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# Presenters



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# Presenters



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# Brewery and Distillery Business Entity Selection, Formation, Finance, and Insurance

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## Topics To Be Covered:

- LLC vs. Partnership vs. Corporation
- Tax Considerations
- Operational Issues
- Documentation and State Filing Requirements
- Structuring, Management, and Governance
- Insurance Concerns
- Drafting and Negotiating Formation Agreements
- Crowdfunding and other Financing Challenges
- Language for Employee Handbooks and Policies

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# Entity Formation

- Partnership
  - Occurs when two or more people agree to conduct business together.
  - No specific documentation is required before a partnership is formed.

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# Entity Formation

- Limited Liability Partnership
  - Partners in an LLP have limited personal liability.
  - Governed by its own state law separate and distinct from the law of a general partnership.
  - General partners v. limited partners.

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# Entity Formation

- Subchapter S Corporation ("S Corp")
  - Must make an election with the IRS
  - Restrictions on who can own shares of an S Corp.
  - All shareholders have the same rights
  - Possible SE Tax Minimization
  - Preferable to C Corporation for small, closely held businesses (no double tax)

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# S Corp vs. LLC

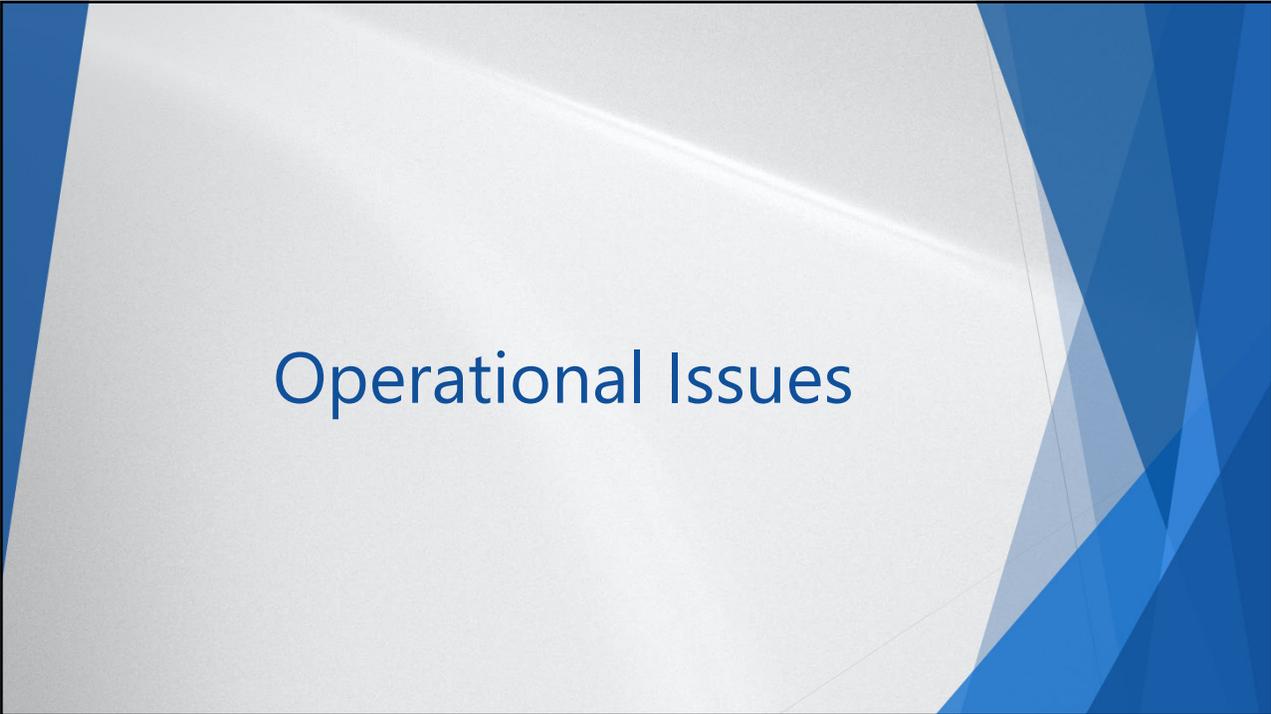
- FICA Tax Minimization – S Corp
- Flexibility – LLC
- BUT: DON'T WORRY: Most state corporation and LLC statutes provide for a mechanism to convert an LLC to a corporation and a corporation to an LLC

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## Tax Considerations

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## Operational Issues

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# Documentation and State Filing Requirements

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## Standard Documents

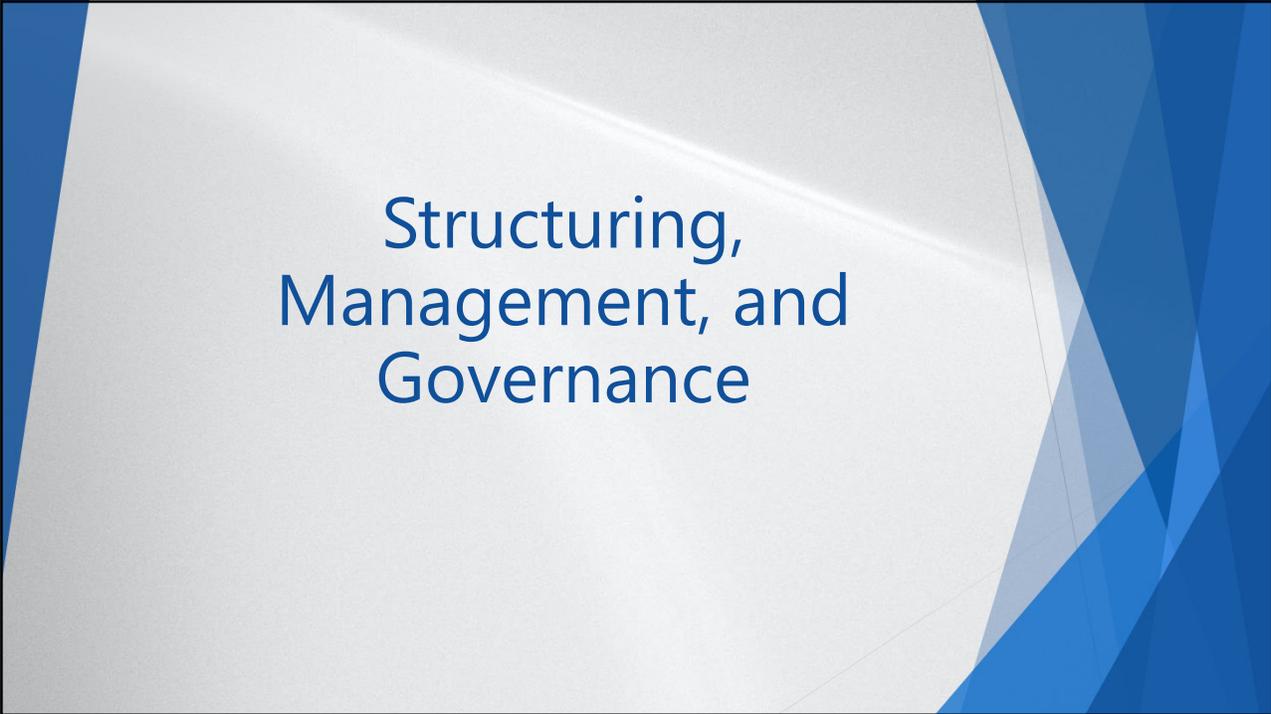
### **S Corporation**

- Articles of Incorporation
- Bylaws
- Initial Written Actions of Shareholders/Directors
- Shareholder Controls Agreement (w. Buy-Sell Provisions)
- Form SS-4
- Form 2553 (S Election)

### **LLC**

- Articles of Organization
- Operating Agreement
- Initial Written Actions
- Form SS-4

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## Structuring, Management, and Governance

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## Insurance Concerns

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## Drafting and Negotiating Formation Agreements

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## Crowdfunding and Other Financing Challenges

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## Investment Capital

What is a Security?

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## Investment Capital – Private Offerings of Securities

- 1933 Act default requires registration of any securities offering
- Alternative: find an applicable exemption from registration
- Also need to find an exemption from registration under state Blue Sky Laws (each state where an investor resides)



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## Key Concept: Accredited Investors

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## Investment Capital

- Section 4(2)
- Regulation D
  - Rule 504
  - Rule 505
  - Rule 506 (now 506(b))



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## JOBS Act: a Game Changer for Startups

- JOBS Act eases some of the most onerous restrictions on raising capital
  - General Solicitation (506(c))
  - Equity Crowdfunding
  - Regulation A+



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## Structuring a Private Offering

- What percentage of ownership to sell?
- Difference between voting and financial rights
- Preferred distributions
- "Sunset" provisions – call rights, put rights, etc.



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## Language for Employee Handbooks and Policies

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## Employee vs. Independent Contractor

- Why does it matter if a worker is deemed an employee – withholding taxes apply and worker may be eligible for benefits
- Misclassified worker = fines, penalties and taxes for employer
- There is no one factor; the IRS has twenty factors
- Look at the level of control that the business owner has over the worker
  - More control → employee

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**Brewery and Distillery Business Entity Selection,  
Formation, Finance and Insurance**

**Submitted by Jeffrey C. O'Brien**

## A. LLC vs. Corporation

- A business organization is governed by both the laws of the jurisdiction in which it organizes and the laws of all jurisdictions in which it conducts business. This section is an introduction to the major concepts a brewery or distillery may face upon organization and should not be relied upon for any particular jurisdiction.
- An entrepreneur must first decide under which entity type it will operate. Most likely, the choice will come down to LLC, S-Corp, or C-Corp.
- There are many factors to consider when choosing an entity type, including liability, raising capital and control, and taxation.
- 

### 1. Limited Liability Company (LLC)

- a. Governing Law:** Governed by state statute. The affairs of an LLC are governed predominantly through its various governance documents. The most prevalent governance document is the operating agreement, which defines the rights and duties of the LLC's members.
- b. Formation:** File articles of organization with the proper state office, typically the Secretary of State. The limited required articles include the name of the LLC, the LLC's in-state address, its organizer(s), the number of membership interests authorized, and the duration it is to exist.
- c. Management:** Owners are called members. An LLC can have one or more members. The LLC can be member-managed, which means that its members perform the day-to-day management of the company, or it can be manager-managed, wherein managers control the management and governance of the company. In Minnesota, the LLC can also be board-managed, where there are one or more governors who designate officers and managers to act for the LLC who have limited authority granted by the board.

- d. Capital Contributions:** An LLC can receive capital contributions by any and all of its members, in the form of any consideration, such as money, real property, personal property, or services for the company.
- e. Pass Through Taxation Benefits:** Unless it chooses otherwise, an LLC is taxed as a pass-through entity, which means that the taxation passes through to the LLC members based on the member's individual ownership interest. However, the members are taxed for their ownership interest regardless of whether or not they received any actual distributions in that tax year.
- f. Limited Personal Liability:** Members are not personally liable for the obligations and debts of the LLC beyond their initial capital contributions, provided that corporate formalities are observed by the members.
- g. Newer Form with Flexibility:** Not well-developed set of case law. LLC flexibility often results in a limitation of duties owed to minority owners. However, LLCs can be tailored to meet nearly any situation and are the most widely used business entities currently.

## 2. Corporation: C-Corporation and S-Corporation

- a. Governing Law:** State statutes govern. Most states have well-developed case law to interpret statutes governing corporations. Articles of incorporation, bylaws or shareholder control agreements create and enforce the rights and duties of a corporation's shareholders.
- b. Formation:** Both the S-Corp and C-Corp are separate legal entities formed by a state filing. These documents, typically called the Articles of Incorporation or Certificate of Incorporation, are the same for both S-Corps and C-Corps.

- c. Management Structure:** Both have shareholders, directors and officers. Shareholders are the owners of the company and elect the board of directors, who in turn oversee and direct corporation affairs and decision-making, but are not responsible for day-to-day operations. The directors elect the officers to manage daily business affairs.
- d. Liability Protection:** Shareholders are not personally liable for any debts or obligations beyond the amount of capital they have contributed to the corporation, unless the corporation fails to follow proper corporate formalities.
- e. Corporate Formalities:** Both are required to follow the same internal and external corporate formalities and obligations, such as adopting bylaws, issuing stock, holding shareholder and director meetings, filing annual reports, and paying annual fees.
- f. Taxation:** Taxation is often considered the most significant difference for small business owners when evaluating S-Corporations versus C-Corporations.

  - (1) C-Corporations:** Separately taxable entities. They pay taxes at the corporate level. They also face the possibility of double taxation if corporate income is distributed to business owners as dividends, which are considered personal income. Tax on corporate income is paid first at the corporate level and again at the individual level on dividends.
  - (2) S-Corporations:** Pass-through tax entities. They do not pay income, tax at the corporate level. The profits/losses of the business are instead "passed-through" the business and reported on the owners' personal tax returns. Any tax due is paid at the individual level by the owners.

**g.** Corporate ownership: C-Corporations have no restrictions on ownership, but S-Corporations do. The S-Corporation must meet certain characteristics such as:

- (1)** it cannot have more than 100 shareholders;
- (2)** its shareholders must be individuals;
- (3)** its shareholders must be citizens or residents of the United States;
- (4)** it must be organized in the United States; and
- (5)** it can only issue one class of stock.

C-Corporations therefore provide a little more flexibility when starting a business if you plan to grow, expand the ownership or sell your corporation.

## **B. Tax Considerations**

### **1. LLC:** May be taxed as:

- a. a disregarded entity if it has one member. The member experiences complete pass through taxation. The member gets taxed on all profits based on tax bracket, whether distributed or not; or
- b. a partnership if it has multiple members. The members experience complete pass through taxation. The members get taxed on all profits based on their tax bracket and ownership interest, whether distributed or not; or
- c. it may elect to be taxed as a corporation. The members experience incomplete pass through taxation, which allows the company to retain earnings from year to year and avoid being taxed regardless of a distribution.

### **2. Corporation**

- a. C-Corporation; Double Taxation: Taxed at the entity level as well as shareholder level, who each get taxed individually for any distributions received from the corporation.
- b. S-Corporation; Pass Through Taxation: Shareholders are only taxed individually.

## **C. Structuring, Management and Governance**

### **1. Management**

- a. LLC/Corporation: States may require an LLC or corporation to have certain designated officers for assist in the company's day-to-day operations. These officer positions may be held by one or more of the company's owners, but can also be held by a non-owner. Officer positions will also often have statutorily-defined duties that can be general to each officer or specific to a particular position, but can be altered with approval of the members or shareholders through agreements. The officers must carry out their duties in the best interests of the company and its owners.
  - i. **LLC:** Can be managed by its members, designated managers, or board of governors. Managers and members of the board of governors can be, but are not required to be, members of the LLC. The individuals responsible for the management of the LLC may also delegate their authority to officers, such as the president, vice president, secretary, or treasurer.
  - ii. **Corporation:** Typically, management is vested in the board of directors. The board of directors serve the interests of the shareholders.
    - Closely Held Corporation: Generally, the shareholders will serve on the board.

**2. Fiduciary Duties:** Individuals responsible for management and operations of a company are generally required to adhere to the duty of care, duty of loyalty, and duty of good faith in discharging their duties on behalf of the company. If such individuals fail to perform these duties, they may be liable to the company and its owners.

**a. Duty of Care:** A legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others.

**b. Duty of Loyalty:** A legal obligation which requires fiduciaries to put the corporation's interests ahead of their own. Corporate fiduciaries breach their duty of loyalty when they divert corporate assets, opportunities, or information for personal gain.

**c. Duty of Good Faith:** A general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith, so as to not destroy the right of the other party or parties to receive the benefits of the contract. It is implied in every contract in order to reinforce the express covenants or promises of the contract.

**3. Corporate Formalities for LLC/Corporation:** Must observe certain formalities in order to maintain the limited liability shield extended to its members/shareholders .

- Piercing the Corporate Veil: The legal standard for extending personal liability varies by state, but the following suggestions help maintain the limited liability shield after forming a limited liability entity:

**a.** Ensure the entity is sufficiently capitalized;

**b.** Document any payments to the legal entity from the owners as either paid-in-capital or loans;

- c.** Do not commingle personal and business funds;
- d.** Do not pay owners in cash;
- e.** Owners should never use the business's cash or assets for personal use or pay personal bills with company funds;
- f.** All of the entity's taxable income should be reported on the entity's tax returns and tax returns should be filed promptly;
- g.** Shareholders who are actively involved in the business should receive a "reasonable" pre-determined wage or salary for their services;
- h.** All payments to shareholders should be clearly documented as being wages, expense reimbursements, or profit distributions;
- i.** All expenses paid to shareholders should be reflected in formal expense reimbursement reports, backed up by appropriate receipts and invoices;
- j.** Owners should not receive "profit distributions" if the entity is insolvent;
- k.** All creditors should be paid regularly before distributing any profits;
- l.** Any purchase of property, computers, equipment, etc. from shareholders should be at commercially reasonable prices and terms and documented in formal written agreement;
- m.** Obtain appropriate insurance for the type of business in question;
- n.** Prepare appropriate bylaws, operating agreements, etc.;
- o.** Hold annual meeting of directors, shareholder, or members and prepare the minutes in a corporate minute book, which should reflect major corporate transactions;
- p.** Hold elections and appoint officers and directors for the entity;
- q.** Obtain federal and state tax identification numbers;
- r.** Obtain sales tax exemption certificates;
- s.** Issue share certificates to owners (if corporation);

- t.** File annual registration statement with Secretary of State to remain in "good standing" if the state law requires it;
- u.** Sign all contracts, agreements, purchases, plans, loan, investments, and accounts in the name of and on behalf of the entity;
- v.** Train officers and directors how to sign contracts, purchase orders, and agreements on behalf of the entity;
- w.** Register all "assumed names" being used by the entity;
- x.** Use the official corporate name on all letterhead, business cards, marketing materials, coupons, websites, etc. to clearly notify third parties that the business has limited liability;
- y.** If possible, run the business profitably and pay dividends/profit distributions to the owners periodically; document the same;
- z.** Avoid entering into transactions or incurring debts when the company is insolvent;
  - aa.** Avoid having the dominant owner siphon funds from the business;
  - bb.** Ensure that all officers and directors have a meaningful voice in the business, participate in decision-making, and periodically meet and vote on major corporate decisions;
  - cc.** Avoid using the corporation merely as a façade for individual dealings.

## **D. Drafting and Negotiating Formation Agreements**

### **1. General Governance Documents**

- a.** Drafting formation agreements is very important for memorializing the rights, responsibilities, and expectations of a business's owners, officers, managers, or board members.

- b.** 'Governance documents often expressly provide provisions regarding the decision-making process, profit and loss allocations and distributions, fiduciary duties, conduct and procedures for meetings, and delegation of officer positions and duties.
- c.** A few examples of agreements: operating, member control, partnership, shareholder control, buy-sell, bylaws.

## 2. Additional Brewery/Distillery Provisions

- a.** Include provisions that require all proposed members, shareholders, directors or officers to pass the appropriate TTB background check process.
- b.** Include provisions that require all proposed members, shareholders, directors or officers to pass any applicable local requirements to obtain and hold a liquor license or any other relevant local licensing requirements.
  - i.** Include provisions that require the ownership in the business to be subject to maintaining or passing any required local licensing.
  - ii.** If the owner does not meet these standards or fails to maintain these stands, the governance documents can establish procedures to terminate the relationship with the individual, including a forced buy-out of the owner's interest in the company.

## E. Capital Raising, Crowdfunding, and Other Financing Methods

### 1. Current Regulatory Landscape and Key Definitions

- a. Generally:** Nearly every means by which a company raises capital involves securities laws. These laws regulate the manner in which securities are sold, the amount of money that may be raised, the persons to whom the

securities may be offered, and the method by which investors may be solicited.

- b. Federal Registrations and Exemptions:** As a general rule, in order to comply with Federal securities laws, a person selling a security must either:
- i. "register" such sale with the Securities Exchange Commission (SEC)  
or
  - ii. identify a specific exemption that allows such sale to be conducted without registration.
    - SEC registration is time consuming and expensive.
    - For most small businesses, SEC registration is not a feasible option.
- c. State Blue Sky Laws:** In addition, an issuer selling securities must adhere to blue sky laws in each state where the securities are being sold, all of which vary from each other.

## 2. Private Placements

- a. Section 4(2):** The most common federal exemption entrepreneurs rely on is Section 4(2) of the Securities Act, which exempts "transactions...not involving any public offering" - i.e., a **private placement**. A company seeking to determine whether an offering will be exempt from registration under Section 4(2) will need to evaluate a number of factors which, although routinely addressed by courts, seldom lead to a definitive answer as to whether an offering is a "public offering" under Section 4(2). Different courts emphasize different factors critical to the Section 4(2) exemption, no single one of which necessarily controls. The factors are guidelines, and include:
- i. Offeree qualification (i.e., whether the investors are sophisticated);

- ii. Manner of the offering (i.e., whether the company will engage in advertising or other promotional activities);
- iii. Availability and accuracy of information given to offerees and purchasers (i.e., whether the people to whom the company proposes to sell securities have access to basic financial information about the company);
- iv. The number of offerings and number of purchasers (i.e., whether the company solicited investment from a large group of people); and;
- v. Absence of intent to redistribute (i.e., whether the people to whom the company proposes to sell securities have an intention to hold the securities for investment purposes - generally for a minimum holding period of 24 months).

