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Feds bust collectors who sell wine online Dozens receive letters asking for back taxes on sales

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Neil Monnens, a San Francisco ad executive and wine buff, decided last year that his taste was veering away from Bordeaux and Napa Valley Cabernets. So he went online and sold 500 cases of his 2,000-case collection at WineCommune.com.

"I had an overabundance of Cabernet-based wines and I'm buying more Rhone- style wines and whites," says Monnens, who parted with his stash of 1997 Bryant Family Napa Valley Cabernet Sauvignon, among others.

Monnens' change of taste caught the attention of federal regulators. Under the three-tier system established after Prohibition, only producers, retailers and wholesalers are allowed to sell alcohol. Monnens' Cabernet sell- off makes him a retailer under federal law, triggering a required annual "special occupational tax" of \$250.

In late August, Monnens received a letter from the federal Alcohol and Tobacco Tax and Trade Bureau (TTB), the successor agency to the Bureau of Alcohol, Tobacco and Firearms, asking for the money. An estimated 50 to 75 WineCommune members received similar notices, which they are entitled to appeal.

Regulators for now are targeting only people selling what they deem to be large quantities of wine. But the crackdown points up the uncomfortable fact that there is no legal framework for consumers to buy and sell wine from each other -- on the Internet or off.

Even in California, which has the most liberal beverage-alcohol laws in the country, an unlicensed person may not legally sell a single bottle of wine to another unlicensed person, says San Francisco attorney John Hinman.

Monnens opted to pay the tax, but the notices have spooked some WineCommune users, who worry that the TTB could share information with the Internal Revenue Service, the



California Department of Alcoholic Beverage Control (ABC) and other agencies, turning their wine collecting hobby into a morass of taxes and permits.

Sales activity on Emeryville-based WineCommune has slowed, at least for now. But the site's bulletin boards were abuzz with questions and quips when the TTB notices started arriving in the mail.

"If any of you need someone to watch your cellar while you are incarcerated, please let me know," says one wag who did not receive a TTB notice.

WineCommune unplugged its bulletin boards after being contacted by Uncorked last week. Chief executive Michael Stajer says the move had been planned for some time and was unrelated to the TTB controversy. "The amount of time required to manage them continued to grow and began to detract from the management of our core business," he says.

WineCommune also posted a new "Laws About Selling Wine" page, advising its members to make sure they are in compliance with state and federal beverage-alcohol laws.

TTB, meanwhile, is playing hard ball. The agency got WineCommune members' names by subpoenaing company records, including names, addresses and transaction data going back to October 2001.

TTB first approached WineCommune last February or March asking for information on all of its members, says Stajer.

"They wanted all transaction information for all of our users" going back to the site's launch in 1999, says Stajer. "We worked with them and were able to mutually agree about (a narrower) scope of the subpoena."

The regulators "wanted to find people who are in the business of selling wine, but who may not have paid their annual occupational tax," he says.

WineCommune's lawyers determined that complying with the subpoena would not violate their confidentiality agreement with members, says Stajer. The information was turned over in June and members started receiving TTB notices at the end of August.



Some members are annoyed that WineCommune disclosed personal information without warning them. Stajer responds that he didn't know who the TTB would contact or when. Based on feedback from members, he estimates that 50 to 75 people received notices, although he gave the TTB information on many more people than that, he says, declining to be specific.

WineCommune does not sell or store wine itself, but provides an exchange where members can trade. The onus is on participants to abide by all state and federal laws, says Stajer.

Some of the site's members are brick-and-mortar merchants, but others are simply wine geeks like Monnens who tinker with their collections as a hobby. In his free time, Monnens runs two Web sites that provide information about wine -- winerelease.com and qprwines.com -- but his Cabernet sale was a one-time phenomenon and not a regular business, he says.

Hobbyists can get out of paying the tax if they can prove they don't trade wine as part of a regular business, says Dave Royalty, district director for investigations in TTB's Sacramento office.

"All they have to do is write us back and explain the circumstances," says Royalty. There is no specific threshold for the TTB deciding someone is a retailer, but "occasional sales are not what we're talking about here. If someone is setting themselves up as a dealer by doing this repetitively, that causes some additional scrutiny."

Royalty would not say whether other wine-trading sites are being targeted, but noted, "there are Web sites all over the country" that are similar to WineCommune.

Privacy advocate Lee Tien says the TTB's subpoena is legal, if "wrong-headed."

The U.S. Supreme Court ruled decades ago that information held by service providers like credit card companies and Web merchants is not protected under the Fourth Amendment, says Tien, a staff attorney for the Electronic Frontier Foundation in San Francisco.

"It's a big loophole in the privacy laws, but in fact, you don't have a reasonable expectation of privacy in records that third parties hold about you," he says.



The WineCommune case is "sort of refreshing" in an era when so many complaints relate to the government overstepping in the war on terror, adds Tien.

Payment of the special occupational tax could trigger a tangled Web of regulations and fees, legal experts say.

Being seen as a retailer is one thing, but WineCommune members may also be considered wholesalers under TTB rules, requiring a higher special occupational tax payment -- \$500. TTB defines a wholesaler as anyone who sells at least eight cases of wine to someone who resells it instead of consuming it. It's not always clear on WineCommune whether a buyer intends to resell the wine or keep it.

Both retailers and wholesalers must be licensed by the state, so if the TTB decides to share information with the California ABC, the ABC could insist that in-state collectors get retail and wholesale licenses.

State licensees must pay \$100 to \$200, submit to a background check and in the case of retailers, post a large notice on the front of their home giving neighbors a chance to protest, says Dennis Clear, legislative coordinator for the ABC.

On the federal level, "if you admit you're a wholesaler, they can come back and say you need a federal basic permit," which carries its own requirements, says Hinman of Hinman & Carmichael, a law firm that specializes in beverage alcohol.

"It's a pain and it's a lot of paperwork," says Hinman.

There is also the chance that TTB could share WineCommune information with tax authorities, helping them find collectors who haven't declared their WineCommune profits.

TTB spokesman Art Resnick in Washington says federal law allows TTB to share such information with the IRS, but "we do not routinely forward that information."

Some California collectors are getting licensed by the state, even though the California ABC doesn't seem too worked up about WineCommune-style trading. The ABC recognizes the



needs and habits of collectors and is working to develop a special license for them to trade wine that would require fewer hoops to jump through and lower fees, says Clear.

"These are basically entrepreneurs who just want to be able to take advantage of the Net" to tinker with their collections, says Clear. "They're forced to fit themselves into an existing licensing structure that doesn't really reflect their business model."

Another option for collectors is an auction site like WineBid.com, which operates under a different legal framework. On such sites, consumers consign their wine to the site and sales are completed under the site's license.

On its face, it seems absurd that a collector can't sell a bottle on a Web site without obtaining licenses and paying fees. But many post-Prohibition- era laws remain on the books, forbidding innocent-seeming activities like shipping a bottle of wine to a friend or relative in New Jersey or Ohio or Florida.

"Is it fair? No, it's not fair," says Hinman. "If I was a consumer sitting out there holding a bunch of wine, I would say, 'Why can't I just sell my wine?' "

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