SLC has maintained policies in several iterations regarding the filing of the Form 8300. In May 2009, the IRS issued a Notice of Proposed Penalty Assessment for a Late and/or Incomplete Form 8300 to the SLC. The AGO, on behalf of SLC, challenged the IRS's relatively modest assessment of penalties on the basis that the filing requirement does not apply to a unit of state government. Neither the AGO nor the SLC has a record of any IRS response to the State's challenge.

The AGO became aware that, for an extended period of time beginning in 2012, the IRS conducted an investigation of the SLC in regard to LVCS. The investigation appears to have included numerous witness interviews. In late 2014, the United States Attorney's Office for the District of New Hampshire informed the AGO that the federal government had concerns with NHLC's compliance with the Form 8300 requirement, but that it was taking no further action.

Based on its October 5, 2018 meeting with IRS officials, the AGO now understands that federal authorities did not proceed with this investigation because they did not believe that they could establish that the Form 8300 filing requirement applies to a state government entity. It is also important to note that federal authorities stated that the concern was with reporting LVCS, not that the cash used for the sales was from illegal sources.

In the aftermath of the 2012 investigation and notwithstanding the legal question of whether the Form 8300 requirement applies to the SLC, the SLC revised its policy regarding LVCS to voluntarily complete Form 8300s in order to promote a culture of honesty and prevention of fraud, criminal conduct, and loss prevention. On March 23, 2015, SLC issued a

revised policy—Policy and Procedure F-112 regarding LVCS. The objective was to create a policy that would conform with the IRS regulations, even though compliance was not required.

Policy and Procedure F-112 requires, in relevant part:

All customers that purchase a volume of product totaling \$10,000 or more in cash, either through one or multiple related transactions, must complete IRS Form 8300 in its entirety before the sale is processed through the cash register, using one of the forms of identification for the customer that is a currently acceptable form of identification for the purchase of product in our stores (valid driver's license, passport, military ID). The Store Manager or the person in charge will complete Part I through Part III of the IRS form 8300. The information must be printed neatly!

Policy and Procedure F-112, at 2. This policy was in effect on February 3, 2018, and remains in effect today.

Additionally, the SLC practices require that for all cash sales in excess of \$1,000, two employees individually count both the cash and the bottles before the transaction is completed. The cash is also run through an automatic bill counter, if available, which confirms the physical count and screens for counterfeit bills. This entire process is to be completed at the register. Every transaction, regardless of amount, is videotaped pursuant to SLC practices.

Beginning in 2017, the SLC's audit division conducted monthly reviews of the sales information for each store, focusing on any cash sales over \$1,000. If there were multiple cash sales in amounts near \$9,000 or above, the audit division reviewed the time of the sales and the amount of time between sales. If there were LVCS that were close in time, the audit division reviewed the video of the sales to determine whether there was evidence that the sales were related, thus giving rise to an obligation under SLC Policy and Procedure F-112 to complete a Form 8300. The SLC has taken disciplinary action against store employees who have failed to follow SLC Policy and Procedure F-112.

In addition to Policy and Procedure F-112, the SLC developed a training program related to LVCS. On an annual basis, SLC employees participate in an interactive training module where two employees independently count the number of bottles being purchased, and for cash sales, two employees independently count the cash. Also, the Store Operations Manual includes a section on processing transactions, which requires that all transactions must be processed at the cash register and the cashier must do a bottle count on every sale. Moreover, the SLC has an area supervisor available to answer any employee question that arises during business hours.

The February 3, 2018 sale

In his February 13, 2018 letter, Councilor Volinsky described the sale as follows:

A woman named Anna called the store and asked the staff to pull together an order for her totaling over \$24,000. Her purchase was almost exclusively of Hennessy products. Later that same day, Anna arrived at the store with a man. The two asked that their purchase be moved to the cash register. I observed the man remove a very large wad of cash from his pocket and give approximately half of it to Anna. The male and Anna then used the cash to each make purchases just under the \$10,000 threshold, with the remainder of the transaction – about \$5-6,000 – purchased on the male’s credit card. Although the SLC now has the male’s credit card information, the IRS does not have any indication that Anna and the man with her trafficked in almost \$20,000 in cash because, based on my direct observations, they successfully structured their transaction to avoid reporting.

Councilor Volinsky learned from SEA President Gulla, who had learned from an SLC employee that the anticipated LVCS was to occur in the Keene store after attending a local SEA meeting.

While at the SEA meeting, SLC employees expressed concerns to Councilor Volinsky about “bootlegging” or bulk cash sales at the liquor stores. More specifically, the concerns were regarding: (a) the safety of liquor employees surrounding the handling of large amounts of cash in the stores and when making bank deposits, and (b) employee liability for not completing the Form 8300. Mr. Gulla echoed these same concerns for the SLC employees: (1) the safety of

SLC employees who are required to count large amounts of cash at the registers and who are required to make large cash bank deposits; (2) the SLC policy on the reporting of LVCS; (3) the lack of adequate training for employees on the handling of LVCS; and (4) the SLC's inconsistent messaging to employees concerning when to either file or not file a Form 8300.

Analysis

A. SLC's policies and practices conform to applicable laws

The SLC's policies and practices with respect to LVCS conform to applicable laws. With respect to state law, the Legislature has plenary authority to set policy regarding the sale and distribution of alcohol. Transactions involving the exchange of cash—even amounts above \$10,000—are lawful. The issue of SLC engaging in LVCS was considered during an extensive legislative review of SLC practices. *See* 2012 Special Legislative Report. The Legislature has not imposed any limitations or otherwise restricted the SLC's ability to engage in cash sales.