**b. Regulation D:** The SEC provides a clear set of "safe harbor" rules that issuers can follow to ensure that they are conducting a valid private placement under Section 4(2). The most common safe harbors that small companies have customarily relied upon in conducting private placements are Rule 504 and Rule 506 (now called Rule 506(b) - see below).

**i. General Solicitation:** Rule 502(c) provides that "neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

1. any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and
2. any seminar or meeting whose attendees have been invited by any general solicitation or advertising." In general, this

means that issuers will need to have a substantial pre-existing relationship with a potential investor before making an offer of securities under Rule 504 or Rule 506(b).

**ii. Accredited investor:** Under Rule 501(a), an accredited investor is a person who meets certain qualifications and, therefore, is deemed able to protect himself or herself in making investment decisions without additional protections under the securities laws, such as those obtained through the SEC registration process and the public disclosure of information about the company that is made through the process of becoming an SEC reporting company. There are several ways to qualify as an accredited investor with the most common being:

1. an individual with at least \$200,000 (or \$300,000 jointly with a spouse) in annual income over the past 2 years or at least \$1 million in net worth (excluding the value of a principal residence); or
2. an entity in which all of the equity owners are accredited investors or the entity has at least \$5 million in net assets.

### 3. The "Old Rules" For Raising Capital

**a. Rule 504:** Generally speaking, Rule 504 allows companies to raise up to \$1 million from an unlimited number of accredited and non-accredited investors (subject to counterpart state Blue Sky registrations and exemptions). Companies are not permitted to engage in general solicitation except for in states where the securities have been registered or states that provide an exemption from registration that allows the company to generally solicit to accredited investors only.

**i. State law counterpart:-** Limited Offering Exemption: Most states have a "limited offering" exemption that is often relied on by companies who are conducting Rule 504 offerings. Normally, sales by a company to no more than 35 non-accredited investors (and an unlimited number of accredited investors) during any 12 consecutive months are exempt from registration.

**b. Rule 506:** Rule 506 is the most common "safe harbor" relied on by companies conducting private placements. Generally speaking, Rule 506 allows an issuer to raise an unlimited amount of capital from an unlimited number of accredited investors and up to 35 non-accredited investors. However, if even one non-accredited investor becomes a purchaser in the offering, then the company must provide all investors with a very detailed disclosure document that satisfies other SEC requirements. For this reason, the practical reality is that Rule 506 offerings are usually restricted to accredited investors only.

**i. State law counterpart:** Securities issued in reliance on Rule 506 are considered Federal "covered securities" and the offer and sale of such securities are exempt from registration as long as the issuer makes a notice filing.

**ii.**

**4. The "New" Rules:** Jumpstart Our Business Startups (JOBS) Act: On April 5, 2012, Congress passed the JOBS Act in an effort to foster job growth by modernizing Federal securities laws. The JOBS Act consisted of three key parts that are relevant for securities crowdfunding:

<b>Title II</b>	<b>Title III</b>	<b>Title IV</b>
<b>Advertising in Connection with Sales to Accredited Investors</b>	<b>Crowdfunding for All</b>	<b>Reg A+/"Mini-IPOs"</b>
Also called Rule 506(c)	SEC released proposed rules in October 2013	SEC released final rules in March 2015
Became effective in October 2013	The proposed rules have been almost universally criticized	Became effective in June 2015
Growing in popularity	Revised rules went into effect in May 2016	Not very useful for small businesses

**a. Title II and Rule 506(c) - Advertising to Accredited Investors:** In late 2013, the SEC (pursuant to the authority granted to it under Title II of the JOBS Act), finalized new Rule 506(c) which allows companies to generally solicit (or advertise) their securities offerings so long as all of the investors who actually purchase securities in the offer are accredited. This means that companies may now talk about their offerings in public seminars, send out email blasts, push offering information out on social media sites, as well as run ads on TV, radio, and the Internet. Companies who comply with Rule 506(c) are now free to talk about their offering to whomever they want (including non-accredited investors). Companies who generally solicit under Rule 506(c) may only sell the securities to accredited investors.

**(1) Verification Steps:** Using Rule 506(c), however, comes with certain additional compliance requirements. Companies must take additional steps to verify that all purchasers actually are accredited. In Rule 506(c), the SEC listed several non-exclusive methods that are deemed to satisfy the verification requirements (provided that the issuer does not

have knowledge that the purchaser is non-accredited). The "safe harbors" include:

**(i)** Income verification by checking federal tax forms, including W-2's and tax returns, and a statement by the investor that he or she expects enough income in the current year to remain accredited;

**(ii)** Net worth verification by checking a recent credit report (with the past 3 months) and bank or investment account statements, together with a written representation from the purchaser that he or she has disclosed all liabilities necessary to make a determination of net worth; and

**(iii)** Certification of accredited investor status by a registered broker-dealer, SEC-registered investment advisor, licensed attorney, or CPA who has verified the purchaser's accredited investor status.

### Comparison of Rules 504, 506(b) and 506(c)

	Rule 504	Rule 506(b)	Rule 506(c)
How much money can I raise?	Up to \$1M	Unlimited	Unlimited
Can I advertise the sale of my securities?	No, unless coupled with a state exemption or registration that allows advertising.	No, unless coupled with a state exemption or registration that allows advertising.	Yes.
To whom can I sell securities?	Anyone. However, counterpart state exemptions or registrations may impose additional restriction on number to non-accredited investors	Unlimited number of accredited investors.  Up to 35 non-accredited investors if you believe they are "sophisticated".	Unlimited number of accredited investors
Do I have to comply with SEC's formal information delivery requirements?	No, but counterpart state exemption or registration may impose additional requirements.	No, if only accredited investors are included.  Yes, if any non-accredited investors are included.	No.
Do I have to verify that any accredited investors are truly accredited?	No, accredited investors can "self-certify".	No, accredited investors can "self-certify".	Yes, you must take "reasonable steps" to verify that the investors are, in fact, accredited.

**b. Title III "retail" crowdfunding and Regulation CF:** Title III of the JOBS Act was meant to democratize the business funding process by allowing non-accredited individuals the opportunity to participate online and invest into private companies. The SEC delayed releasing final rules for years, and the system finally went live in May 2016. Issuers must comply with multiple requirements and limitations, namely:

- Issuer may only raise up to \$1M in any 12-month period.
- Individual investor limits:
  - If the investor's annual net income OR net worth is < \$100k, then the investor may invest the greater of: (a) \$2,000; or (b) 5% of the investor's annual income or net worth.
  - If the investor's annual net income AND net worth is > \$100k, then the investor may invest 10% of the investor's annual income or net worth
- Investors are subject to a \$100k max across all Reg CF offerings in any 12-month period.
- Issuer must provide financial statements based on offering size:
  - < \$100k -> Internally prepared, certified statements
  - \$100k - \$500k 4 CPA reviewed statements
  - \$500k - \$1M -> CPA audited financials (or CPA reviewed statements if the issuer is a first time user of the system).
- Issuer must file a robust disclosure document with the SEC.
- Issuer is subject to annual SEC reporting obligations.
- Offerings must be made through registered portals. The portals must be either (a) registered with the SEC as a broker-dealer; or (b)

registered as a portal operator with the SEC and be a member of FINRA.

**c. Title IV and Regulation A+:** Reg A+, which went into effect in June 2015, has been described as a mini-IPO or "IPO-Lite," in that it allows nearly any company with principal offices in the U.S. or Canada to use internet crowdfunding to raise up to \$50 million per year from any number of both accredited and non-accredited investors under a regulatory scheme that is far less burdensome than that of a traditional IPO. There is no prohibition on general solicitation, and offering companies are not required to independently verify the sophistication (income or net worth) of their investors. Corporations, limited liability companies, and limited partnerships can take advantage of Reg A+'s two-tiered offering scheme and can sell nearly all types of securities, including equity, debt, and debt securities convertible into equity securities. Furthermore, the securities issued in Reg A+ will be unrestricted and freely transferable. One of the most exciting changes for companies seeking to raise capital under Reg A+ is that Tier 2 offerings are not subject to state Blue Sky registration and merit review (further explained below).

**a. Tier 1:** Tier 1 offerings are largely similar to old Regulation A offerings, but the old limit of \$5 million raised in a 12-month period per issuer has now been increased to \$20 million. Unlike Tier 2, there is no limit on the amount a non-accredited investor may invest in any Tier 1 offering.

**i. State Registration:** Tier 1 still requires that offerors register under the Blue Sky laws of every state in which money is raised. However, the NASAA (North American Securities

Administrators Association) recently launched a multi-state coordinated review program for Regulation A offerings that, if successful, would allow an issuer to register with multiple states by filing just one package with a relatively quick turnaround time. This could make Tier 1 much more attractive for many issuers, given its lower cost.

**ii. Reporting:** Tier 1 is less burdensome than Tier 2 in terms of SEC requirements for initial filing and ongoing reporting. Tier 1 does not require audited financial statements nor ongoing reporting. The only requirement is that offering companies file a Form 1-Z to report the completion of their offering.

**b. Tier 2:** Under Tier 2, companies are allowed to raise up to \$50 million in a 12-month period and, most importantly, there is no requirement that the offering company register under any state Blue Sky laws because the federal Reg A+ preempts state law. Tier 2 offerings must only be registered with and approved by the SEC. On the other hand, Tier 2 limits investment by non-accredited investors to the greater of 10% of their annual income or net worth, excluding their primary residence, per offering. Tier 2 also includes substantially more onerous reporting requirements than Tier 1.

**i. Audited Financial Statements:** Tier 2 issuers must provide the SEC with two years of audited financial statements before approval, while Tier 1 issuers only need to provide "reviewed" statements.

**ii. Ongoing Reporting:** After a successful Tier 2 raise, Tier 2 issuers who have 300 or more record holders of the security offered must also file the following ongoing reports:

1. Detailed annual reports, using Form 1-K;
2. Semiannual reports, using Form 1-SA, including unaudited interim financial statements and a management discussion; and
3. Current event reports, using Form 1-U, reporting all fundamental changes.

### **Comparison of Rule 506(c), Reg CR and Reg A+**

	<b>Title II Rule 506(c)</b>	<b>Title III Reg CR</b>	<b>Regulation A+ Tier 1</b>	<b>Regulation A+ Tier 2</b>
Maximum Dollars Raised	No maximum	\$1 million per 12 months, including affiliates	\$20 million per 12months	\$50 million per 12 months
Permitted Investors	Only Accredited	Anyone	Anyone	Anyone
Per-Investor Limits	None	Yes—depends on income and net worth of investor, and applies to all Reg CF deals per year.	None	For non-accredited investors, 10% of income or net worth whichever is more, per deal
General Solicitation (Advertising) Permitted?	Yes	Yes, but only through portal	Yes	Yes
Testing the Waters Permitted	Yes	Yes	Yes	Yes
Securities Sold Through Third Party Portal?	Yes (but not required)	Yes (required)	Yes (but not required)	Yes (but not required)
Can Issuer Run Its	Yes	No	Yes	Yes

	<b>Title II Rule 506(c)</b>	<b>Title III Reg CR</b>	<b>Regulation A+ Tier 1</b>	<b>Regulation A+ Tier 2</b>
Own Portal?				
Pre-Sale Information Required	Moderate	Substantial	Very substantial, akin to a registration statement for a public company.	Very substantial, akin to a registration statement for public company.
Audited/Reviewed Financial Statements Required?	No	Depends on size of offering; most first time users will have to provide reviewed statements.	No	Yes
Pre-Sale Approval Required	No	No	Yes-submission must be approved by SEC and the states where the securities will be sold (through a coordinated review).	Yes-Submission must be approved by SEC; state approval not required.
Investor Verification	Verification required	Self-certification	N/A	Self-certification
Ongoing Reporting	None	Moderate	None	Substantial ongoing reporting, akin to a min-public company, but waived depending on number of investors.
Length of Process	Fast	Moderate	Very Slow	Very Slow

## 5. Other Crowdfunding Methods

a. **Rule 504 + State registration:** Theoretically, a company may legally conduct a small (less than \$1 million) crowdfunding campaign by combining a Federal Rule 504 exemption with state registered offering.

i. **General Solicitation under Rule 504:** Rule 504 allows an issuer to engage in general solicitation to accredited and non-accredited investors if the issuer either:

1. Registers the offering exclusively in one or more states that require a publicly filed registration statement and delivery of a substantive disclosure document to investors; or
2. Registers and sells the offering in a state that requires registration and disclosure delivery and also sells in a state without those requirements, so long as the company delivers the disclosure documents required by the state where the company registered the offering to all purchasers (including those in the state that has no such requirements).

ii. **SCOR Offering Option:** Some states provide a simplified process for "small corporate offering registrations" that otherwise are exempt from Federal registration under Rule 504.

### b. Federal intrastate exemption + State crowdfunding exemption

i. **Section 3(a)(11) and Rule 147:** Another lesser known Federal securities exemption is the "intrastate" exemption embodied by Section 3(a)(11) of the Securities Act and Rule 147 promulgated by the SEC. Generally speaking, Section 3(a)(11) exempts from SEC registration any offering that is confined to the borders of a single state. To qualify for this exemption, the company must meet requirements of Rule 147, which include:

- 1.** The company must be incorporated in the state in which it is offering the securities;
- ii.** The company must only sell the securities to individuals residing in that state;
- iii.** 80% of the company's consolidated gross revenues must be derived from the state in which the offering is conducted;
- iv.** 80% of the company's consolidated assets must be located within the state in which the offering is conducted; and
- v.** 80% of the offering's net proceeds must be intended to be used, and actually used, in connection with the operation of a business or real property, the purchase of real property located in, or the rendering of services, within the state in which the offering is conducted.

In addition to complying with the Federal "intrastate" exemption, the issuer must also satisfy the requirements of the state crowdfunding exemption. The requirements vary on a state-by-state basis, but they often impose:

- i.** Limits on the amount of money the issuer can raise;
- ii.** Limits on the amount of money that investors can invest (there are usually different limits for accredited investors vs. non-accredited investors);
- iii.** Disclosure requirements, including whether the issuer must provide purchasers with audited or reviewed financial statements;
- iv.** Escrow requirements;
- v.** Use of third party Internet portal; and
- vi.** Ongoing reporting requirements of the issuer.

- c. General Solicitation in Intrastate Crowdfunding Offerings: There is no prohibition in Section 3(a)(11) or Rule 147 regarding general solicitation as long as such solicitation:
- complies with applicable state law; and
  - does not result in an offer or sale to nonresidents of such state.
- i. **SEC Guidance on Online Advertising:** In recent months, the SEC has provided guidance on how intrastate issuers can use the internet to publicize their offerings without having those online advertisements result in an offer or sale to nonresidents of that state.
- a. **Limiting Access to Out of State Residents:** In April 2014, the SEC clarified in Questions 141.03-141.05 that issuers hoping to utilize the Rule 147 exemption could use the Internet for general advertising and solicitation if they implemented measures to limit the offers to people within the issuer's state. In the context of an offering conducted within state crowdfunding requirements, those measures have to include:
- i. limiting access to information about a specific investment opportunity to persons who confirm they are residents of the relevant state "(for example, by providing a representation...such as a zip code or residence address)" and
  - ii. providing a disclaimer and restrictive legend clarifying "that the offer is limited to residents of the relevant state under applicable law." (Question 141.04).
- b. **IP Address Blocking:** In recent years, the SEC suggested what might be a simpler method of limiting the offer to those within the

relevant state. The issuer can "implement technological measures" that limit any offers to persons with an IP address originating within the issuer's state and prevent offers to any individuals outside of the issuer's state (Question 141.05). However, the offer should still contain a disclaimer and restrictive legend. Presumably, this clarification allows issuers to skip the opt-in step where the viewer must verify they are residents of the relevant state before viewing the solicitation or advertisement. The simplification could greatly increase the number of views and potentially improve the effectiveness of the communication.

## **6. Capital Raising Pitfalls**

**a. Rights of Ownership:** When considering whether to engage in a private offering to raise investment capital, a company must consider that investors will be owners of the company following the offering (albeit likely constituting a minority stake in the entity) and as such, those investors will have certain rights afforded to them by law.

### **b. Limited Liability Companies**

**i. Governance Rights:** A member's governance rights (i.e., the right to vote and control) in a limited liability company (LLC) depends upon whether the LLC is member-managed, board-managed or manager-managed. If the LLC is member-managed, each member has equal rights in the management and conduct of the company's activities. Even if the LLC is manager-managed, certain proposed actions require consent of the members. In a board-managed LLC, while the board of governors manages the LLC's affairs, the board is selected by a majority vote of the members.

- ii. **Right to Profits:** Unless otherwise provided in the LLC operating agreement, each member is entitled to participate in any distribution(s) of the company's profits (although as noted herein, some additional incentives may be necessary).
- iii. **Right to Information:** Members have the right to access information from the LLC that is material to the member's interest as a member.
- iv. **Minority Rights Regarding Oppressive Conduct:** A member does not have the right to dissent from a proposed course of action and require the LLC to purchase his/her membership interest. However, some states provide for certain rights and remedies upon a court finding of "oppressive conduct" towards a minority member or members. Note, however, that the LLC operating agreement can limit the remedies that a court may impose, including but not limited to a court-ordered buyout.

**c. Corporations**

- i. **Voting Rights:** Unless otherwise provided within the corporation's articles of incorporation, a shareholder in a corporation has one vote per share. In addition, even if the articles provide that the holders of a particular class of shares are not entitled to voting rights, in some instances, these shareholders are entitled to voting rights as a matter of law.
- ii. **Rights to Information:** Shareholders are entitled to inspect books and certain records of the corporation.
- iii. **Dissenters Rights:** Most significantly, a shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of certain actions.

- d. Maintaining Control:** Frequently in private offerings for startup ventures, the capital contributed by investors through the offering often exceeds the amount of capital contributed by the company's founders. This can prove problematic for the founders seeking to maintain control of the entity by offering a minority ownership stake in the company through the offering. However, various incentives can be employed to make ownership of a minority interest in the business more palatable for investors.
- e. Changes to Terms of Offering; Rescission Offers:** Frequently a prospective investor will propose a counteroffer which differs from the terms outlined in the offering document. If accepted, be aware that changed terms for even a single investor will trigger an obligation to make a rescission offer to prior investors.

## **7. Other Sources of Funds**

- a. Debt Financing:** Before embarking upon a private offering, it is best to consult with one or more lending institutions regarding a small business loan. Banks offer several small business loan programs, ranging from their own private loan programs to those loan programs established by the U.S. Small Business Administration (SBA). These types of programs are particularly useful when seeking financing to acquire equipment and/or real estate, given the ability to pledge these assets as collateral. Personal guaranties of those owners holding 20% or more is also generally required.
- b. "Gap" Financing:** "Gap" financing refers to state and local financing incentives that can bridge the gap between a bank loan and an equity capital investment.
  - i. State Initiatives:** Some states have financing programs available for small businesses. These initiatives provide financing to help add

new workers and retain high-quality jobs on a statewide basis. The focus is usually on industrial, manufacturing, and technology-related industries to increase the local and state tax base and improve economic vitality statewide.

**ii. Local Financing Incentives:** Some cities have financing programs and incentives available for small businesses that locate within those cities. For example, some cities have a "Two-Percent Loan" program. Two-Percent Loans provide financing to small businesses (retail, service or light manufacturing) to purchase equipment and/or to make building improvements. A private lender provides half the loan at market rate and the City provides the rest, up to \$50,000 at 2 percent interest (up to \$75,000 in designated neighborhood commercial districts). The loan term is set by the private lender and can be for up to 10 years. Bank fees vary, but the City charges a 1 percent origination fee with a minimum of \$150 due at closing.

**iii. Tax Increment Financing:** Tax increment financing, or TIF, is a public financing method that is used as a subsidy for redevelopment, infrastructure, and other community-improvement projects. Through the use of TIF, municipalities can dedicate future tax revenues of a "particular business or group of businesses toward an economic development project in the community.

**c. Kickstarter/Rewards Based Crowdfunding:** In recent years, websites such as Kickstarter.com have popularized "rewards-based" crowdfunding. Kickstarter.com is a web portal that allows individuals to make a contribution to a particular project in exchange for some reward, typically some type of tangible product. Other variations of rewards-based

crowdfunding include "founders clubs" (often used by local breweries and distilleries) which offer a variety of member benefits (but not any voting rights or share of profits in the enterprise so as to steer clear of the definition of a "security") in exchange for payment of a one-time membership fee. These types of rewards-based incentives should be structured in a way that minimizes liability for the company; i.e., the terms and conditions of membership should be in writing and should specify what happens to the memberships if the company is sold or ceases to do business, that the memberships are non-transferrable and that the membership does not carry with it the rights of ownership.

## **8. Practical Considerations in Structuring a Private Offering**

- a. Put Rights:** A put or put option is a device which gives the owner of the put the right, but not the obligation, to sell his/her shares, at a specified price (the put price), by a pre-determined date to a given party (typically the company).
- b. Call Rights:** In contrast to put rights, call rights or a call option refers to the right, but not the obligation, to buy an agreed number of shares within a certain time for a certain price (the "call price"). The seller is obligated to sell his/her shares to the buyer if the buyer so decides.
- c. Preferred Distributions:** In some instances, it may be necessary or advantageous to incentivize potential investors by including a preferred distribution for investors. Most closely held companies give their board the discretion to make (or not make) distributions of profits and the amount of such distributions. A preferred distribution constitutes the company's contractual obligation to pay a minimum amount to the holders of such preferred distribution rights ahead of making any discretionary

distributions to all owners. Often times preferred distributions are "cumulative", meaning that a preferred distribution which is not made in one year cumulates and is to be paid when the company has funds available to pay it.

- d. Preferential/Accelerated Distributions:** In regards to general distributions of profits, in order to maintain governing control of the company following a private offering, and in addition or alternative to preferred distributions it may be necessary to offer investors a distribution preference. For example, suppose the investors as a group own 40% of the company. A distribution preference would be to make 60% of the company's operating distributions to the investor class for a period of years until the investors recoup their initial investment. Upon doing so, distributions would then be made pro rata based upon ownership percentages.
- e. Written Agreement.** All of these mechanisms should be included in a written agreement between the owners (an operating agreement for an LLC or a shareholder agreement for a corporation), and new investors should be required to execute a joinder to the agreement in order to bind themselves to the agreement.

### **The Regulatory Framework at the Local, State and Federal Levels**

#### **A. Federal**

##### **i. Alcohol and Tobacco Tax and Trade Bureau (TTB)**

- a)** The Alcohol and Tobacco Tax and Trade Bureau (TTB) regulates craft beer at the federal level. (Brew Law 101 at 59).

- b) Anyone brewing beer for sale must obtain a Brewer’s Notice from the TTB. You can find the form online at their website but be aware the process can take on average 129 days. *Id.*
- c) The application requires a heavy amount of paperwork, including personal information for every officer, director, and shareholder who holds at least 10% interest in the company. *Id.*

**ii. Food and Drug Administration (FDA)**

- a) Federally regulates any “facility that manufactures, processes, packs, or holds food or beverages – including alcoholic beverages – for consumption in the United States.” *Id* at 60.
- b) You must register with the FDA biannually, but there is no fee involved. *Id.*

**B. State**

1. Brewery License

a. Qualifications:

- An applicant must be 21 years of age, be of good moral character, be a legal resident of the United States and if applying as a Sole Proprietor, must be a legal resident of South Carolina for 30 days prior to submitting an application to this Department.
- The applicant must be the owner of the business seeking the permit and must not previously have had a permit revoked within the past two (2) years.
- All principals, officers, agents, and employees listed on the permit must be over the age of 21 and be of good moral character. A current criminal history of not more than 90 days old, on each principal, officer, and employee must accompany this application.
- Please check with the city and/or county authorities to ensure you are in compliance with zoning laws and local business license requirements.

b. Tax Liabilities:

- A permit cannot be issued if the applicant has any outstanding tax liabilities with the SCDOR.
- c. Sign Posting:
- An agent of the SC Law Enforcement Division (SLED) must post and remove a sign at the proposed place of business.
  - This sign must remain posted at the location for at least 15 days, and may be removed only by the SLED agent.
  - Permits will not be issued until the afternoon of the fourth day after the sign is taken down; unless your published ad provides for a later date.
- d. Newspaper Advertisements:
- A notice of application must be placed at least once a week for three (3) consecutive weeks in a newspaper approved by the department for your area.
  - This notice must:
    - Be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;
    - Be in large type, covering a space of one column wide and at least two inches deep; and
    - State the type of license applied for and the exact location of the proposed business.
    - To complete your application you must submit your Affidavit of Publication and a copy of the ad furnished by the approved newspaper office.
    - The ABL-32 lists all approved newspapers.
- e. Requirements
- Completed application, signed, dated, and notarized.
  - Submit nonrefundable filing fees: \$300.00
  - LICENSE FEES SHOULD NOT BE SUBMITTED UNTIL PERMIT IS APPROVED.
  - Must complete ABL-946 (Consent and Waiver).

- Must attach copy of Articles of Incorporation, if applying as a corporation.
- Must attach a Certificate of Authority to do Business in South Carolina, obtained from the Secretary of State's office, if applying as a foreign corporation.
- Must attach a copy of Articles of Organization and Operating Agreement, if applying as a Limited Liability Corporation.
- Must attach copy of partnership agreement, if applying as a partnership or Limited Liability Partnership.
- All principals must attach a Criminal Records Check (CRC), not more than 90 days old.
- If the principal has lived in SC for more than two (2) years, obtain the CRC from SLED at [www.sled.state.sc.us](http://www.sled.state.sc.us) or from SLED Headquarters, Criminal Records Department, 4400 Broad River Rd., P.O. Box 21398, Columbia, SC 29221.
- If the principal has lived in SC less than two (2) years, obtain a CRC from previous state of residency AND a CRC from SLED.
- If principal is not a SC resident, obtain a CRC from current state of residency.
- If you own the property, you must submit a copy of the deed or tax bill; if not, submit a copy of your lease.
- Must attach completed residency status verification affidavit. Use Verification of Lawful Presence in the United States-Applicant and Principals (ABL-920) for each principal. Each principal, officer, owner, member, and/or partner MUST sign the form. If applicable include his/her non-citizen alien registration number and attach a copy of all appropriate immigration documents.
- General Location Requirements for Brewery to offer Samples:
- Sales to or samplings must be held in conjunction with a tour by the consumer of the licensed premise and the entire brewing process utilized at the licensed premise;
- Sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of 21;
- No more than a total of 48 ounces of beer brewed at the licensed premises, including amounts of samples offered and consumed with or without cost,

shall be sold to a consumer for on-premises consumption within a 24 hour period.

- Of that 48 ounces of beer available to be sold to a consumer within a 24 hour period, no more than 16 ounces of beer with an alcoholic weight of above eight (8) percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a 24 hour period.
- General Location Requirements for Brewery to sell On-Premises Beer/Wine:
- A brewery licensed in this State is authorized to sell beer produced on its licensed premises to consumer for on-premises consumption within an area of its licensed premises approved by the rules and regulations DHEC governing each and drinking establishments and other food service establishments.
- Breweries approved through DHEC for eating and drinking establishments may also apply for a retail on-premises consumption permit for the sale of beer and wine of a producer that has been purchased from a wholesaler through the three-tier distribution chain set forth in Section 61-4-730 and Section 61-4-940.
- The brewery must comply with all state and local laws concerning house of operation.
- The brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12-21-1020 and Section 12-21-1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

## 2. Brewpub Beer/Wine License

### a. 120 Day Temporary

- The existing business must have a biennial permit that has not expired, been suspended or revoked.
- This permit must be attached with the completed ABL-901 application. A \$25.00 fee is required for each temporary permit requested.
- Attach a copy of the receipt from the approved newspaper indicating you have paid for the Notice of Application.

- Attach a copy of the bill of sale, lease, probate document, divorce decree, eviction order, or document showing how the business was acquired.
- Be sure to indicate the Retail Sales Tax Number on the ABL-901 application.

b. Qualifications

- Authorizes the sale of beer and wine, the manufacture of beer and the consumption of these products on the permitted premises.
- An applicant must be 21 years of age, be of good moral character, be a legal resident of the United States and if applying as a sole proprietor, must be a legal resident of South Carolina for 30 days prior to submitting an application to this department.
- The applicant must be the owner of the business seeking the license and must not previously have had a license revoked within the past five years.
- All principals, officers, agents, and employees listed on the license must be over the age of 21 and be of good moral character. A current criminal history background check of not more than 90 days old, on each principal, officer, and employee must accompany this application.
- Please check with the city and/or county authorities to insure you are in compliance with zoning laws and local business license requirements.

c. Tax Liabilities:

- A license or permit cannot be issued if the applicant or any principal has any outstanding tax liabilities with the SCDOR.

d. Sign Posting:

- An agent of the SC State Law Enforcement Division (SLED) must post and remove a sign at the proposed place of business.
- This sign must remain posted for at least 15 days, and may be removed only by the SLED agent. If the sign disappears before the SLED agent removes it, contact the SCDOR or SLED immediately.

- Permits/Licenses will not be issued until the afternoon of the fourth day after the sign is taken down by agent; unless your published ad provides for a later date.

e. Newspaper Advertisements:

- A notice of application must be placed at least once a week for three (3) consecutive weeks in a newspaper approved by the department for your area.
- This notice must:
  - Be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;
  - Be in large type, covering a space of one column wide and at least two inches deep; and
  - State the type of license applied for and the exact location of the proposed business.
  - To complete your application, you must submit your Affidavit of Publication and a copy of the ad furnished by the approved newspaper office.
  - Please refer to the ABL-32 for a complete list of approved newspapers.

f. Requirements

- Authorizes the sale of beer and wine, the manufacture of beer and the consumption of these products on the permitted premises.
- Completed application (ABL-901), signed, dated and notarized
- Submit nonrefundable filing fees - \$300.00
- LICENSE FEES SHOULD NOT BE SUBMITTED UNTIL LICENSE IS APPROVED
- Submit an Affidavit of Publication from the newspaper running your ad. The affidavit must include a copy of your ad. If you just started your ad in the newspaper and have not received the ad and affidavit, you MUST include the receipt from the newspaper with your application. Forward the ad and affidavit as soon as the newspaper provides it to you. Your permit cannot be issued until this is received.

- Must complete the ABL-946 (Consent and Waiver)
- Must attach copy of Articles of Incorporation, if applying as a corporation.
- Must attach a Certificate of Authority to do Business in South Carolina, obtained from the Secretary of State's office, if applying as a foreign corporation.
- Must attach a copy of Articles of Organization and Operating Agreement, or LLC Supplemental Information Form (ABL-919), if applying as a Limited Liability Corporation.
- Must attach copy of partnership agreement, if applying as a partnership or Limited Liability Partnership.
- All principals must attach a criminal records check (CRC), not more than 90 days old.
- If the principal has lived in SC for more than 2 years, obtain the CRC from SLED at [www.sled.state.sc.us](http://www.sled.state.sc.us) or SLED Headquarters, Criminal Records Department 4400 Broad River Rd., P.O. Box 21398, Columbia, SC 29221.
- If the principal has lived in SC less than 2 years, obtain a statewide CRC from previous state of residency AND a CRC from SLED.
- If principal is not a SC resident, obtain a statewide CRC from current state of residency.
- Must attach a copy of your lease, deed or tax bill for the location for which you are seeking a license. The lease, deed, or tax bill must be in the applicant's name and list the physical address of the business location.
- Must attach completed residency status verification affidavit. Use Verification of Lawful Presence in the United States– Applicant and Principals (ABL-920) for each principal. Each principal, officer, owner, member, and/or partner MUST sign the form. If applicable, include his/her non-citizen alien registration number and attach a copy of all appropriate immigration documents.

### 3. In State Liquor Manufacturer

#### a. Qualifications

- An entity operating a plant or place of business in this State for distilling, rectifying, brewing, fermenting, blending, or bottling alcoholic liquors.

- An applicant must be 21 years of age, be of good moral character, be a legal resident of the United States and if applying as a sole proprietor, must be a legal resident of South Carolina for 30 days prior to submitting an application to this department.
- The applicant must be the owner of the business seeking the license and must not previously have had a license revoked within the past five years.
- All principals, officers, agents, and employees listed on the license must be over the age of 21 and be of good moral character. A current criminal history background check of not more than 90 days old, on each principal, officer, and employee must accompany this application.
- Please check with the city and/or county authorities to ensure you are in compliance with zoning laws and local business license requirements.

b. Tax Liabilities:

- A license cannot be issued if the applicant or any principal has any outstanding tax liabilities with the SCDOR.

c. Sign Posting:

- An agent of the SC State Law Enforcement Division (SLED) must post and remove a sign at the proposed place of business.
- This sign must remain posted for at least 15 days, and may be removed only by the SLED agent. If the sign disappears before the SLED agent removes it, contact the SCDOR or SLED immediately.
- Licenses will not be issued until the afternoon of the fourth day after the sign is taken down by the agent; unless your published ad provides for a later date.

d. Newspaper Advertisements:

- A notice of application must be placed at least once a week for three (3) consecutive weeks in a newspaper approved by the department for your area.
- This notice must:

- Be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;
- Be in large type, covering a space of one column wide and at least two inches deep; and
- State the type of license applied for and the exact location of the proposed business.
- To complete your application, you must submit your Affidavit of Publication and a copy of the ad furnished by the approved newspaper office.

e. Requirements

- An entity operating a plant or place of business in this State for distilling, rectifying, brewing, fermenting, blending, or bottling alcoholic liquors.
- Completed application (ABL-902), signed, dated and notarized
- Submit nonrefundable filing fees: \$200.00
- Submit an Affidavit of Publication from the newspaper running your ad. The affidavit must include a copy of your ad. If you just started the ad in the newspaper and have not received the ad and affidavit, you MUST include the receipt from the newspaper with your application. Forward the ad and affidavit as soon as the newspaper provides it to you. Your license cannot be issued until this is received.
- Must complete the ABL-946 (Consent and Waiver)
- Must attach copy of Articles of Incorporation, if applying as a corporation
- Must attach a Certificate of Authority to do Business in South Carolina, obtained from the Secretary of State's office, if applying as a foreign corporation
- Must attach a copy of Articles of Organization and Operating Agreement, if applying as a Limited Liability Corporation, LLC
- Must attach copy of partnership agreement, if applying as a partnership or Limited Liability Partnership.
- All principals must attach a criminal records check (CRC), not more than 90 days old.

- If the principal has lived in SC for more than 2 years, obtain the CRC from SLED at [www.sled.state.sc.us](http://www.sled.state.sc.us) or SLED Headquarters, Criminal Records Department, 4400 Broad River Rd., P.O. Box 21398, Columbia, SC 29221.
- If the principal has lived in SC less than 2 years, obtain a statewide CRC from previous state of residency AND a CRC from SLED.
- If principal is not a SC resident, obtain a statewide CRC from current state of residency.
- If you own the property, you must submit a copy of the deed or tax bill; if not, submit a copy of your lease
- Must attach completed residency status verification affidavit. Use Verification of Lawful Presence in the United States– Applicant and Principals (ABL-920) for each principal. Each principal, officer, owner, member, and/or partner MUST sign the form. If applicable, include his/her non-citizen alien registration number and attach a copy of all appropriate immigration documents

### **C. Local**

#### **a) Growlers**

#### **b) Tap Rooms/ Cocktail Rooms**

#### **c) Zoning/Land Use**

#### **Top Permitting/Licensing Issues**

- a) First and foremost, it is imperative to understand what permits and licenses must be obtained at each level of government before operations can legally begin.
- b) At the Federal level, when you are seeking a brewer's notice or distilled spirits plant license, be sure that your application is complete and accurate, as incomplete applications will not be reviewed and will ultimately be dismissed.
- c) At the state level, be aware of which agency or agencies are responsible for reviewing your application and provide such agency/agencies with all required

and requested documentation in order to ensure expeditious review and approval.

- d) It is also imperative to understand what local requirements exist as to the brewery or distillery, be they taproom/cocktail room licenses or other issues (such as growler sales restrictions and/or garden variety land use/zoning requirements).

#### **D. Navigating TTB Labeling Regulations – and Landmines to Avoid!**

i. **TTB:** At the federal level, breweries and distilleries are regulated via the Alcohol Tobacco Tax and Trade Bureau, an agency falling under the U.S. Department of Treasury. Commonly referred to as the “TTB”, this agency grew out of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) in 2003. The TTB handles all federal liquor law issues including tax revenues, permits, licenses, tax audits, trade investigation and labels.

ii. **Navigating Local, State and Federal Rules, Regulations and Requirements:** While the TTB’s licensing requirements and regulations apply for breweries and distilleries in any state within the U.S., state and local laws vary by jurisdiction.

#### **iii. State and Federal, TTB Registration Requirements**

##### **a. Federal**

1. The TTB requires anyone brewing beer for sale to acquire a Brewer’s Notice. Historically, the process for obtaining a Brewer’s Notice through the TTB was time consuming, but with the recent craft brewing and distilling boom, the TTB has streamlined the process through its Permits Online site, <https://www.ttbonline.gov/permitsonline>.
2. Information and documents to be submitted to the TTB in connection with the Brewer’s Notice application include the following:
  - Articles of Organization (LLC) / Articles of Incorporation Corp.)
  - Operating Agreement (LLC) / By Laws (Corp.)
  - Federal EIN (from IRS)

- Owner Officer Questionnaires (for each owner of 10%+ and each officer)
- List of all owners and officers identifying percentage of voting ownership, amount of funds invested, etc. (if owner is an entity, EIN)
- Source of Funds Documents (bank statements, loan documents, etc.)
- Diagram of Premises
- Description of Property (usually metes & bounds is best)
- Description of Equipment (more reviewers are requiring this, at least provide size of tanks)
- Description of the Building (walkthrough of the brewery premises)
- Environmental Questionnaire (number of employees, amount of waste, disposal of liquid and solid waste, electric/gas provider name, etc.)
- Supplemental (disposal of waste into navigable waterways, etc.)
- Brewer's Bond
- Consent of Surety (if using a non-contiguous warehouse, alternating premises between a brewery and a distillery, running an alternating proprietorship, etc.)
- Lease agreement or mortgage (with permission to use premises as a brewery/distillery)
- Assumed name registration (if applicable)
- Security statement
- Designation of a main contact person
- Copy of ID for main contact person
- Signing authority resolution for application contact
- TTB's Signing Authority Form
- Power of attorney (if being filed by an attorney)
- Other (historic buildings, variance request, etc.)

3. Similarly, anyone seeking to produce distilled spirits must obtain a distilled spirits plant license through the TTB with similar requirements as for the Brewer's Notice.

**b. State Licensing Issues**

- i. While the TTB's licensing requirements and regulations apply for breweries and distilleries in any state within the U.S., state and local laws vary by jurisdiction.

**c. Formula Approvals**

**i. Beer Formulas**

1. Beers do not typically require a formula approval, unless they contain a non-traditional beer ingredient or are made using a non-traditional brewing method.
2. In 2015, TTB issued a ruling broadly expanding the definition of "traditional." Under the new rule, traditional ingredients and processes have been expanded, and are listed in the attachment on the next page.
3. If the beer includes a "non-traditional" fruit, spice (e.g., elderberry), or "sweetener" (e.g., aspartame), or contains a coloring (e.g., Blue No. 1), flavoring (e.g., an extract), or TTB limited ingredient (e.g., calcium chloride), or is made by a "non-traditional" process (e.g., "ice distilling"), the beer requires a TTB formula approval before TTB will issue a COLA approval. For more information on ingredient issues, see Appendix 1.

**ii. Spirits formulas**

1. Most traditional spirits do not require a formula approval, unless they contain a restricted product (e.g., thujone), or are infused with flavors or colored. Occasionally, a product must also be sent in to TTB's lab for analysis. Lab analysis is more typically required for imported products to make sure certain requirements are met. TTB's chart is attached hereto as Appendix 2, which shows if/when formula and/or laboratory approval is required for a distilled spirits product prior to label submission.

**iii. Labeling**

1. Another integral responsibility of the TTB is to regulate and approve labels for packaging beer and spirits. Section 105(e) of the Federal Alcohol Administration Act (27 USC 205(e)) authorizes the Secretary of the Treasury to issue regulations regarding product labeling that:

- (1) ensure that consumers are provided with adequate information as to the identity and quality of alcohol beverages, and

- (2) prevent consumer deception. The Secretary has delegated to the Alcohol and Tobacco Tax and Trade Bureau (TTB) authority to administer the regulations promulgated under section 105(e). Section 105(e) and the TTB regulations require a Certificate of Label Approval ("COLA") for each alcohol beverage product regulated by the agency. TTB issues COLAs on TTB Form 5100.31.

2. First, you must register for the COLA's. Appendix 3 contains instructions on how to successfully register using the online system. If you choose not to file electronically, you must TTB Form 5100.3, in duplicate form, to the following address:

Advertising, Labeling and Formulation Division  
Alcohol and Tobacco Tax and Trade Bureau  
1310 G Street, NW, Box 12  
Washington, DC 20005

3. A copy of Form 5100.3 is included at Appendix 4.

4. NOTE: You must obtain label approval prior to bottling if you are shipping out of state.

5. For many alcohol beverage products, TTB requires a product evaluation to determine whether a proposed label identifies the product in an adequate and non-misleading way. Pre-COLA product evaluation entails a review of a

product's ingredients and formulation and also may include a laboratory analysis of the product. Laboratory analysis involves a chemical analysis of a product.

6. Such pre-COLA product evaluations ensure that:
  - No alcohol beverage contains a prohibited ingredient.
  - Limited ingredients are used within prescribed limitations or restrictions.
  - Appropriate tax and product classifications are made.
  - Alcohol beverages labeled without a sulfite declaration contain less than 10 parts per million (ppm) of sulfur dioxide.
7. The type of pre-COLA product evaluation required for a particular product depends on that product's formulation and origin. TTB regulations require formulas most commonly when flavoring or coloring materials are added. Field investigations can be used to verify the accuracy of these documents. Since TTB does not have access to foreign plants, some imported products are subject to laboratory analysis or pre-import letter approval.
8. The relevant Federal regulations for labeling and advertising of malt beverages can be found Part 7 of Title 27 of the Code of Federal Regulations. Processing times for COLA's can be found :  
<https://www.ttb.gov/labeling/processing-times.shtml>.