With respect to federal law, under Section 6050I, a person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction (or two or more related transactions), must file an information return with the Service, and furnish the payor with a statement. Under Treasury Regulations, the term "person" in Section 6050I(a) means "person" as defined in Section 7701(a)(1). Section 7701(a)(1) provides: "[w]hen used in this title, where not otherwise expressly or manifestly incompatible with the intent thereof, ... the term person shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." Under basic principles of statutory construction, the State, its agencies, and its employees are not included in the definition of "person" and, thus, are not required to file Form 8300 information reports under Section 6050I. This conclusion has been repeatedly stated by the IRS in several technical assistance

memoranda and the Internal Revenue Manual. The IRS specifically addressed whether the reporting requirements applied to the SLC in the private letter ruling and concluded that, as a state governmental entity, the reporting requirement did not apply and any such filings were voluntary.

SLC employees are aware of and regularly trained on SLC policies for LVCS. Training on LVCS for managers consists mostly of on-the-job training and emailed instructions. Employees receive updated policies either by email or through their supervisors.

Store managers generally understand the SLC Policy and Procedure F-112 requirement that a Form 8300 must be completed for cash sales in excess of \$10,000. Some managers believed that the filing requirement was triggered at \$10,000, regardless of whether the sale involved cash or credit. Most managers knew that customers could not split a cash sale to avoid the \$10,000 reporting threshold. Non-managerial employees' knowledge was more limited and they generally understand that a manager must be called for any LVCS. Their understanding of the amount of sale that would trigger the obligation to involve a manager varied widely, from a couple of cases of liquor up to a \$4,500 sale, or included an annual limit per customer.

This is no indication that SLC employees are not generally complying with SLC's policy requiring the completion of a Form 8300 for cash transactions over \$10,000. There is also no indication that employees are discouraged from completing a Form 8300 with respect to sales exceeding \$10,000. Nor does the SLC encourage employees to break up sales so they were lower than \$10,000 in order to avoid the Form 8300 filing.

B. There is no evidence that money from LVCS comes from illegal activity

There is no evidence to support the assertion made by Councilor Volinsky in his February 13, 2018 letter that the money for LVCS comes from "illegal trafficking, whether in guns, drugs,

or humans.” Councilor Volinsky does not have any personal knowledge about the genesis of any cash being used to purchase liquor at the SLC and instead the concern stemmed from general information he gained as a white collar criminal defense attorney. In addition, in 2014 during a meeting with IRS agents and an Assistant United States Attorney, members of the AGO were told by the Assistant “...that there is no suggestion that the cash being accepted at the [liquor] stores come from nefarious acts. The issue is just that cash sales exceeding the \$10,000 threshold are not being reported.”

C. New Hampshire has no legal obligation to enforce laws of other states

Councilor Volinsky also asserts in his February 13, 2018 letter that the SLC’s practices around LVCS “expose New Hampshire to potential suits from neighboring states for facilitating efforts to avoid their taxation schemes.” The SLC has neither the authority nor a legal obligation to enforce the laws imposed on individuals by other states in regard to alcohol sales or purchases. As a result, there is no basis for another State to pursue SLC for its handling of LVCS and the AGO would vigorously defend against any such lawsuit.

D. The February 3, 2018 transaction involved serious transgressions

Finally, the events that transpired on February 3, 2018, at the Keene Liquor and Wine Outlet constituted an isolated and serious violation of the SLC’s policies and practices, in particular SLC Policy and Procedure F-112. After being notified by staff of what transpired on February 3rd, SLC conducted an internal review of the event and took any necessary corrective actions.

In addition, Richard Gulla failed to notify the SLC or request permission to access employees when conducting business in the store before arriving at the store on February 3, 2018, as is required by the SEA Collective Bargaining Agreement.

Lastly, it is expected that state officials would utilize appropriate methods for addressing serious concerns, such as potential violations of law or policy. This did not occur here. It is undisputed that an elected official and the president of one of the state's employee unions observed what they knew to be violations of SLC policy, and what Councilor Volinsky believed to be a violation of federal law. Yet, neither made the decision to promptly contact SLC leadership or law enforcement. Officials or citizens conducting their own investigations may imperil state government functions and law enforcement efforts, and put not only themselves, but the public at risk. Individuals with concerns about state operations should contact the appropriate state officials or law enforcement and should not attempt to conduct their own investigations.

Recommendations

As a result of the review, the AGO has the following recommendations regarding SLC's policies and procedures with respect to LVCS, which were discussed with SLC management:

A. **Implement SLC Policy and Procedure F-112**

The SLC should continue to implement SLC Policy and Procedure F-112 in order to continue to promote a culture of honesty and prevention of fraud, criminal conduct, and loss prevention. The SLC should continue to conduct store audits to ensure that the policy is fairly and uniformly implemented across all stores.

B. Training

The SLC should supplement its training in regard to Policy and Procedure F-112. Such training should ensure that LVCS are processed consistently in each store. Employees would benefit from the opportunity to discuss specific scenarios with administration and receive guidance on how to address such situations.

C. Employee Safety

The SLC should continue to ensure employee safety is a top priority. The SLC has implemented several safety measures, such as installing safe drop boxes in the stores and employing an armored car service to make bank deposit. The SLC should continue to explore and implement appropriate employee safety measures. The SLC should also continue its internal meetings of selected SLC employees to review the policies and procedures involving the handling of cash. The AGO recommends all of these efforts continue and remain a priority for the SLC.