#### **§7.11 Use of ingredients containing alcohol in malt beverages; processing of malt beverages**

(a) *Use of flavors and other nonbeverage ingredients containing alcohol—*

- i. (1) *General.* Flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage. Except as provided in paragraph (a)(2) of this section, no more than 49% of the overall alcohol content of the finished product may be derived from the addition of flavors and other

nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol.

- ii. (2) In the case of malt beverages with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the malt beverage may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

(b) *Processing.* Malt beverages may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

#### **iv. Labeling Requirements**

**Permission to Re-label:** Application for permission to re-label shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

#### **Land Use, Zoning and Environmental Issues**

##### **A. Industrial Waste & Water**

a. Breweries use a substantial amount of water and create a large amount of byproduct waste through their operations. (Brewlaw p. 47). The spent grain is considered "industrial waste and must be handled accordingly". *Id.*

**b.** Be aware that some cities and locations are not friendly to breweries because they use a substantial amount of water. *Id.* Additionally, at drought-stricken areas, your brewery will need to expend more on water as it may be more expensive. *Id.*

**B. Pollutants**

**a.** Brewing creates pollutants that must be handled appropriately. These pollutants are governed by different agencies. *Id.*

**b.** "The wastewater created by boilers, referred to as effluent, is regulated by the Environmental Protection Agency (EPA) for nitrogen oxide level." *Id.*

**c.** Plan to have a silo? You need to obtain a permit from the Air Pollution Control District (APCD). *Id.* at 48.

**C. Zoning & Licenses**

**Considerations for Clients Doing Business in Multiple States**

**A.** Onus is on the brewery to ensure they are compliant with each state and federal law.

**B.** Non-extensive checklist for laws:

**a.** Environmental laws in different states;

**b.** Zoning;

**c.** Licensing;

**d.** Labeling;





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## Regulatory

- Scope - Brewer
  - Manufacture and bottle wine
  - Transport
    - Intrastate to wholesaler
    - Interstate to a point legal in that state
    - Intra/Inter to another vintner
  - No direct sales to consumer or to retailers

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## Regulatory

- Scope – Distillery
  - Manufacture and bottle wine
    - Less than 1,000,000 gallons annually sold in Indiana
    - Based anywhere.
  - Sales/sampling
    - On-premises sampling and sales by the glass
    - Off-premises sales of bottles
  - Buy and sell bulk wine – not to exceed 5,500 gallons
    - Losses allowed up to the total loss
  - Transport
    - Intrastate to wholesaler
    - Interstate to a point legal in that state
  - May sell direct to consumer in another state – pending legality.
  - Winery satellites – up to three locations

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## Regulatory

- Ind. Code 7.1-5-2
  - Relationship between manufacturers and dealers/customers
  - Sign advertising
- Ind. Code 7.1-5-5
  - Gifts between manufacturers and dealers
    - Entertainment
    - Educational and professional expenses
- Ind. Code 7.1-5-9
  - Prohibited interests
    - Manufacturers interest in a wholesale, retailer, or dealer permit.
    - Retailer interest in a manufacturer permit.

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## Regulatory

- Other permits
  - May hold an interest in other craft manufacturer permits
- Co-owned sites
  - May serve/sell over the same counter as co-owned permit.
- May “wholesale”
  - Beer only
  - Capped on production in-state
  - May receive digital orders.

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## Indiana

- Residence
- Time manufacturing permit held
- Gallonage/barrelage
- Ownership details
- SSN required
- Floorplan
- Fees

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# Federal

- Online
- All materials submitted simultaneously
- Detailed equipment description
- Detailed floorplan
- Detailed source of funds
- Sampling/tours
- Merch
- Accessible

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# Overcoming Permitting Issues

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## Common questions

- **What is proof?**
- Proof is a method of measuring the alcohol content of spirits. You calculate the proof of a spirits product by multiplying the percent of alcohol by volume by two (2). For example, a spirits product that has a 40% alcohol content by volume is 80 proof [40 multiplied by 2 = 80].
- **How do I calculate proof?**
- **Converting U.S. gallons into proof gallons for tax purposes:**
  1. Multiply U.S. gallons by the percent of alcohol by volume.
  2. Multiply by 2.
  3. Divide by 100.
- **Sample calculation:**
  1. 100 U.S. gallons x 40% alcohol by volume=4000
  2. 4000 x 2=8000
  3. 8000/100= 80 proof gallons

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## Common questions

- Converting metrics to US measurement.
- Official Conversion Factor: 1 Liter = 1 quart = 0.264172 U.S. Gallon

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## Common questions

- Food additives
- TTB reminds you that each producer and importer of alcohol beverages is responsible for ensuring that the ingredients in its products comply with the laws and regulations that FDA administers. TTB's approval of a COLA or formula does not imply or otherwise constitute a determination that the product complies with the Federal Food, Drug, and Cosmetic Act

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## Label Approval

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# COLA Online

For this type of application:	Label processing times are:	We are now processing new applications received on:
Distilled Spirits Labels	3 days	8/23/2022
Malt Beverage Labels	2 days	8/22/2022



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# New Label

- [Brand name](#) in accordance with [27 CFR 5.34](#)
  - [Class or type designation](#) in accordance with [27 CFR 5.35](#); and
  - [Alcohol content](#) in accordance with [27 CFR 5.37](#)
- Other mandatory information (including some information that is mandatory only in certain circumstances) may appear on any label. This includes name and address, net contents, coloring or flavoring, FD& C Yellow #5 disclosure, carmine or cochineal extract, sulfite declaration, commodity statement, age statement, and state of distillation.



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## New Label



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## Label Changes

1. Industry members may divide a single approved label into multiple labels on a container, and conversely, may combine separate labels that were approved under a single COLA into a single label, provided the label or labels comply with placement requirements for mandatory information and all other relevant requirements.
  2. Industry members may add or delete two new claims ("Environmentally Conscious" and "Eco-Conscious"), in addition to the nine sustainable farming, environmental, and eco-friendly claims that are already authorized as allowable revisions.
  3. Industry members may add, change, or delete opening instructions for box wine containers and tapping instructions for wine and malt beverages in kegs. In the case of box wine containers, the revisions may include graphics showing step-by-step instructions.
  4. Industry members may add, change, or delete the name or name and address of the container manufacturer. See new Item 40 below.
  5. Industry members may change the stated numerical representation of the International Bitterness Units or Original Gravity on malt beverage labels.
- Industry Circular 2021-1

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## Cross-type labelling

- A proposed restriction on the use of certain types of cross-commodity terms (for example, imposing restrictions on the use of various types of distilled spirits terms, including homophones of distilled spirits classes on wine or malt beverage labels).
- Proposed changes to statements of composition for distilled spirits labels, including changes that would have required disclosure of components of intermediate products, required distilled spirits and wines used in a finished product to be listed in order of predominance, and removed the flexibility to use an abbreviated statement of composition for cocktails.
- A policy that would have limited "age" statements on distilled spirits labels to include only the time the product is aged in the first barrel, and not aging that occurs in subsequent barrels.
- A proposal that would have required that whisky that meets the standards for a specific type designation be labeled with that type designation..

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## Ingredients

- *Rhamnus prinoides*, also known as "Ethiopian hops" or "Gesho," are not the same hops traditionally used in alcohol beverages that are addressed in the laws and regulations administered by TTB. The scientific name of the hop plant traditionally used and commonly understood to be used in alcohol beverages covered under the laws administered by TTB is *Humulus lupulus*.
- Consequently, "Ethiopian hops" cannot be used interchangeably with traditional hops when making alcohol beverages, including malt beverages.

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## Land Use, Zoning

- *Artisan food and beverage*: Small-scale production or preparation of food made on site with limited to no automated processes involved and may include direct sales to or consumption by consumers. This definition includes uses such as small-batch bakeries, micro-breweries (manufacturing 15,000 barrels per year or less) as regulated by the State of Indiana, artisan distilleries (manufacturing 10,000 barrels per year or less) as regulated by the State of Indiana, small-batch candy shops, and local cheese makers. This use may or may not have outdoor seating or patio as an accessory use depending on the zoning district in which it is located.
- Any factory, yard, building or structure of any kind, or any tallow or soap factory, tannery, distillery, brewery, livery stable, cattle yard or shed, barn, packinghouse, slaughterhouse, rendering establishment, fertilizer plant, butcher shop or other place or use which emits an unwholesome smell or becomes foul, noxious or offensive, or injurious to the public comfort or health, is hereby declared to be a public nuisance and may be abated.
- In the MU Districts, this use shall not exceed 10,000 square feet of gross floor area.
- Retail sales of food and beverages produced on-site shall be permitted as an accessory use.
- Consolidated Code of Indianapolis – Marion County

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# Advertising

- **Mandatory statements are missing, such as:**
  - the name and address of the responsible advertiser
  - the alcohol content (percent alcohol by volume) of distilled spirits
- **False or misleading health claims or health-related statements are made, such as:**
  - "no headaches"
  - "provides energy"
- **Statements that create a misleading impression about the identity, origin, or other characteristics of the product.**
- **A product label depicted on a bottle in the advertisement is not a reproduction of the approved label.**
- **A calorie or carbohydrate claim is made but no statement of average analysis appears on the website.**
- TTB Guidance on Gluten
- TTB Guidance on Nutrition
- TTB Enforcement for "sponsorship"
- 905 Ind. Admin. Code Rule 23 and 38
  - 200 foot rule
  - Indy 500
  - No illumination

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# Environmental

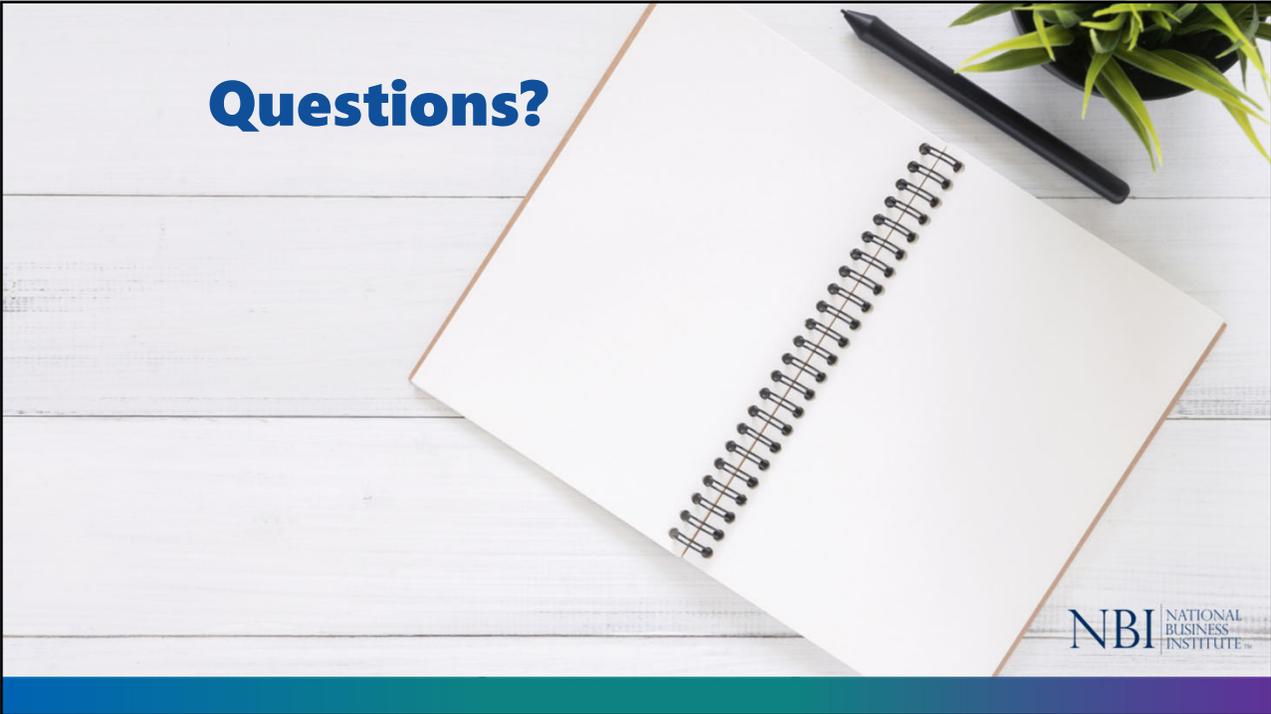
- Wastewater
- Spent grain
- A description of specialized farming practices generally may appear on alcohol beverage labels as additional information provided it is truthful, accurate, specific, and does not conflict with, or in any manner qualify, mandatory labeling information. However, due to the constantly evolving nature of this field, TTB reserves the right to request clarification and documented verification of any graphics, seals, logos, definitions or language appearing on labels. For instance, any label specifically stating that the producer is certified by an agricultural organization must have documented proof.

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**APPLICATION FOR NEW OR TRANSFER PERMIT –  
MANUFACTURER OR WHOLESALER**  
State Form 56885 (R / 5-22)

**INSTRUCTIONS:**

1. Type or print legibly.
2. Include payment.
3. Do not complete shaded areas.
4. Mail to the address at the end of this application form.
5. Please attach a completed Property Tax Clearance – Form 1 (State Form 1462) if applicable.
6. Please attach a completed County Verification of Business Location form (State Form 44184), if applicable.
7. Please attach a copy of your Registered Retail Merchant Certificate from Indiana Department of Revenue.

\* This record is requesting your Social Security Number in accordance with IC 4-1-8-1; disclosure is mandatory, and this record cannot be processed without it.

FOR OFFICE USE ONLY	
Date received (mm/dd/yy)	
Permit number	
Permit type	
Jurisdiction	
Checked by	
Base fee receipt number	
Balance due	
Refund	
Balance due	
Refund	
Date reviewed (mm/dd/yy)	
Hearing date of Local Board (mm/dd/yy) (For farm winery satellite dealer only.)	
Commission approved	
Permit issued	

SECTION 1. GENERAL INFORMATION		
<b>1.1. Permit type for which you are applying (Select one):</b> <input type="checkbox"/> Artisan distiller <input type="checkbox"/> Brewer <input type="checkbox"/> Small brewer <input type="checkbox"/> Direct wine seller <input type="checkbox"/> Distiller <input type="checkbox"/> Farm winery <input type="checkbox"/> Farm winery brandy distiller <input type="checkbox"/> Farm winery satellite dealer <input type="checkbox"/> Rectifier <input type="checkbox"/> Wholesaler – Liquor <input type="checkbox"/> Wholesaler – Wine <input type="checkbox"/> Wholesaler – Beer <input type="checkbox"/> Wholesaler – Microwine <input type="checkbox"/> Wine bottler <input type="checkbox"/> Wine Vintner		<b>1.2. Type of application:</b> <input type="checkbox"/> New application <input type="checkbox"/> Transfer owner <input type="checkbox"/> Transfer location
<b>1.3. Please briefly describe your business that qualifies you for this permit type.</b>		<b>1.4. Permit number (Required for transfers.)</b>
<b>1.5. This ownership entity is: (Check one)</b> <input type="checkbox"/> Sole Owner <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Municipality <input type="checkbox"/> Simple Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Club Association <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Club Corporation		
<b>1.6 Business entity making this application</b>		<b>1.7. Telephone number of applicant</b> (     )
<b>1.8. Doing business as (DBA)</b>		
<b>1.9. Premises address – Location where alcoholic beverages will be dispensed</b> Number and street City / Town      State      ZIP code		
<b>1.10. E-mail address</b>		<b>1.11. Telephone number of premises</b> (     )
<b>1.12. Mailing address</b> <input type="checkbox"/> Same as above (NOTE: Notices from the ATC will be sent to the mailing address provided on this form. It is the permittee's responsibility to notify the ATC of any changes to the mailing address.) Name Address (number and street, city, state, and ZIP code)		

<b>1.13. What county is the proposed permit premises located in?</b>	
<b>1.14. Is the proposed permit premises located inside the corporate limits of a city / town?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>1.15. If yes, please name the incorporated city / town.</b>	

1.16. Is there at least 200 feet between the permit premises and any church or school?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, please check the exception that applies:	
<input type="checkbox"/> Church or school provided a written statement pursuant to IC 7.1-3-21-11 ( <i>Applies only to grocery store, drug store, restaurant, hotel, or catering hall.</i> ) <i>(Copy of written statement must be attached to application.)</i>	
<input type="checkbox"/> Wall of the premises and wall of the church or school are separated by at least eighty-five (85) feet, including a two-lane road of at least thirty (30) feet in width	
<input type="checkbox"/> An alcoholic beverage permit premises has continuously operated at the location since prior to the opening of the church or school.	
1.17. Do any individuals, corporations, limited liability companies, limited liability partnerships, or stock owners, members, or partners of such business entities have any interest, either directly or indirectly, in any artisan distiller, distiller, vintner, farm winery, rectifier, brewer, primary source of supply, or wholesaler permit?	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.18. As owner, do you manage the premises? <i>If no, please complete Section 5, Manager's Questionnaire.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.19. Do you consent for the duration of the permit to inspection and search by an enforcement officer, without a warrant or other process, of your licensed premises and vehicles to determine compliance with the provisions of Indiana Code 7.1?	<input type="checkbox"/> Yes <input type="checkbox"/> No
1.20. Do you have the right to possess (rent, lease, mortgage, or own) the permit premises for the term of the permit?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>SECTION 2. QUALIFICATIONS</b>	
<b>Instructions: All permit applicants must complete this section.</b>	
<b>THE FOLLOWING QUESTIONS PERTAIN TO ALL INDIVIDUALS HAVING AN INTEREST IN THIS APPLICATION.</b>	
<b>NOTE:</b> "Individuals" referred to in all questions in the below section include limited liability companies (LLCs), limited liability partnerships (LLPs), corporations, partnerships, and all other business entities recognized under Indiana law, as well as a natural person where applicable.	
2.1. Are all individuals with an interest in this application citizens of the United States?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.2. Are all individuals with an interest in this application of sound mind and good repute in the community in which they reside?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3. Have any individuals with an interest in this permit been convicted of a felony or a misdemeanor? <i>(If yes, please attach a letter detailing the conviction, court, date, and sentence information.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.4. Have any individuals with an interest in this permit ever been convicted of and/or found to have committed a violation of the Indiana alcoholic beverage laws, rules, regulations, or orders of the ATC? <i>(If yes, please attach a letter detailing the conviction(s) and/or violation(s), including any permit number(s).)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.5. Are any individuals with an interest in this application a law enforcement officer, a non-elected officer of a municipal corporation or governmental subdivision, or an officer of the state of Indiana, charged with any duty or function in the enforcement of Title 7.1 of the Indiana Code?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.6. Have any individuals with an interest in this application held a permit under Title 7.1 of the Indiana Code and had the permit revoked within one (1) year prior to the date of this application? <i>(If yes, please provide the permit number(s) and an explanation.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.7. Have any individuals with an interest in this application made an application for a permit of any type which was denied less than one (1) year prior to this application for this permit (unless the application was denied by reason of a procedural or technical defect)? <i>(If yes, please attach an explanation.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.8. Do any individuals, corporations, limited liability companies, limited liability partnerships, partnerships, or stock owners, members, or partners of such entities have any interest, either directly or indirectly, in any other permits or registrations of any kind issued under Title 7.1 of the Indiana Code in connection with, but not limited to, the production, distribution, transportation, or sale of alcoholic beverages? <i>(If yes, list permits below. (Attach additional sheet if necessary.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Permit number(s)	

**SECTION 3. AFFIDAVIT OF OWNERSHIP**

*(NOTE: IC 7.1-3-21-8 requires the disclosure of each person who is, or will be, financially or beneficially interested in the permit and the business conducted, or to be conducted, under it. Changes to this list must be filed by the applicant or permittee within ten (10) days of the date when the change became effective.)*

A. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
B. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
C. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
D. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
E. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
F. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
G. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	
H. Complete name				Social Security number *		Date of birth (month, day, year)		Citizen of United States <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address (number and street, city, state, and ZIP code)									
Nature of interest <input type="checkbox"/> Sole Owner <input type="checkbox"/> Corporate President <input type="checkbox"/> Stockholder <input type="checkbox"/> Partner <input type="checkbox"/> Corporate Secretary <input type="checkbox"/> Club Officer <input type="checkbox"/> Member								Percent of ownership	

Please attach additional sheets as needed.

**SECTION 4. PERMIT TYPES**

**NOTE: You must meet specific requirements to hold certain types of permits. Please answer only the following questions that are applicable to your permit application.**

**A. ARTISAN DISTILLER**

- |  |                |
|--|----------------|
| 1. I will not produce more than 10,000 gallons of liquor in any calendar year, excluding liquor sold through a wholesaler licensed under IC 7.1-3-8.   | Initial: _____ |
| 2. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture liquor. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>  | Initial: _____ |
| 3. Which qualifying permit have you held for at least six (6) months immediately preceding the date of this application?<br>*Please note that a qualifying permit holder must be the same as the applicant or the applicant and the qualifying permit holder must be owned or controlled more than fifty percent (50%) by the same persons.<br><input type="checkbox"/> Farm winery issued under IC 7.1-3-12 <input type="checkbox"/> Brewer's permit issued under IC 7.1-3-2-2(b) <input type="checkbox"/> Distiller's permit issued under IC 7.1-3-7 |                |
| 4. What is the permit number for the qualifying permit?  | _____          |

**B. BREWER**

- |   |  |
|---|--|
| 1. Have you attached a bond payable to the State of Indiana in the penal sum of ten thousand dollars (\$10,000) as required by IC 7.1-3-1-7?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture beer. <i>(You must provide a copy before a permit can be issued by the ATC.)</i> | Initial: _____   |

**C. SMALL BREWER**

- |  |  |
|--|--|
| 1. Have you attached a bond payable to the State of Indiana in the penal sum of ten thousand dollars (\$10,000) as required by IC 7.1-3-1-7?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture beer. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>                          | Initial: _____   |
| 3. I will not produce more than 90,000 barrels of beer in a calendar year for sale or distribution within Indiana.   | Initial: _____   |
| 4. I will not sell and deliver more than 30,000 barrels of beer in a calendar year to a person holding a retailer or dealer permit under Title 7.1 of the Indiana Code.  | Initial: _____   |
| 5. I plan to store or condition beer in a secure building that is separate from the brewery and owned or leased by me. If yes, please list the address of secure building below.<br><br>_____<br><i>(number and street, city, state, and ZIP code)</i> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

**D. DIRECT WINE SELLER**

- |   |  |
|---|--|
| 1. Are you domiciled in the United States?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Is your primary place of business in the United States?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Are you engaged in the manufacture of wine?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Do you hold an alcoholic beverage license or permit to manufacture wine from the state in which you manufacture wine? <i>(If issued by a state other than Indiana, provide a copy of your home state permit.)</i>  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. Do you hold an alcoholic beverage license or permit to manufacture wine from the Tax and Trade Bureau of the United States Department of the Treasury? <i>(Provide a copy of your federal permit.)</i>   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6. Do you consent to the personal jurisdiction of the Indiana Alcohol and Tobacco Commission and the Indiana courts?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7. <b>For out-of-state direct wine sellers:</b> If you previously distributed wine through a wine or mirrowine wholesaler in Indiana under the authority of a primary source registration, you must either: <ul style="list-style-type: none"> <li>▪ surrender the primary source registration, cease distribution through wholesalers, and wait 120 days before direct shipping wine; or</li> <li>▪ apply for a farm winery permit as an out-of-state winery.</li> </ul> |  |
| 7.1. Have you distributed wine through a wine wholesaler in Indiana under the authority of a primary source registration within the one-hundred twenty (120) days immediately preceding the date of this application?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2. When did you last distribute wine through a wine or mirrowine wholesaler?  | _____<br><i>(mm/dd/yy)</i>                               |
| 7.3. Do you hold or are you simultaneously applying for a farm winery permit as an out-of-state farm winery?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8. How much wine do you anticipate direct shipping during the first permit year?<br><br><input type="checkbox"/> Up to 9,000 liters <input type="checkbox"/> 9,001 to 18,000 liters <input type="checkbox"/> 18,001 to 27,000 liters <input type="checkbox"/> 27,001 to 36,000 liters <input type="checkbox"/> 36,001 to 45,000 liters  |  |

<b>E. DISTILLER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture liquor. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
2. Have you attached a bond payable to the State of Indiana in the penal sum of ten thousand dollars (\$10,000) as required by IC 7.1-3-1-7?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>F. FARM WINERY</b>		
1. Do you agree that the projected number of gallons of wine to be sold by you in Indiana, excluding wine shipped to an address outside Indiana, will not exceed one million (1,000,000) gallons?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture wine. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
<b>G. VINTNER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture wine. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
2. Have you attached a bond payable to the State of Indiana in the penal sum of one thousand dollars (\$1,000) as required by IC 7.1-3-1-7?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>H. FARM WINERY BRANDY DISTILLER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to manufacture liquor. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
2. List the farm winery permit number that qualifies you to hold a farm winery brandy distiller permit.		
<b>I. RECTIFIER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury to rectify. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
2. Have you attached a bond payable to the State of Indiana in the penal sum of fifteen thousand dollars (\$15,000) as required by IC 7.1-3-1-7?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>J. WINE WHOLESALER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
<b>K. LIQUOR WHOLESALER</b>		
1. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
2. Have you attached a bond payable to the State of Indiana in the penal sum of ten thousand dollars (\$10,000) as required by IC 7.1-3-1-7?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>L. MICROWINE WHOLESALER</b>		
1. I will not distribute more than 12,000 gallons of wine in a calendar year.	Initial: _____	
2. I understand I must receive a federal permit from the Tax and Trade Bureau of the United States Department of the Treasury. <i>(You must provide a copy before a permit can be issued by the ATC.)</i>	Initial: _____	
<b>M. FARM WINERY SATELLITE DEALER</b>		
1. List the farm winery permit number that qualifies you to hold a farm winery satellite dealer location described in IC 7.1-3-12-5(b).		
<b>SECTION 5. MANAGER'S QUESTIONNAIRE</b>		
5.1. Name of manager <i>(last, first, middle initial)</i>		5.2. Social Security number *
5.3. Date of birth <i>(month, day, year)</i>	5.4. Employee permit number of manager	5.5. Date of expiration <i>(month, day, year)</i>
5.6. Home address <i>(number and street, city, state, and ZIP code)</i>		
5.7. Are you a citizen of the United States?		<input type="checkbox"/> Yes <input type="checkbox"/> No
5.8. Are you at least twenty-one (21) years old?		<input type="checkbox"/> Yes <input type="checkbox"/> No
5.9. Have you ever been convicted of a felony or misdemeanor? <i>(If yes, please attach a letter detailing the conviction, court, date, and sentence information.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
5.10. Have you ever been found in violation of the Indiana alcoholic beverage laws, rules, regulations, or orders of the ATC? <i>(If yes, please attach a letter detailing the violation(s), including any permit numbers.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No

5.11. Are you a law enforcement officer, a non-elected officer of a municipal corporation or governmental subdivision, or an officer of the state of Indiana charged with any duty or function in the enforcement of Title 7.1 of the Indiana Code?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.12. Are you an officer or employee of a non-resident of the state of Indiana that is engaged in the alcoholic beverage traffic or engaged in carrying on any phase of the manufacture of, traffic in, or transportation of alcoholic beverages without a permit under Title 7.1 of the Indiana Code?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.13. Have you had an alcoholic beverage permit revoked within one (1) year prior to the date of this application? (If yes, please attach an explanation, including any permit numbers.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.14. Have you made an application for an alcoholic beverage permit of any type which was denied less than one (1) year prior to the date of this application (unless the application was denied by reason of a procedural or technical defect)? (If yes, please attach an explanation.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.15. Do you have an interest, either directly or indirectly, in any other permits or registrations of any kind issued under Title 7.1 of the Indiana Code in connection with, but not limited to, the production, distribution, transportation, or sale of alcoholic beverages? (If yes, list permits below. (Attach additional sheet if necessary.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Permit number(s)	
Signature of manager	

### SECTION 6. FLOOR PLAN

**INSTRUCTIONS:** Applicants must submit a floor plan drawing on letter size (8½" x 11") paper. The drawing must show dimensions and identification of all entrances, exits, office areas, alcoholic beverage storage areas, manufacturing equipment, bottling equipment, bathrooms, tasting areas, bars, seating arrangements, and alcoholic beverage display areas. Sign and date the drawing and attach to this application.

**NOTE:** All drawings must be approved by the Commission before the permit is issued. We recommend you receive approval before construction begins. Contact your local excise district office. Contact information for local excise district offices can be found at <http://in.gov/atc/ise/2379.htm>.

For a farm winery or artisan distiller with the same permit holder as a farm winery, will minors be present in a tasting room?  Yes  No

### SECTION 7. CERTIFICATION OF APPLICANT

I certify that this application was completed by myself or by the preparer identified herein. I certify that I have read this completed document and that all information provided herein and on any attachments is true and correct. **I UNDERSTAND THAT IT IS A FELONY TO MISREPRESENT OR FALSIFY ANY PORTION OF THIS APPLICATION OR ATTACHED DOCUMENTS.**

I hereby consent for the duration of the permit term to inspection and search by an enforcement officer, without a warrant or other process, of my licensed premises, any approved satellite facility, approved storage facility, and vehicles to determine compliance with the provision of Indiana Code 7.1.

**Note: The applicant MUST sign this application unless the proper Power of Attorney forms are attached to this application.**

Signature of applicant		Date signed (month, day, year)
Printed name of applicant	Title of applicant	

### SECTION 8. CERTIFICATION OF PREPARER (if applicable)

I certify that I have examined this application and the accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete. I certify that the applicant reviewed the completed form prior to signing.

Signature of preparer	Date signed (month, day, year)
Printed name of preparer	Telephone number (     )

### SECTION 9. PAYMENT AND CONTACT INFORMATION

Please remit business check, certified check, or money order. Applications will not be processed without payment.  
(See attached fee schedule.)

Checks should be made payable to the Indiana Alcohol and Tobacco Commission.

**MAIL TO:**  
Indiana Alcohol and Tobacco Commission  
302 West Washington Street, Room E114  
Indianapolis, IN 46204  
For additional information: [www.IN.gov/atc](http://www.IN.gov/atc) or (317) 232-2430

SECTION 10. PERMIT TYPES AND FEE SCHEDULE		
Permit	Fee	Statutory Authority
Wholesaler (beer, wine, or liquor)	\$4,000 for two years	IC 7.1-4-4.1-13(b)
Micro wine wholesaler (selling less than 12,000 gallons of wine and brandy)	\$100	IC 7.1-4-4.1-13(c)
Brewer (manufacturing more than 90,000 barrels)	\$2,000	IC 7.1-4-4.1-14
Brewer (manufacturing 90,000 barrels or less)	\$500	IC 7.1-4-4.1-16
Distiller	\$2,000	IC 7.1-4-4.1-14
Artisan distiller	\$250	IC 7.1-3-27-15
Vintner	\$2,000	IC 7.1-4-4.1-14
Farm winery	\$500	IC 7.1-4-4.1-15
Rectifier	\$2,000	IC 7.1-4-4.1-14
Wine bottler	\$2,000	IC 7.1-4-4.1-14
Farm winery brandy distiller	\$250	IC 7.1-4-4.1-17
Direct wine seller – direct shipping up to 9,000 liters per permit year	\$100	IC 7.1-3-26-8(b)(1)
Direct wine seller – direct shipping 9,001 to 18,000 liters per permit year	\$200	IC 7.1-3-26-8(b)(2)
Direct wine seller – direct shipping 18,001 to 27,000 liters per permit year	\$300	IC 7.1-3-26-8(b)(3)
Direct wine seller – direct shipping 27,001 to 36,000 liters per permit year	\$400	IC 7.1-3-26-8(b)(4)
Direct wine seller – direct shipping 36,001 to 45,000 liters per permit year	\$500	IC 7.1-3-26-8(b)(5)
Farm winery satellite dealer	\$0	

*\*For information about fees for other permit types, please contact the Alcohol and Tobacco Commission at (317) 232-2430.*



# COLAs Online

## Application Detail

The Application Detail page provides detailed status information of submitted e-filed COLA applications. Figure 1, Figure 2, and Figure 3 detail the Application Detail page.

**Figure 1: Application Detail (Top)**

The screenshot shows the top portion of the COLAs Online application detail page. At the top left is the TTB logo and the text "ALCOHOL AND TOBACCO TAX AND TRADE BUREAU U.S. Department of the Treasury". The main heading is "COLAs Online" with the same bureau name below it. A sub-heading reads "TTB F 5100.31: Application For and Certification/Exemption of Label/Bottle Approval". To the right is a navigation menu with links: "Formulas Online", "Home: My eApplications", "Create an eApplication", "Search for eApplications", "My Profile", "Contact Us", "Instructions", and "Log Off". The main content area is titled "Application Detail" and contains the following information:

- TTB ID:** 13221001000001
- Status:** RECEIVED [Withdraw eApplication](#)
- Brand Name:** POM BREW
- Type of Product:** WINE
- Source of Product:** DOMESTIC
- Serial #:** 134567
- Type of Application:** LABEL APPROVAL
- Date Submitted:** 08/09/2013

Below this is a section for "Plant Registry/Basic Permit/Brewers No (Principal Place of Business):" with the following details:

- BR-ME- 5555
- POM BREWING COMPANY
- 1111 RIVER RD
- BETHEL, ME 04217

Next is "Trade Name (as on label):" with the value "POM BREWING".

Finally, there is a section for "Plant Registry/Basic Permit/Brewers No (Other):" which is currently empty.

## Application Detail

Figure 2: Application Detail (Middle)

<p><b>Plant Registry/Basic Permit/Brewers No (Other):</b> ?</p> <p><b>Contact Information</b> JANE SMITH (JSCFMEXT) (202) 453-2000 JANE.SMITH@TTB.GOV</p> <p><b>Fanciful Name:</b> ?</p> <p><b>Net Contents:</b> ? 1 LITER</p> <p><b>Alcohol Content:</b> ? 1</p> <p><b>Wine Appellation:</b> ?</p> <p><b>Grape Varietal(s):</b> ?</p> <p><b>Wine Vintage:</b> ?</p> <p><b>TTB Formula ID:</b> ? (None assigned)</p> <p><b>Formula/SOP #:</b> ?</p> <p><b>Sulfite Analysis Submission ID:</b> ? (None assigned)</p> <p><b>Lab No. &amp; Date/Pre-Import No. &amp; Date:</b> ?</p>							
<p><b>Special Wording:</b> N/A</p> <table border="1"><thead><tr><th>Label Images</th><th>Type</th><th>Label Dimensions</th></tr></thead><tbody><tr><td><a href="#">Test4.jpg</a></td><td>Brand (front)</td><td>1 inches W X 1 inches H</td></tr></tbody></table> <p><b>Attachments</b>      <b>Type</b></p>	Label Images	Type	Label Dimensions	<a href="#">Test4.jpg</a>	Brand (front)	1 inches W X 1 inches H	
Label Images	Type	Label Dimensions					
<a href="#">Test4.jpg</a>	Brand (front)	1 inches W X 1 inches H					
<p>Under the penalties of perjury, I declare: that all the statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read</p>							

## Application Detail

Figure 3: Application Detail (Bottom)

(None assigned)

Lab No. & Date/Pre-Import No. & Date: ?

Special Wording:  
N/A

Label Images	Type	Label Dimensions
<a href="#">Test4.jpg</a>	Brand (front)	1 inches W X 1 inches H

Attachments	Type
-------------	------

Under the penalties of perjury, I declare: that all the statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31. Certificate/Exemption of Label/Bottle Approval.

Date of Application: 08/09/2013      Applicant Name JANE SMITH

Back

Alcohol and Tobacco Tax and Trade Bureau, 2003 Contact us at [webmaster@ttb.treas.gov](mailto:webmaster@ttb.treas.gov)

UNITED STATES  
DEPARTMENT of  
the TREASURY

While the Alcohol and Tobacco Tax and Trade Bureau (TTB) makes every effort to provide complete information, data such as company names, addresses, permit numbers, and other data provided in the registry may change over time. TTB makes no warranty, expressed or implied, and assumes no legal liability or responsibility as to the accuracy, reliability or completeness of furnished data. Label images contained within the Public COLA Registry may appear differently, with respect to type size, characters per inch and contrasting background, than actual labels on the container. We also remind users of the Public COLA Registry that section V. of the instructions for the TTB COLA Form 5100.31, Allowable Revisions to Approved Labels, identifies various types of label information that may be changed by the COLA holder without the need for re-approval. TTB welcomes suggestions on how to improve our Public COLA Registry. Please contact us via email at [alfid@ttb.gov](mailto:alfid@ttb.gov).

If you have difficulty accessing any information in the site due to a disability, please contact us via email ([webmaster@ttb.treas.gov](mailto:webmaster@ttb.treas.gov)) and we will do our best to make the information available to you.

This site is best viewed at 800x600 screen resolution or higher using Internet Explorer 7.0.  
If you are using Internet Explorer 8.0, [click here](#) for more information on browser Compatibility.

WARNING! THIS SYSTEM IS THE PROPERTY OF THE UNITED STATES DEPARTMENT OF TREASURY. UNAUTHORIZED USE OF THIS SYSTEM IS STRICTLY PROHIBITED AND SUBJECT TO CRIMINAL AND CIVIL PENALTIES. THE DEPARTMENT MAY MONITOR, RECORD, AND AUDIT ANY ACTIVITY ON THE SYSTEM AND SEARCH AND RETRIEVE ANY INFORMATION STORED WITHIN THE SYSTEM. BY ACCESSING AND USING THIS COMPUTER YOU ARE AGREEING TO ABIDE BY THE TTB RULES OF BEHAVIOR, AND ARE CONSENTING TO SUCH MONITORING, RECORDING, AND INFORMATION RETRIEVAL FOR LAW ENFORCEMENT AND OTHER PURPOSES. USERS SHOULD HAVE NO EXPECTATION OF PRIVACY WHILE USING THIS SYSTEM.

Follow these steps to view application details:

1. From the Search Results page or Home: My eApplication page, select the [TTB ID](#) link to view the details of an application. The Application Detail page displays. See Figure 1, Figure 2, and Figure 3.
2. Use the scroll bar to view all the details of the application.
3. To view images or attachments uploaded to the application, select the image or attachment link.
4. For e-filed applications, select the [Printable Version](#) link to view a printable version of an e-filed COLA. See [Printable E-Filed COLA](#).

► **Note:** e-filed COLAs are identified by “001” in positions 6-8 of the TTB ID.

► **Note:** Older COLA applications may not have an available printable version. If you want to obtain a copy of the entire COLA, you will need to make a request under FOIA. For more information, go to <https://www.ttb.gov/foia>. Please include CFM ID/TTB ID number in your request.

5. For paper filed applications, select the [Printable Version](#) link to view a scanned image of a paper filed COLA. See [Printable Paper Filed COLA](#).

### Application Detail

- ▶ **Note:** Approved COLAs can be surrendered by selecting the [Surrender Cola](#) link.
  - ▶ **Note:** Received applications can be withdrawn by selecting the [Withdraw Application](#) link.
  - ▶ **Note:** Rejected applications can be resubmitted by selecting the [Resubmit Application](#) link.
6. Select the **Back** button to return to the Search Results page.



# Brewery/Distillery Law

*Author: By Christopher Denney*

*While it is the intent of the author to provide the most current tax law scenarios, it is the responsibility of anyone using the information contained in this document to cross-reference and verify that the information is utilizing the most current tax law.*

## III.TAX Chris Denney 11:15-12:15

### A. Federal and State Tax Reporting Requirements

#### 1.) Small Brew vs. Beer Act -

On December 22, 2017, the President signed into law the [Tax Cuts and Jobs Act](#) (Public Law 115-97) ("the Act"), which makes extensive changes to the Internal Revenue Code of 1986 (IRC), including provisions related to alcohol that are administered by TTB. Those changes are effective January 1, 2018. This includes provisions in the Craft Modernization and Tax Reform Act.

This bill amends the Internal Revenue Code, with respect to the tax treatment of certain alcoholic beverages, to:

- exclude the aging period from the production period for beer, wine, or distilled spirits for purposes of determining whether a taxpayer can expense, rather than capitalize, interest costs paid or incurred during the production period;
- reduce excise tax rates on beer and distilled spirits;
- modify the small wine producer tax credit to increase the amount of the credit, expand the producers that are covered, and specify an adjustment for hard cider;
- modify the alcohol content limitations that apply to certain wines for tax purposes;
- specify definitions for "mead" and "low alcohol by volume wine;"
- modify requirements for records, statements, and returns for certain breweries; and
- permit the transfer of beer between bonded facilities without payment of tax.

The Act includes the following Specific Provisions:

- **Reduced Beer Tax Rates**
  - **General:** In general, the Act provides for a tax rate of \$16 per barrel on the first six million barrels of beer brewed by the brewer and removed during the calendar year or imported by the importer into the United States during the calendar year. The

Act provides for a rate of \$18 per barrel on the remaining barrels not subject to the \$16 rate.

- **Foreign Manufacturer Election:** In the case of beer brewed or produced outside of the United States and imported, the Act provides for foreign brewers to assign the reduced rate described in the previous bullet to importers who elect to receive it.
- **Small Domestic Brewers:** In the case of brewers in the United States who produce no more than two million barrels of beer during the calendar year, the Act provides for a rate of \$3.50 per barrel on the first 60,000 barrels removed during such calendar year which have been brewed or produced by such brewer.
- **Transfer of Beer in Bond:** The Act authorizes the transfer of beer in bond between brewers who are not owned by the same corporation or other entity.
- **Wine Tax Credits**
  - **General:** The Act allows three different credits on wine produced by the producer and removed during the calendar year or imported by the importer into the United States during the calendar year. The credits available under section 5041(c)(1) and (2) of the IRC do not apply during calendar years 2018 and 2019. Under the Act, the credits are equal to \$1 per wine gallon on the first 30,000 wine gallons of wine removed or imported, 90 cents on the next 100,000 wine gallons removed or imported, and 53.5 cents on the next 620,000 wine gallons removed or imported. The tax credits apply to all wine tax rates, except that the Act provides adjusted credits for the hard cider tax rate under section 5041(b)(6) of the IRC (6.2 cents, 5.6 cents, and 3.3 cents, respectively).
  - **Foreign Manufacturer Election:** In the case of wine produced outside of the United States and imported, the Act provides for foreign wine producers to assign the tax credits described in the previous bullet to importers who elect to receive them.
- **Adjustment of Alcohol Content for Certain Still Wines:** The Act authorizes application of the wine tax rate of \$1.07 per wine gallon under section 5041(b)(1) to still wines containing not more than 16% alcohol by volume.
- **Mead and Low Alcohol by Volume Wine**
  - **General:** The Act provides that certain “meads” and “low alcohol by volume wines” are deemed still wines subject to the wine tax rate of \$1.07 per wine gallon under section 5041(b)(1) of the IRC.
  - **Definition of Mead:** For purposes of this provision, the term “mead” means a wine containing not more than 0.64 gram of carbon dioxide per hundred milliliters of wine, which is derived solely from honey and water, which contains no fruit product or fruit flavoring, and which contains less than 8.5% alcohol by volume.
  - **Definition of Low Alcohol by Volume Wine:** For purposes of this provision, the term “low alcohol by volume wine” means a wine containing not more than 0.64 gram of carbon dioxide per hundred milliliters of wine, which is derived primarily from grapes or from grape juice concentrate and water, which contains no fruit

product or fruit flavoring other than grape, and which contains less than 8.5% alcohol by volume.

- **Reduced Distilled Spirits Tax Rates**
  - **General:** The Act provides for reduced tax rates on distilled spirits distilled or processed and removed during the calendar year or imported by the importer into the United States during the calendar year. These rates are equal to \$2.70 per proof gallon on the first 100,000 proof gallons removed or imported, and \$13.34 per proof gallon on the next 22.13 million proof gallons removed or imported. The tax rate for distilled spirits not subject to the reduced rates is \$13.50 per proof gallon.
  - **Foreign Manufacturer Election:** In the case of distilled spirits produced outside the United States and imported, the Act provides for foreign distilled spirits manufacturers to assign the reduced tax rates to importers who elect to receive them.
  - **Amendment of Section 7652(f)(2):** The Act amends section 7652(f)(2) of the IRC to provide that the reduced rates of tax for distilled spirits are not taken into account when determining the amounts covered into the treasuries of Puerto Rico and the U.S. Virgin Islands.
- **Transfer in Bond of Non-Bulk Distilled Spirits:** The Act authorizes the transfer in bond of distilled spirits between distilled spirits plants irrespective of whether the distilled spirits are transferred in bulk or non-bulk containers.
- **Controlled Group:** The Act provides that the quantities to which the credits and reduced rates apply shall be applied to the controlled group. The Act also provides that an importer electing to receive an assignment of a credit or reduced tax rate from a foreign manufacturer shall be deemed a member of the controlled group of the foreign manufacturer.
- **Single Taxpayer:** The Act provides that two or more entities (whether or not under common control) that produce products marketed under a similar brand, license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the credits and reduced rates.

Taxpayers continue to file taxes using TTB Form 5000.24 or TTB Form 5000.24sm, either on paper or through pay.gov. No new tax return forms are required to pay taxes under the new tax provisions.

The reduced tax rates or tax credits became effective January 1, 2018, and they apply to products removed in calendar years 2018 or 2019 regardless of when the products were produced. (See the Act for the specific quantities of products eligible for the reduced tax rates or tax credits and any other limitations.)

For purposes of taking the reduced rate of tax allowed by the Act, beer is considered to have been “produced” if it is lawfully brewed or produced at a qualified brewery premises, including beer brewed by fermentation or produced by the addition of water or other liquids during any stage of production. The entire volume of beer to which water or other liquids had been added will be considered “produced” for purposes of applying the reduced tax rates. TTB expects these

production activities to be undertaken in good faith in the ordinary course of production, and not solely for the purpose of obtaining a tax credit. Blending or combining two beers does not count as production for purposes of the reduced tax rate. Beer received in bond in containers and subsequently removed subject to tax, without any production activity occurring, is not eligible for a reduced tax rate. Beer received in bond and merely bottled is also not eligible for a reduced tax rate. The eligibility for the reduced rate is also subject to controlled group and single taxpayer rules in section 5051(a)(5), which may further limit the beer subject to the reduced rate upon removal by the brewer.

An owner of multiple breweries that brew or produce beer must combine production and taxpaid removals of that beer for all its breweries when determining each brewery's eligibility for the reduced rates because the owner, rather than each brewery, is considered the brewer or producer of the beer for purposes of the reduced rates in 26 U.S.C. 5051(a)(1) and (a)(2). For example, if a company owns two breweries that each produce and remove taxpaid 60,000 barrels of beer during the calendar year, the company's total production and removals of 120,000 barrels will be applied to each brewery for purposes of determining each brewery's eligibility for the reduced rates. The company therefore would not be eligible for the reduced rate of \$3.50 per barrel on the full 60,000 barrels of beer removed taxpaid from each brewery. Rather, the company would be eligible to take the reduced rate of \$3.50 per barrel on a total of 60,000 barrels of beer removed taxpaid from the breweries.

The answer is the same if instead the breweries are owned by two different entities that are members of the same controlled group. Under the Act, the quantities of beer eligible for the reduced rates shall be applied to the controlled group. See section 5051(a)(5)(A).

See TR-B3 for guidance about apportioning quantities of beer eligible for the reduced rates among breweries who are required to combine taxpaid removal totals.

A single owner may apportion the quantity of beer eligible for the reduced rates among the breweries it owns, and a controlled group may apportion such quantities among its members. For example, if a company owns two breweries and is eligible to take the reduced rate of \$3.50 on a total of 60,000 barrels of beer removed taxpaid from the breweries as specified in the Act, the company may apportion 30,000 barrels to each brewery for removal at the \$3.50 rate. Each brewery should keep records indicating how the quantities will be apportioned among the breweries and make those records available to TTB officers upon request. Breweries who apportion the reduced rate of tax must also notify TTB about the apportionment, either by providing the annual notice described in [27 CFR 25.167](#) or by incorporating the information into the Brewer's Notice as outlined in [TTB Industry Circular 2002-1](#). However, the apportioned quantity would apply to the first eligible barrels removed during the calendar year from each applicable brewery. The apportionment may not be, for example, for a specific brand, regardless of when the beer is removed.

I own several breweries. If I brew or produce beer at one brewery that I own and transfer the beer in bottles to a second brewery that I own, where the beer is removed taxpaid, is that beer ineligible for the reduced rates under the Act since no further production occurred at the second brewery? Is the answer different if instead the two breweries are owned by different entities that are members of the same controlled group? Under these circumstances, the beer is not ineligible for the reduced rates solely because it is removed taxpaid from the brewery where no further production occurred. The owner of the breweries is considered the brewer or producer for purposes of the reduced rates in 26 U.S.C. 5051(a)(1) and (a)(2), so the owner may apply the reduced rates to beer removed from the breweries that it owns. The owner must combine its production and taxpaid removal totals for its breweries when determining its eligibility for the reduced rates.

The answer is not different if instead the breweries are owned by different entities that are members of the same controlled group. Under the Act, the quantities of beer eligible for the reduced rates shall be applied to the controlled group. See section 5051(a)(5)(A). A member of a controlled group may therefore apply the appropriate reduced rate to beer removed from its brewery in instances where the beer was produced at a brewery owned by another member of the controlled group. Members of the controlled group must combine the production and taxpaid removal totals for their breweries when determining their eligibility for the reduced rates.

Barrel equivalents of common keg and case sizes are printed in the beer regulations. Brewers must request case equivalent computations for other sizes from the Regulations Division in Headquarters. One barrel equals 31 U.S. Gallons.

27 CFR 25.156 Determination of tax on keg beer.

27 CFR 25.157 Determination of tax on bottled beer.

27 CFR 25.158 Tax computation for bottled beer.

#### **TTB Brewers Operating “Brewed on Premises (BOPs)”**

Under some circumstances, a TTB qualified brewery may operate a BOP. All beer produced at a BOP on brewery premises is taxable under Federal law, must be labeled in accordance to 27 CFR part 25, must bear the Government Warning Statement required under 27 CFR part 16, and is subject to recordkeeping and other requirements.

For further information regarding qualification of a brewery or operation of a BOP at a brewery, contact the Brewery Applications Section at the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Room 8002, Cincinnati, OH 45202, or by:

#### **Individuals “home brewing” at BOPs**

A person producing beer at a BOP must do so in accordance to 26 U.S.C. 5053(e) and TTB regulations 27 CFR 25.205 - 25.206, which provide that:

- Adults may produce beer for personal or family use without payment of tax;
- Adults are defined as 18 years of age or older (or the age required for the purchase of beer in the locality of the BOP);
- Adults may produce, without payment of tax, per household, up to 100 gallons per calendar year if there is one adult residing in the household, or 200 gallons of beer per year if there are two or more adults residing in the household;
- Adults who produce beer at a BOP may remove their beer for personal or family use, including use in organized affairs, exhibitions, or competitions (such as homemaker's contests or tastings);
- Adults may collaborate with other adults in the production of beer at a BOP provided they are not considered a corporation or an association; and
- Adults may not produce beer for sale or offer their beer for sale.

Adults using BOPs should note that owners and employees of BOPs are limited in the assistance they may provide customers. It is the responsibility of BOP customers to carry out the activities that are required to brew, store, and package beer.

TTB regulations do not authorize the production of beer that is contrary to State or local law. See [contact information](#) for State alcohol control boards.

. Rate Chart: Applies to Calendar Years 2018-2019

Tax Rates for Beer that is Removed or Imported During Calendar Years 2018 and 2019*		
	Barrels per Calendar Year	
Beer removed by Domestic Brewer who brews 2,000,000 barrels or less per calendar year	First 60,000	Over 60,000 up to 2,000,000
	\$3.50	\$16.00
Other Beer	First 6,000,000	Over 6,000,000
	\$16.00	\$18.00

\* Additional rules apply. See the text of the [implementing law](#) for full details.

Tax on Wine that is Removed or Imported During Calendar Years 2018 and 2019*				
	Wine Gallons per Calendar Year			
Tax Class	First 30,000	Over 30,000 up to 130,000	Over 130,000 up to 750,000	Over 750,000
<b>Still Wine</b>				
16% and under alcohol by volume (0.392g CO2/100mL or less)	\$0.07	\$0.17	\$0.535	\$1.07
Over 16 - 21% alcohol by volume (0.392g CO2/100mL or less)	\$0.57	\$0.67	\$1.035	\$1.57
Over 21 - 24% alcohol by volume (0.392g CO2/100mL or less)	\$2.15	\$2.25	\$2.615	\$3.15
Mead No more than 0.64g CO2/100mL; derived solely from honey and water; containing no fruit product or fruit flavoring; and containing less than (not equal to) 8.5% alcohol by volume	\$0.07	\$0.17	\$0.535	\$1.07
Low alcohol by volume wine No more than 0.64g CO2/100mL; derived primarily from grapes or from grape juice concentrate and water; containing no fruit product or fruit flavoring other than grape; and containing less than (not equal to) 8.5% alcohol by volume	\$0.07	\$0.17	\$0.535	\$1.07
<b>Artificially Carbonated Wine</b>				
Over 0.392g CO2/100mL - injected or otherwise added	\$2.30	\$2.40	\$2.765	\$3.30
<b>Sparkling Wine</b>				
Over 0.392g CO2/100mL - naturally occurring	\$2.40	\$2.50	\$2.865	\$3.40

Hard Cider				
No more than 0.64g CO2/100mL; derived primarily from apples/pears or apple/pear juice concentrate and water; containing no other fruit product or fruit flavoring other than apple/pear; and containing at least 0.5% and less than (not equal to) 8.5% alcohol by volume	\$0.164	\$0.17	\$0.193	\$0.226

\* Additional rules apply. See the text of the [implementing law](#) for full details.

Tax Rates for Distilled Spirits Removed or Imported During Calendar Years 2018 and 2019*		
Proof Gallons per Calendar Year		
First 100,000	Over 100,000 up to 22,230,000	Over 22,230,000
\$2.70	\$13.34	\$13.50

\* Additional rules apply. See the text of the [implementing law](#) for full details.

## 2.) State Tax Requirements and Penalties

### 1. State Tax Rates and Payments

Indiana has a Consumer Tax on Alcohol at the following rates:

- Beer 11.5¢ /gal.;
- Wine <21% 47¢ per gal., >21% \$2.68/gal.;
- Spirits \$2.68/gal.

\*§§7.1-4-2-1; 7.1-4-3-1; 7.1-4-5-1

In some counties or municipalities, businesses that sell food and beverages must register for sales tax and food and beverage tax.

The Indiana Department of Revenue (DOR) provides the food and beverage tax rates for each county or municipality in the table below. You may also contact your county auditor's office to learn if your county has this tax.

#### Example

Alison and Jaime run a winery in Fort Wayne. The winery has a small café that allows customers to pair wines with appetizer-style foods. The winery employs 10 people to assist with the café and processing the grapes. Alison and Jaime will need to register their business for food and beverage tax, withholding tax and sales tax. Selling bottles of wine and food requires the company to register for **sales tax**; being in Allen County requires the company to collect a one percent food and beverage tax; and having employees requires the company to **withhold taxes** for employees' wages. The business will register with DOR to set up the proper tax accounts. And because they'll be selling alcohol, they will need to get a license from the **Alcohol and Tobacco Commission**.

## Food and Beverage Tax Guides

- **Business Guide to Food and Beverage Tax**
- **Local Government Guide to Food and Beverage Tax**

Area	Code	Tax Rate
Allen County	(02)	1%
Avon	(3232C)	1%
Boone County	(06)	1%
Brownsburg	(3232A)	1%
Carmel	(2929A)	1%
Cloverdale	(67671)	1%
Delaware County	(18)	1%
Hamilton County	(29)	1%
Hancock County	(30)	1%
Hendricks County	(32)	1%
Henry County	(33)	1%
Johnson County	(41)	1%
Lebanon	(0606B)	1%
Madison County	(48)	1%
Marion County	(49)	2%
Martinsville	(5555A)	1%
Monroe County	(53)	1%
Mooreville	(5555)	1%
Nashville	(0707)	1%
Noblesville	(2929B)	1%
Orange County (Historic Hotel)	(59591)	2%
Plainfield	(3232B)	1%
Rockville	(61611)	1%
Shelby County	(73)	1%
Shipshewana	(4444)	1%
Vanderburgh County	(82)	1%
Vigo County	(84)	1%
Westfield	(2929C)	1%
Zionsville	(0606A)	1%

## 2. Refunds and Reporting

See Form 55553, Form 55548, Form 55549, Form 615 Attached.

## 3.) TTB Audits – Common Errors and Penalties

### Common Compliance and Tax Issues Found During Brewery Audits

In support of TTB's mission to assist industry members in understanding and complying with the TTB regulations, we discuss the most common compliance and tax issues we encounter during brewery audits in this guide. We have grouped the issues into four categories:

- Records;
- Production and Inventory;
- Taxes; and
- Reporting.

Within these categories, we list common audit issues, beginning with the issues we encounter most frequently. We then provide advice on how to avoid these problems.

### ***Common Compliance and Tax Issues at Breweries***

#### **Records**

1. Daily Records of Operations
2. Inventory Records
3. Brewer's Report of Operations
4. General Recordkeeping Requirements
5. Retention and Preservation of Records
6. Penalties for Failure to Maintain Records

#### **Production and Inventory**

1. Meaning of Terms
2. Beer Returned to the Brewery
3. Tanks
4. Testing and Measuring Devices
5. Storage of Beer

#### **Taxes**

1. Excise Tax Returns
2. Tax and Determination of Tax on Keg Beer, Bottled Beer and Rate of Tax
3. Tax and Determination of Tax Payment
4. Penalties for Failure to File Returns

#### **Reporting**

1. Brewer's Report of Operations and Brew Pub Report of Operations
2. Notice of Intent (NOI) to Destroy Beer
3. Alcohol Dealer Registration and Recordkeeping (previously Special Occupational Tax Registration)

#### **Records Issue 1 — Daily Records of Operations**

TTB auditors most frequently cite a brewer's lack of, and inaccuracy of, records required under TTB regulations as the number one non-compliance issue. Under 27 CFR part 25, brewers must complete and maintain daily records and reports that capture information about brewery operations.

As outlined in 27 CFR 25.292, daily records must include:

- Each kind of material received and used in the production of beer and cereal beverage;
- The amount of beer and cereal beverage produced;
- Beer and cereal beverage transferred for, and returned from, bottling and racking, or bottled, racked, or removed from the brewery;
  - Beer removed for consumption or sale -- For each removal, the record shows the date of removal, the person to whom the brewer shipped or delivered the beer, and the quantities of beer removed calculated in kegs and in bottles;

- Beer removed without payment of tax -- For each removal, the record shows the date of removal, the person to whom the brewer shipped or delivered the beer, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of vessels;
- Packaged beer used for laboratory samples at the brewery;
- Beer consumed at the brewery;
- Beer returned to the brewery from which it was originally removed or from another brewery that the brewer owns;
- Beer reconditioned, used as material, or destroyed;
- Beer received from other breweries or received from pilot brewing plants;
- Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause;
- Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom it was shipped or delivered), and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal;
- Record of tests of measuring devices; and
- Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

All entries in the daily records must show the date of the operation or transaction, accurately and clearly reflect the details of each operation or transaction, and contain all data necessary to enable brewers to prepare summaries, reports, and returns. The records should verify removals of beer and cereal beverages, verify claims, and confirm compliance with laws and regulations.

### **Most Common Daily Recordkeeping Mistakes**

TTB often finds that brewers do not properly maintain daily records that support entries that they make on the Brewer's Report of Operations (BROP) ([TTB F 5130.9](#)) or on the Quarterly Brewer's Report of Operations ([TTB F 5130.26](#)). Brewers most commonly fail to:

- Accurately report the amount of beer returned to the brewery;
- Properly maintain records regarding destruction of beer;
- Appropriately record lab sample removals; and
- Appropriately report, record, or maintain supporting documents regarding losses or shortages.

### **How to Avoid Daily Recordkeeping Mistakes**

1. Review 27 CFR 25.292. This regulation provides a complete list of the daily records that brewers must complete and maintain. These daily records are very important because they are the source documents on which the Excise Tax and BROP are based.
2. As required by 27 CFR 25.291(b), complete each entry required under part 25 on the daily records no later than the close of the next business day after the day of the transaction. Build recordkeeping duties into the brewery's daily work schedule.
3. Be extra vigilant with recordkeeping requirements when beer is:
  - Returned to the brewery;
  - Destroyed on or off premises; or
  - Removed without payment of tax under subpart L, such as samples removed for analysis or testing, removals of beer unfit for beverage use, or removals of bulk beer to a distilled spirits plant.
4. If you have questions, you may contact the Brewery Applications Section (Beer Tax Group) at the [NRC](#).

## **Records Issue 2 — Inventory Records**

Under 27 CFR 25.294, brewers must take a physical inventory of beer and cereal beverage at least once per calendar month. The brewer must retain inventory records and make them available for inspection when an appropriate TTB officer requests them.

The record of inventory must include the following:

- Date taken;
- Quantity of beer and cereal beverage on hand;
- Losses, gains, and shortages; and
- Signature—under penalties of perjury—of the brewer or person taking the inventory.

### **Most Common Inventory Mistakes**

TTB most commonly finds the following inventory errors:

- Inventory sheets are not signed (see Production and Inventory Issue-1).
- Brewers fail to take inventory each month.
- Brewers fail to properly maintain inventory records or fail to make inventories available for inspection.
- Brewers do not adequately report or document shortages and losses revealed by physical inventory.
- Inventory records do not agree with the BROP.

### ***Physical inventories must be performed every month*** (§ 25.294(a))

TTB auditors find that brewers neglect to perform inventories or fail to perform complete inventories. For example, a brewer may complete an inventory of premises but may fail to account for product loaded onto trucks. TTB cannot always rely on a brewer's book inventory to calculate tax because, in many cases, actual inventory count is less than book inventory.

### ***Brewers must document shortages***

Under § 25.294, brewers are required to maintain monthly physical inventories of all beer on hand and to report any losses, gains, and shortages. When TTB discovers an inventory issue it is generally because the brewer's inventory records do not agree with the BROP or the brewer uses line 11 (physical inventory disclosed an overage) and line 31 (physical inventory disclosed a shortage) of the BROP to balance the report totals. TTB finds that brewers frequently do not calculate overages and shortages from cellar operations, tank logs, and meter readings separately. Instead, they calculate the net difference between the amount of cellar production, plus additions against the total of beer transferred to racking and bottling.

### **How to Avoid Inventory Issues**

1. Review 27 CFR 25.294. This regulation describes the records required for, and timing of, physical inventory counts.
2. As permitted in 27 CFR 25.52, submit a request to TTB if a variance from the timing of inventory requirements (§ 25.294) is necessary.
3. Make sure the brewer or other authorized individual signs the inventory summary under penalty of perjury, as outlined in 25 CFR 25.299. Before signing an inventory summary, the signee should make sure that the inventory record is accurate and complete.

4. Properly complete and maintain reports of losses and shortages. If you report losses on the BROP, you must ensure that what you report is actually a loss and not a shortage.

Report losses on line 30 of the BROP for "recorded losses, including theft" and report, "physical inventory disclosed a shortage," on line 31, columns (d) and (f). As outlined under number 7 on the instructions for the BROP, you must provide further details of the shortage, line 30 in "Part 5 – Remarks" of the BROP.

TTB suggests that you complete reports and gather any supporting information regarding losses and shortages immediately after you identify the discrepancy. Review TTB Industry Circular 2007–1, Shortages of Inventoried Packaged Beer for more information on the proper recording and documentation of shortages.

5. If you have questions, you may contact the Brewery Applications Section at the NRC. Direct all questions regarding items on the BROP to the Beer Tax Section.

### **Records Issue 3 —BROP (TTB F 5130.9)**

Under 27 CFR 25.297, brewers must prepare and submit BROPs. Brewers must fully support all entries on their excise tax return TTB F 5000.24 with accurate and complete BROPs. The most frequent audit issue concerning BROPs is that brewers consistently file the BROP late or they do not submit it at all. As outlined in the instructions for the BROP, brewers must submit BROPs by the fifteenth day after the end of the reporting period.

Another common issue that TTB auditors cite is the lack of supporting documentation or improper maintenance of supporting documentation.

#### **Most Common BROP Mistakes**

TTB auditors commonly find errors in the following sections of the BROP:

- **Line 2:** The brewer's daily "beer and cereal beverage produced" records do not support the amount entered under "beer produced by fermentation," required under § 25.295.
- **Line 5:** Brewers frequently misinterpret the category of "beer that is received in bond from other breweries and pilot brewing plants of same ownership." Breweries bring beer in bond onto their premises from breweries NOT under the same ownership and mistakenly record that transfer of beer on line 5. Beer under bond from another brewery or a pilot brewery may not be brought on to a brewery premises *unless* all parties are under the same ownership. Taxpaid beer from an outside, non-owned brewer, purchased by and stored on your brewery premises, does not need to be reported on the BROP. Breweries often confuse this line with line 8.
- **Line 8:** Brewers frequently misinterpret the category of "beer returned to this brewery after removal from another brewery of the same ownership." "Another brewery under the same ownership" means one corporation owns two or more breweries, or one corporation owns the controlling interest in the other corporation, or the same person owns a controlling interest in each corporation, as defined in 27 CFR 25.181.
  - A brewer may bring taxpaid beer of another brewer's production onto the brewery premises when the brewer holds a wholesaler's permit and segregates such beer from non-taxpaid beer, as outlined in 27 CFR 25.24.
  - This line is often confused with line 5, so double check for accuracy.

- **Line 16:** "Removed without payment of tax for export" should reflect the amount of beer the brewer exported that month. Many brewers ask whether exported beer counts toward the 60,000-barrel threshold for the reduced rate of tax. Only domestic removals for consumption or sale count toward the 60,000-barrel threshold.
- **Line 18:** "Removed without payment of tax for use in research, development and testing." Brewers must support such removals by their daily operational records, required in § 25.292.
- **Line 21:** "Beer consumed on premises." Brewers may not consider beer "removed tax determined for use at tavern on brewery premises" as beer "consumed on premises" under line 21. Remember, "beer consumed on premises" has no charge of any type.

#### **How to Avoid Mistakes Regarding the BROP**

1. Review 27 CFR 25.291 and 27 CFR 25.292. These regulations outline what records and reports you must keep.
2. Complete and properly maintain daily records and supporting documentation.
3. File BROPs on time. You must submit BROPs no later than 15 days after the end of the reporting period. If you do not submit this report, you are in violation of TTB regulations.
4. Double check the BROP to ensure that you entered information on the correct lines. For more information on how to complete the BROP, see the BROP tutorial on [www.TTB.gov](http://www.TTB.gov).
5. If your business is a brewpub that produces less than 5,000 barrels per year, consider submitting a Quarterly Brewer's Report of Operations instead of the Brewers Report of Operations. The Quarterly Brewer's Report is a shorter, less complicated form.
6. If you have questions, you may contact the Beer Excise Tax Group at the NRC.

#### **Records Issue 4 — General Recordkeeping Requirements**

The general records that brewers are required to maintain under § 25.291 include:

- All individual transaction forms, records, and summaries specifically required in part 25;
- All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and
- Copies of notices, reports, returns, approved applications, and other documents relating to brewery operations and transactions.

The records may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of part 25, but only if the commercial records:

- Contain all the details required under part 25;
- Are consistent with the general requirements of clarity and accuracy; and
- Do not result in difficulty in their examination.

#### **Most Common General Recordkeeping Mistakes**

Most general recordkeeping mistakes occur because the brewer:

- Does not maintain bills of lading;
- Does not keep a complete summary records;
- Does not maintain or make available book inventory records;

- Has inventory sheets that do not accurately reflect operations within the brewery; and
- Does not properly explain beer shortages.

### **How to Avoid General Recordkeeping Problems**

1. Review 27 CFR 25.291. This regulation discusses general record requirements.
2. Maintain accurate bills of lading and other supporting documentation for all shipments. Complete daily records for all brewery transactions and properly maintain those records. (See [Records Issue 1—Daily Records of Operations](#).)
3. Make certain that your inventory records are complete and available to TTB officers. (See [Records Issue 2—Inventory Records and Controls](#).)
4. Maintain copies of all notices, reports, returns, approved applications, and supporting documentation that relate to brewery operations and transactions. (See [Records Issue 5 — Retention and Preservation of Records](#).)
5. Verify that entries your brewery makes on daily records and inventories correspond to entries on the [BROP](#).
6. If you have questions, you may contact the Brewery Applications Section at the [NRC](#).

### **Records Issue 5 — Retention and Preservation of Records**

Under 27 CFR 25.300, brewers must prepare and maintain records necessary for production and removals at the brewery where the operation or transaction occurs and make these records available to TTB. Brewers may store records off the brewery's premises, but they must obtain TTB approval to do so. Brewers must maintain records required in part 25 for a period of "not less than three years".

### **Most Common Record Retention and Preservation Issues**

TTB auditors often find that:

- Records are not retained for the required 3-year retention period.
- Brewers do not retain original commercial records that support removals, such as invoices, bills of lading, receiving and inspection reports, and sales memorandum.
- Brewers destroy paper and electronic data during or before the end of the 3-year preservation requirement.
- Brewers store records offsite without TTB approval.

### **How to Avoid Problems Related to Record Retention and Preservation**

1. Review 27 CFR 25.300. This regulation lists all records required under part 25 (electronic and paper) that you must maintain at the brewery premises.
2. Retain all records and documents required under part 25 (including daily summaries, inventory sheets, bills of lading, and invoices) for a minimum of 3 years.
3. Obtain an approved variance from § 25.300(a) before you store records off premises. Ensure that records stored offsite will be available for inspection within 24 hours.
4. If you have questions, you may contact the Brewery Applications Section at the [NRC](#).

### **Records Issue 6 — Penalties for Failure to Maintain Records**

The Internal Revenue Code provision under 26 U.S.C. 5672 describes the penalties for failure to maintain records. It provides that if a brewer fails or refuses to keep the records and file the returns required in part 25, or refuses to permit any TTB officer to inspect such records, the

Government may fine the brewer up to \$1,000, or seek imprisonment of up to 1 year, or both, for each such offense.

### **How to Avoid Penalties for Improper Recordkeeping**

1. Create a reliable system for filing and maintaining required documents, records, and forms.
2. If you are unsure whether you need to maintain a specific document, you may contact the Brewery Applications Section at the [NRC](#).

### **Production and Inventory Issue 1 — Meaning of Terms**

TTB is aware that some terms in our regulations confuse brewers, such as losses, shortages, "removed for consumption or sale," and "executed under penalties of perjury." Brewers can find the meanings of these and other terms in 27 CFR 25.11.

#### ***Losses and Shortages***

Section 25.11 defines losses as "known quantities of beer lost due to breakage, casualty, or other unusual cause." It defines shortage as "an unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory." Brewers must know the difference between losses and shortages. No tax liability exists for legitimate losses, but that may not be true for shortages. Since shortages are unexplained discrepancies, brewers must first establish that they did not remove beer for consumption or sale before relieving it of the liability for tax. TTB auditors often find that Brewers:

- Report losses on the shortage line of the [BROP](#);
- Report shortages on the losses line of the BROP;
- Do not report losses or shortages at all when they occur; or
- Incorrectly net losses against overages.

#### ***Removed for consumption or sale***

Section 25.11 defines "removed for consumption or sale" as the sale and transfer of possession of beer for consumption at the brewery, or any removal of beer from the brewery, except under certain circumstances when the law authorizes beer to be removed without the payment of tax. Subpart L—Removals without Payment of Tax (27 CFR 25.181 through 25.207) in the TTB regulations provides limited scenarios when brewers may remove beer from the premises without payment of tax. They are:

- Transfer to another brewery of same ownership;
- Removal of beer unfit for beverage use;
- Removals for analysis, research, development, or testing;
- Removal of beer to a distilled spirits plant (contiguous or noncontiguous) for use as distilling material;
- Removal of beer for destruction;
- Exportation; and
- Beer for personal or family use.

If a brewer removes beer from the premises for any reason other than those listed above, TTB considers the beer removed for consumption or sale. Brewers must report the amount of beer that they remove for consumption or sale for the period on line 14 of the [BROP](#).

### **Executed Under Penalties of Perjury**

Under § 25.11 (and 27 CFR 25.299), a document is "executed under penalties of perjury" if a brewer signs it with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document, or when no form of declaration prescribes the following declaration: "I declare under the penalties of perjury that this (*insert type of document such as statement, report, certificate, application, claim, or other document*), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

### **How to Avoid Problems Related to These Terms**

1. Review 27 CFR 25.11. This regulation provides the meanings of key terms that you should know.
2. Document *all* removals of beer and cereal beverages from the premises.
3. When you remove beer for consumption or sale, e.g., any removal of beer from the brewery that is not covered in Subpart L—Removals without Payment of Tax, enter the amount on line 14 of the BROP.
4. When an inventory reveals a shortage, record it on line 31 of the BROP as "physical inventory disclosed a shortage." Under 27 CFR 25.291 and 27 CFR 25.297 "a written explanation must be given and this explanation must establish that the questionable beer was not removed for consumption or sale."
5. When losses occur due to theft, destruction, etc., enter it on line 30 of the BROP as "recorded losses, including theft."
6. As 27 CFR 25.299 requires, include a signed "under penalties of perjury" statement when part 25 requires a return, form, or other document, or when the instructions of a return, form, or other document require the statement.
7. If you have questions, you may contact the NRC.

### **Production and Inventory Issue 2 — Beer Returned to the Brewery**

27 CFR 25.211 authorizes the brewers to return beer, which is produced in the United States and on which the brewer has paid or determined the tax, to any brewery that the brewer owns. When the brewer's beer is returned to the premises, the brewer must determine the actual quantity of beer received, expressed in barrels, by:

- Referring to the label for cases or bottles;
- Weight or by other accurate means for kegs or cases containing less than the original contents;
- Balling and determining alcohol content of returned keg beer, unless the keg is equipped with tamper-proof fittings; or
- Weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight of dumpsters, pallets, packages and the like.

For beer returned to the brewery, the brewer's daily records must show:

- The date;
- The quantity of beer returned;
- If the title to the beer has passed, the name and address of the person returning the beer; and
- The name and address of the brewery from which the beer was removed, if different from the brewery to which returned.

Brewers need supporting records of returned beer, such as invoices, credit memoranda, or other commercial papers. These records must differentiate between beer returned to the brewery from which it removed, and beer returned to a brewery different from the one from which a brewer removed it.

### **Most Common Errors with Returned Beer**

The most common errors that TTB notes are that:

- Brewers fail to record and maintain the detailed information on returned beer required in 27 CFR 25.211.
- Brewers fail to determine the actual quantity of keg beer returned, or they fail to check the balling and alcohol content of returned kegs. TTB has found many times that warehouse personnel handle, account for, and report returned beer without determining contents in the kegs, or the brewer estimates the amount of beer in returned kegs by unsound methods (for example, banging on the side of the tank to determine fluid level).
- The brewer takes an offset for returned beer under 27 CFR 25.159 when it is not permissible. If taxpaid beer is returned and an offset is not permissible, the brewer must make the adjustment on the next Federal excise tax return (TTB F 5000.24).

### **How to Avoid Problems Related to Returned Beer**

1. Review 27 CFR 25.211. This regulation lists the detailed information required when beer is returned to the brewery.
2. Record the actual quantity of keg beer returned and determine the balling and alcohol content of returned kegs using proper methods.
3. Ensure that you properly report returned beer that cannot be considered an offset on your next Federal excise tax return (TTB F 5000.24 ) and BROP(line 8) and that it is not netted against other items.

As provided in 27 CFR 25.159, offsets are not permissible when:

- The brewer was indemnified by insurance or otherwise in respect of the tax;
  - The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the brewer does not timely credit the customer after the offset or the brewer takes a deduction, the brewer must make an increasing adjustment on the next tax return; or
  - When beer is returned to a brewery location other than the one from which it was removed (see 27 CFR 25.213(a)).
4. If you have questions, you may contact the Beer Excise Tax Group at the NRC.

### **Production and Inventory Issue 3 — Tanks**

27 CFR 25.35 states that every tank, vat, cask, or other container that a brewer uses or intends to use as a receptacle for wort, beer, or concentrate produced from beer, must be "durably marked with a serial number and capacity." Tanks must be "equipped with a suitable measuring device" or, alternatively, provide meters or other suitable portable devices for measuring contents of tanks.

### **Most Common Tank Markings Issue**

Brewers sometimes fail to mark all tanks, vats, casks, or other types of containers that they use or intend to use in the production and storage of beer with a unique serial number and the container's capacity. For example, TTB finds that brewers often fail to durably mark open top tanks and kettles.

### **How to Avoid Tank Markings Issues**

1. Review 27 CFR 25.35. It provides the minimum marking and measuring device requirements for tanks, vats, casks, and other containers.
2. Make sure *all* containers used for storage and production of beer (tanks, vats, casks, open top tanks, kettles, etc.) are durably marked with a unique number and the container's capacity.
3. If you have questions, you may contact the Tax Audit Division office nearest to you.

### **Production and Inventory Issue 4 — Testing and Measuring Devices**

Every brewer must periodically test and adjust or repair all measuring devices they use to measure beer, such as meters or gauge glasses. Under 27 CFR 25.42, records of such tests must be available to TTB officers for inspection.

Records of these tests of measuring devices require the following information:

- Date of test;
- Identity of meter or measuring device;
- Result of test; and
- Corrective action taken, if necessary.

The allowable variation for beer meters as established by testing may not exceed  $\pm 0.5$  percent. If a meter test discloses an error in excess of the allowable variation, the brewer is required to immediately adjust or repair the meter.

### **Most Common Testing and Measuring Devices Issues**

Below are some of the common errors made by brewers:

- The brewer does not test and recalibrate all their testing and measuring devices (such as flow meters, site glass gauge, centrifuge magmeter, brew house micro-motion meter, D.E. filter micro-motion meter, keg line or bottle shop magmeter, etc.) on a periodic basis. For example, brewers fail to test flow meters measuring beer transferred from the fermenters to the brite tanks or fail to test site glass gauges used to measure beer in tax determination tanks. TTB has found that brewers fail to properly calibrate the "mobile" site glass and flow meters brewers use to gauge non-malt beverage in storage tanks.
- The brewer does not maintain records to support periodic testing of measuring devices.
- Paragraph (b) of § 25.42 provides that beer meters, as established by testing, may not exceed  $\pm 0.5$  percent variance. If a meter test discloses an error in excess of the allowable variation, the brewer must immediately adjust or repair the meter. Adjustments need to reduce the error as near to zero as practicable.

### **How to Avoid Measurement and Testing Devices Issues**

1. Review 27 CFR 25.42. This regulation provides tests and documentation requirements for measuring equipment.
2. Test and recalibrate (if necessary) all measuring and testing devices used in the brewery on a periodic basis. Bring the equipment within the  $\pm 0.5$  percent allowable tolerance.

3. Make sure to keep records with the proper detailed information of all device tests (see 27 CFR 25.42).
4. The TTB regulations do not define "periodic" testing. Instead, consult the manufacturer's recommendations or rely on good commercial practices to determine when to test your measuring devices. TTB suggests that you perform calibration testing at least once each year.
5. If you have questions, you may contact the Tax Audit Division office nearest to you.

### **Production and Inventory Issue 5— Storage of Beer**

A brewer may not store beer of that brewer's own production, on which the tax has been paid or determined, at his or her brewery. The exception to this rule is when a brewer stores taxpaid beer in an approved alternate use tavern area (see 27 CFR 25.25) or when the brewer returns taxpaid beer to a brewery other than the one from which the brewer removed it, when both breweries are under the same ownership (see 27 CFR 25.213). Under these two exceptions, the brewer must separate the taxpaid beer from non-taxpaid beer and clearly identify it as beer for use in the tavern or returned beer.

Brewers may store beer produced by other brewers at their breweries under the following conditions:

- The brewer must segregate taxpaid beer from non-taxpaid beer;
- The brewer may be required to hold a wholesaler's or importer's basic permit under 27 CFR part 1 and keep records of the taxpaid beer under 27 CFR part 31;
- The brewer may store taxpaid beer in packages; and
- The brewer may not make changes to or re-label taxpaid beer, or enter taxpaid beer on brewery summaries or inventories.

### **Most Common Beer Storage Issues**

The most common storage issues occur when brewers fail to:

- Segregate taxpaid beer from non-taxpaid beer. For example, the brewer stores taxpaid beer with non-taxpaid beer in the tavern service room or moves taxpaid beer onto a bonded area to repackage or re-case before shipment; and
- Identify beer as taxpaid on the premises.

### **How to Avoid Beer Storage Issues.**

1. Review 27 CFR 25.24. This regulation outlines when and how you may store taxpaid beer on the premises.
2. Consider temporarily marking an area where taxpaid beer is stored or designating a permanent area on the premises where taxpaid beer will always be stored.
3. If you have questions, you may contact the Tax Audit Division office nearest you.

### **Tax Issue 1 — Excise Tax Returns**

27 CFR 25.164 requires every brewer to file a Federal Excise Tax Return TTB F 5000.24 with TTB, regardless of whether a tax liability exists, and payment of the full amount of tax required for beer removed for consumption or sale during the period covered by the return. If the brewery does not qualify for deferred payment of the tax, then they must prepay the tax (see 27 CFR 25.175).

**Semimonthly Tax Returns**

Except in the case of a taxpayer who qualifies for quarterly return periods, all taxpayers must file semimonthly returns for deferred payment of tax. All months except September have two return periods and September has three. Semimonthly return periods are the first day of each month through the 15th day of that month and the 16th day of the month through the last day of the month. For September, the three return periods are the 1st - 15th; 16th - 26th; and 27th - 30th (see 27 CFR 25.164a).

Brewers must file semimonthly tax returns and remit payment for each return period, no later than the 14th day after the last day of the return period.

The following tables summarize the due dates for filing **semi-monthly** returns:

<b><i>For return periods ending on--</i></b>	<b><i>Returns and payments are due on--</i></b>
The 15th of the month	The 29th of the same month
The last day of the month	The 14th of the next month

**September Return periods for Electronic Fund Transfer (EFT) filers**

<b><i>For the return period ending on--</i></b>	<b><i>Returns and payments are due on--</i></b>
The 15th of September	The 29th of September
The 26th of September	The 29th of September
The 30th of September	The 14th of October

**September Return periods for non-EFT filers**

<b><i>For the return period ending on--</i></b>	<b><i>Returns and payments are due on--</i></b>
The 15th of September	The 28th of September
The 25th of September	The 28th of September
The 30th of September	The 14th of October

TTB considers the date of the official postmark stamped on the envelope as the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return.

**Quarterly Tax Returns**

A taxpayer who "reasonably expects" (see 27 CFR, 25.164(c)(1)) to be liable for less than \$50,000 in Federal beer excise taxes for the current calendar year, and who was not liable for more than \$50,000 in Federal beer excise taxes in the preceding calendar year, may choose to file quarterly. The penal sum of the bond that is required must be 29 percent of the projected tax liability for the calendar year.

Brewers filing quarterly returns must submit returns and remit payment for the following return periods:

<b><i>For the return period--</i></b>	<b><i>Returns and payment are due on--</i></b>
January 1st to March 31st	April 14th
April 1st to June 30th	July 14th

July 1st to September 30th	October 14th
October 1st to December 31st	January 14th

**Filing and Payment Methods**

Brewers may file returns electronically through TTB's [Pay.gov](#) online payment system. (See TTB's [Pay.gov Excise Tax Guide](#).) Brewers also may make excise tax payments by electronic funds transfer (EFT) via Fedwire. (See [TTB Procedure 2011-1](#).)

A taxpayer who, in a calendar year, was liable for a gross amount of \$5 million or more in Federal excise taxes must use a financial institution to make tax payments via EFT during the succeeding calendar year (see 27 CFR 25.164(c)(2)(v)). TTB will not accept tax payments of cash, check, or money order from taxpayers required to make remittances via EFT.

**Most Common Excise Tax Return Issue**

The most common tax return issue that TTB finds is that brewers file tax returns after the due date. TTB is likely to contact brewers who file late for compliance violations.

**How to Avoid Excise Tax Returns Issues**

1. Review TTB regulations 27 CFR, 25.164, 27 CFR 25.164a and 27 CFR 25.175. These regulations outline whether you must file an excise tax return semimonthly or may file quarterly, and when those returns are due.
2. File excise tax returns on time. Determine how you are required to file (semimonthly or quarterly) and be consistent.
3. If you have questions, you may contact the Beer Excise Tax Group at the [NRC](#).

**Taxes Issue 2 — Determination of Tax on Keg Beer, Bottled Beer and Rate of Tax**

Under 27 CFR 25.151, brewers who produce more than 2,000,000 barrels of beer per year must pay the tax rate of \$18 for every barrel containing not more than 31 gallons as authorized in 27 CFR 25.156. This rate applies to all beer brewed or produced and removed for consumption or sale within the United States and all beer imported into the United States. (For regulations regarding importation of alcohol beverage products, see 27 CFR part 27.)

Brewers who produce less than 2,000,000 barrels per year (except for brewers who are part of a controlled group with annual combined barrel production exceeding 2,000,000 barrels, as defined in 27 CFR 25.152) may pay a reduced tax rate of \$7 per barrel on the first 60,000 barrels of beer removed for consumption or sale within a calendar year.

**Barrel Equivalent Conversion Factors**

Under 27 CFR 25.156, the authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eighths. The following keg sizes are also authorized at the stated barrel equivalents:

Size of keg	Barrel equivalent
5 gallons	0.16129
30 liter	0.25565

50 liter	0.42608
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When removing bottled beer, brewers should refer to the chart in 27 CFR 25.158 to calculate barrel equivalents. The barrel equivalent is based on the size of the bottle and the number of bottles per case. If a bottle size or case configuration is not listed in the regulations, the brewer must request a barrel equivalency from the NRC prior to removing the beer. Failure to contact the NRC before removing the beer could result in penalties and interest.

For U.S. measure bottles (fluid ounces), the barrel equivalent for cases is calculated as follows:

Net content of bottle (in ounces) x number of bottles per case = Total ounces per case  
 Total ounces per case ÷ 128 = Gallons per case  
 Gallons per case ÷ 31 = Barrel equivalent conversion factor

12 oz bottle / 24 bottles per case				
12 oz	x	24	=	288 oz
288 oz	÷	128	=	2.25 gal.
2.25 gal.	÷	31	=	<b>0.07258</b>

For metric measure bottles (liters), the barrel equivalent for cases is calculated as follows:

Net content of bottle (in liters) x number of bottles per case = Total liters per case  
 Total liters per case x .264174 = Gallons per case  
 Gallons per case ÷ 31 = Barrel equivalent conversion factor

1L bottle / 12 bottles per case				
1 L	x	12	=	12 L
12 L	x	.264174	=	3.17 gal.
3.17 gal.	÷	31	=	<b>0.10226</b>

### **Computation of Taxes**

When removing beer from the premises in kegs or bottles, brewers must compute quantities to five decimal places (drop any number after the fifth decimal place). Brewers must total the quantities computed for any one day, round to two decimal places, and calculate and pay the tax on the rounded sum.

### **Most Common Tax Determination Issues**

TTB auditors find that some brewers:

- Fail to record taxable removals;
- Fail to pay tax on removals of beer for promotional events and samples;
- Inappropriately record and pay tax on beer consumed at the taxpayer's retail operations;
- Use incorrect conversion factors in calculating the barrel equivalent amounts for net removals or rounding each transactional amount to two decimal places instead of rounding to the required five decimal places. For example, brewers often use incorrect conversion factors for 12 oz, 22 oz, and 750 ml bottle sizes, and 1/6 barrel kegs. 1/6 barrel kegs

contain 5.16666 gallons, but brewers often use the conversion factor for a 5 gallon keg (0.16129); and

- Use incorrect computations. For example, some sales registers automatically and inappropriately round each transactional amount to two decimal points, so brewers must ensure that they convert all sales register transactions to five decimal points.

#### **How to Avoid Tax Determination Issues.**

1. Review 27 CFR 25.156, 27 CFR 25.158, and 27 CFR 25.151. These regulations provide the amount of tax and some of the barrel conversion factors. You must request the barrel equivalency from the NRC before removing beer in cases or container sizes that are not listed in 27 CFR 25.158.
2. The tax rate for beer removed for consumption or sale is \$7 per barrel on the first 60,000 barrels, if the brewery (or "controlled group") produces less than 2,000,000 barrels per year.
3. Once the brewery meets the 60,000 barrel threshold in the calendar year, the tax rate for beer removed for consumption or sale is \$18 per barrel.
4. When using the conversion factor to calculate barrel equivalent amounts, compute the total quantity to five decimal places, dropping any numbers after that decimal place.
5. If you have questions or need a barrel equivalency approved, you may contact the Beer Excise Tax Group at the NRC.

#### **Taxes Issue 3 — Time and Determination of Tax Payment**

27 CFR 25.159

Brewers must determine tax on beer at the time of its removal for consumption or sale and must record these totals on the BROP and submit tax payment with the brewer's Federal tax return.

The quantity of beer returned to the same brewery from which it was removed may be taken as an offset against, or deducted from, the total quantity of beer removed for consumption or sale from that brewery **on the day that the beer is returned**. A brewer may not take an offset or deduction for returned beer when they are indemnified by insurance for the tax or when the brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer.

#### **Most Common Time and Determination of Tax Payment Issues**

The most common errors that brewers make when they determine tax payments are:

- Brewers make decreasing tax adjustments on their excise tax returns for taxpaid beer that was not physically returned to the brewery (such as beer in the marketplace that was destroyed offsite).
- Brewers fail to properly report beer returned to the brewery on line 7 of the BROP.
- Brewers determine the tax during production instead of when the brewer actually removes the beer from the premises for consumption or sale. While TTB regulations require brewers to keep daily and monthly records of "beer on hand," there is no tax payment due until the beer is removed from the premises for consumption or sale.
- Brewers often transfer beer without payment of tax to other brewers who are not under the same ownership.
- Brewers remove beer from their bonded premises for storage purposes without paying the appropriate tax. For example, they remove beer for repackaging into a variety pack.

### How to Avoid Time and Tax Determination Issues

1. Review 27 CFR 25.159. This regulation says that tax on beer is determined when the brewer removes beer from the premises for consumption or sale. The regulation also says that brewers may offset beer returned to the same brewery from which it was originally removed (line 7 of the BROP).
2. You must pay tax when you remove beer from the premises for consumption or sale.
3. If you have questions, you may contact the Beer Excise Tax Group at the NRC.

### Taxes Issue 4 — Penalties for Failure to File Returns

Under 27 CFR part 70, brewers who fail or refuse to keep the records or file the returns required by TTB regulations, or refuse to allow TTB to inspect records, may be fined not more than \$1,000, or imprisoned not more than 1 year, or both, for each offense.

### How to Avoid Penalties

1. Review **Subpart U—Records and Reports** in 27 CFR part 25 . This subpart outlines every detail of the brewery operation that you must record and maintain.
2. If you have questions, you may contact the Beer Excise Tax Group at the NRC.

### Reporting Issue 1 — Brewer's Report of Operations, TTB F 5130.9 and Brew Pub Report of Operations, TTB F 5130.26

Under 27 CFR 25.297, a brewer who produces 10,000 or more barrels of beer per calendar year, must prepare and submit the BROP monthly. Brewers who produce less than 10,000 barrels of beer per calendar year and do not file a Quarterly Brewer's Report of Operations may file the BROP quarterly. Brewpubs that produce 5,000 barrels of beer per calendar year or less and do not bottle or keg their beer for removal from their breweries may report their operations on the Quarterly Brewer's Report of Operations TTB F 5130.26.

Brewers must notify TTB before the calendar quarter in which they want to begin submitting quarterly filings. To elect quarterly filing, brewers may add a comment in the "Remarks" section of the BROP indicating that they intend to start filing quarterly. Brewers beginning business and intending to file quarterly must state under the "Remarks" section of their initial monthly BROP that their annual production of beer is unlikely to exceed 10,000 barrels.

If the brewer determines that the brewer will exceed 10,000 barrels for a calendar year in any month, the brewer must file a BROP for that month and for all subsequent months of the calendar year.

Brewers must retain copies of all BROPs they submit to TTB.

### Most Common BROP Issues

One of the most common errors that brewers make is that they file their BROPs late or not at all.

Below are the sections of the BROP where TTB finds errors most frequently:

- **Line 2:** Brewers fail to enter a correct amount for beer "produced by fermentation." Brewers may not include in this amount beer they did not produce on their premises, such as beer they received from other breweries, beer in cellars, or beer returned to the brewery.

- **Line 8:** Brewers incorrectly report receipts of beer from other breweries that are not under the same ownership (This line is for beer returned to the brewery after removal from another brewery under the same ownership).
- **Line 11:** Brewers improperly use line 11 (physical inventory disclosed overage) and line 31 (physical inventory disclosed shortage) to balance an inventory discrepancy.
- **Line 14:** Brewers must enter taxable removals under line 14. This is a crucial amount because tax is determined on this amount. Brewers may not enter the difference between taxable removals and taxpaid or tax-determined beer returned to the brewery (which brewers must report on line 7) on this line.
- **Line 15:** Brewers often improperly report the "on premises" consumption amount (line 21) as a "tavern removal" amount under line 15. Brewers also fail to report transfers to the tavern appropriately on line 15b. "Tavern" means a portion of brewery premises where the brewer sells beer to consumers (27 CFR 25.25). Beer sold from a tavern is taxable. Beer consumed on premises without charge, for example in a tasting room, is not taxable.
- **Line 16:** Brewers who report beer removed without payment of tax for export often do not enter the correct amount of beer removed for export during the reporting period. In other cases, brewers improperly enter the difference between beer removed for export and beer that was exported and returned to the brewery.
- **Line 18:** Brewers may not estimate the amount of beer removed without payment of tax for use in research, development, or testing. Brewers must ensure that all such removals from the brewery without payment of tax are accurately reported as exact amounts or TTB may treat the discrepancy as a taxable removal.
- **Lines 30 and 31:** Brewers often fail to report inventory shortages or they report inventory shortages incorrectly. Brewers reporting losses on the BROP must ensure that they report on inventory records the exact amount revealed when taking inventory. Some brewers confuse losses (such as losses occurring during cellar operations or theft), which they must report on line 30, with "Physical inventory disclosed as a shortage," which they must report on line 31. Shortages are revealed when the inventory count is different from book inventory.

Brewers are not required to explain inventory shortages that occur during cellar operations under "Part 5 – Remarks." However, as part of the brewer's explanation required under "Part 5 – Remarks," brewers must report whether the shortage of finished goods was in cans, bottles, or kegs. Brewers who report shortages on line 31 must enter the amount in barrels, and not by package type (cans, bottles, or kegs). For more discussion on losses and shortages, see Records Issue 2 — Inventory Records.

### How to Avoid BROP Issues

1. Review 27 CFR 25.297. This regulation requires you to submit either a BROP monthly or quarterly.
2. Make sure that you complete, sign, and file the BROP on time (submit it by the fifteenth day after the end of its reporting period).
3. Put the total amount of an item rather than a net amount on the BROP.
4. When you fill out the Brewer's Report of Operations, be aware of the differences between losses (Line 30) and shortages (Line 31). See Records Issue 2 — Inventory Records.
5. If you have questions, you may contact the Beer Excise Tax Group at the NRC.

## Reporting Issue 2 — Notice of Intent (NOI) to Destroy Beer

Under 27 CFR 25.222, a brewer must give written notice (Notice of Intent (NOI)) to TTB if that brewer intends to destroy taxpaid or tax-determined beer at a location other than one of the brewer's breweries. The brewer should give notice on the brewery's letterhead.

- Brewers must serially number and sign the notice "under penalties of perjury" as defined in 27 CFR 25.11.
- The brewer must specify the date of destruction and mail the NOI to TTB not less than 12 days before that date.
- A brewer's NOI must also include the following information:
  - The quantity of beer expressed as:
    - The number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels; or
    - The number and sizes of kegs and the actual quantity of beer, in barrels.  
When destroying kegs containing less than the full contents, the brewer must determine the actual content of beer by weight or by other accurate means;
  - The date on which the brewer received the beer for destruction;
  - A statement that the brewer has fully paid or determined the tax on the beer and the rate at which the brewer paid or determined the tax on the beer;
  - If the title of the beer has passed, the name and address of the person returning the beer; and
  - The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

### Most Common NOI Issues

The most common errors on NOIs occur because brewers:

- Fail to notify TTB of their intent to destroy beer off premises;
- Fail to sign the NOI;
- Enter amounts of total barrels destroyed that do not match the actual quantity destroyed;
- Estimate the amount of beer returned in opened kegs instead of determining the actual content of beer by weight or other accurate means;
- Fail to provide the name and address of the person(s) holding the title of the returned beer to be destroyed;
- Submit multiple NOIs without serially numbering them;
- Fail to state the date the brewer received the beer at the destruction location;
- Fail to state the location at which the brewer will destroy the beer;
- Fail to state the reason for not returning the beer to the brewery; and
- Fail to maintain required information and supporting documents regarding voluntary destructions that are required in order to obtain an adjustment or refund of tax paid, as outlined under Subpart T (27 CFR 25.281 through 25.286).

A brewer may request a variance, which may allow the brewer to destroy a maximum number of barrels of returned beer off premises without obtaining prior approval for each destruction. However, the brewer with an approved variance must record and maintain records that support such destructions, as outlined in 27 CFR 25.222.

### How to Avoid NOI Issues

1. Review 27 CFR 25.222. This regulation outlines the information required on NOIs.
2. Make sure that the NOI contains all the information required in § 25.222:

- Serial number;
  - Dates of receipt and destruction;
  - Quantity in barrels;
  - Name of the person returning the beer—if the title to the beer has passed;
  - Location of destruction; and
  - Statements that the beer was taxpaid and the reason for destruction.
3. Sign NOIs before you mail them to TTB. You are signing the NOI "under penalty of perjury."
  4. Properly record and maintain records that support destructions, under Subpart T (27 CFR 25.281 through 25.286), in order to obtain an adjustment or refund of tax paid.
  5. If you have questions, you may contact the Beer Excise Tax Group at the [NRC](#).

### Reporting Issue 3 — Liquor Dealer Registration and Recordkeeping

On August 10, 2005, President Bush signed into law the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users," Public Law 109–59, which permanently repealed payment of the special occupational taxes for several alcohol beverage related industry members, among them brewers.

Although Congress repealed the payment of occupational tax, recordkeeping and registration requirements remain for brewers, who also operate as "liquor dealers." A liquor dealer is a person who sells, or offers for sale, any alcohol product (distilled spirits, wines, and/or beer) fit for beverage use.

While the law suspended payment of occupational tax for the period of July 1, 2005 to June 30, 2008, TTB still required brewers to register and keep appropriate records during that time. If brewers did not maintain registration during this time, they should contact the [NRC](#).

#### How to Avoid Liquor Dealer Registration and Recordkeeping Issues

1. Review 27 CFR 25.111 through 27 CFR 25.114. These regulations outline the registration and recordkeeping requirements for brewers.
2. Maintain records of transactions not covered in the brewery records, such as retail sales of wine or distilled spirits in a restaurant at the brewery, or operations as a wholesale dealer in wine or distilled spirits, under 27 CFR part 31.
3. If you have questions, you may contact Brewery Applications Section at the [NRC](#).

#### TTB Forms Used in this Brewer's Guide

Form number	Title of form:
TTB F 5000.8	Power of Attorney
TTB F 5000.9	Personal Questionnaire - Alcohol and Tobacco Products
TTB F 5000.18	Change of Bond (Consent of Surety)
TTB F 5000.24	Excise Tax Return
TTB F 5000.29	Environment Information

<b>TTB F 5000.30</b>	<b>Supplemental Information on Water Quality Considerations Under 33 U.S.C 1341(a)</b>
<b>TTB F 5100.1</b>	<b>Signing Authority for Corporate and LLC Officials</b>
<b>TTB F 5100.31</b>	<b>Application for Certification/Exemption of Label/Bottle Approval</b>
<b>TTB F 5100.51</b>	<b>Formula and Process for Domestic and Imported Alcohol Beverages</b>
<b>TTB F 5130.6</b>	<b>Drawback on Beer Exported</b>
<b>TTB F 5130.9</b>	<b>Brewer's Report of Operations Need Help with Form 5130.9? Try our helpful tutorial! Sample Brewer's Report</b>
<b>TTB F 5130.10</b>	<b>Brewer's Notice</b>
<b>TTB F 5130.12</b>	<b>Beer for Exportation</b>
<b>TTB F 5130.22</b>	<b>Brewer's Bond</b>
<b>TTB F 5130.23</b>	<b>Brewer's Bond Continuation Certificate</b>
<b>TTB F 5130.25</b>	<b>Brewer's Collateral Bond</b>
<b>TTB F 5130.26</b>	<b>Quarterly Brewer's Report of Operations</b>
<b>TTB F 5130.27</b>	<b>Brewer's Collateral Bond Continuation Certificate</b>
<b>TTB F 5620.8</b>	<b>Claim - Alcohol, Tobacco and Firearms Taxes Need Help with Form 5620.8? Try our helpful tutorial!</b>

**TTB Regulations Cited in This Brewer's Guide**

<b>TTB Regulations</b>	
27 CFR part 25	Beer regulations
27 CFR 25.11	Meaning of terms
27 CFR 25.24	Storage of beer
27 CFR 25.25	Operation of a tavern on brewery premises
27 CFR 25.35	Tanks
27 CFR 25.42	Testing of measuring devices

27 CFR 25.111- 27 CFR 25.114	Subpart I - Dealer Registration and Recordkeeping
27 CFR 25.151	Rate of tax
27 CFR 25.156	Determination of tax on keg beer
27 CFR 25.158	Tax computation for bottled beer
27 CFR 25.159	Time of tax determination and payment; offsets
27 CFR, 25.164	Quarterly and semimonthly returns
27 CFR 25.164a	Special September rule for taxes due by semimonthly return.
27 CFR 25.175	Prepayment of Tax
	Subpart L--Removals Without Payment of Tax
27 CFR 25.211	Beer returned to brewery
27 CFR 25.213	Beer returned to brewery other than that from which removed.
27 CFR 25.222	Notice of brewer
27 CFR 25.281 through 25.286	Subpart T - Refund or Adjustment of Tax or Relief From Liability
27 CFR 25.291 through 25.301	Subpart U- Records and Reports
27 CFR 25.291	Records
27 CFR 25.292	Daily records of operations
27 CFR 25.294	Inventories
27 CFR 25.297	Brewer's Report of Operations, Form 5130.9
27 CFR 25.299	Execution under penalties of perjury.
27 CFR 25.300	Retention and preservation of records
27 CFR 70.1 through 70.803	Subpart 70--Procedure And Administration

### **Additional Resources for Breweries**

#### **General Resources:**

- [TTB's National Revenue Center \(NRC\)](#)
- [TTB glossary](#)
- [COLA and Formulas online](#)
- [Getting Started in a TTB Regulated industry](#)
- [Government Auditing Standards \(The Yellow Book\)](#)

#### **Tutorials for TTB Forms:**

- TTB form [TTB F 5000.24 Excise Tax Return Tutorial](#)
- TTB form [TTB F 5130.9 Brewer's Report of Operations Tutorial](#)
- TTB form [TTB F 5620.8 Claim - Alcohol, Tobacco and Firearms Taxes Tutorial](#)

#### **Pay.gov User Guides:**

- [Access/User Profile Guide](#)
- [Excise Tax Guide](#)
- [Electronic Funds Transfer](#)
- [Payment of tax by EFT](#)



Search All

for 18-000403



## CSMS #18-000403

[Back](#)

**Title: Implementing the Craft Beverage Modernization and Tax Reform Act of 2017**

**Date: 6/27/2018 9:36:14 AM**

**To: Automated Broker Interface, ACE Outreach Events, ACE Portal Accounts, ACE Reports, Air Manifest, Export, New ACE Programming, Ocean Manifest, Partner Government Agencies, Rail Manifest, Trade Policy Updates, Truck Manifest**

### BACKGROUND

Effective January 1, 2018, the Craft Beverage Modernization and Tax Reform Act of 2017 (CBMA) (as contained in Pub. L. No. 115-97) amended the Internal Revenue Code with respect to the tax treatment of certain alcoholic beverages. Since passage of the CBMA, U.S. Customs and Border Protection (CBP) and the Department of the Treasury have worked together to coordinate implementation of the CBMA for imports. The provisions of the CBMA are effective during calendar years 2018 and 2019.

The CBMA requires that procedures be established governing how an importer can receive a reduced tax rate on qualifying distilled spirits or beer, or receive a tax credit on qualifying wine. On January 31, 2018, CBP issued Cargo Systems Messaging Service (CSMS) #18-000103, which stated that, until such procedures are established and guidance issued, importers of beer, wine, and distilled spirits seeking to qualify for excise tax relief, based on qualifying assignments made by a foreign producer, should continue to pay the full excise tax rates.

Under the CBMA, reduced tax rates and/or tax credits are applicable to importations of certain limited quantities of distilled spirits, beer, or wine imported from each qualifying foreign producer. Further, the foreign producer must have affirmatively assigned those rates or tax credits to an importer or importers and the quantity assigned to all importers by that producer may not exceed the quantities allowed by law. As a result, for an importer to be eligible to receive a reduced tax rate or a tax credit, the importer must be able to substantiate that the foreign producer has assigned an allotment of its reduced tax rate or tax credits to the distilled spirits, beer, or wine imported by that importer.

### GUIDANCE

Importers will continue to pay the full excise tax rate at time of entry summary filing. CBP and Treasury are considering amending current regulations (19 CFR 24.36) to allow CBP to issue refunds owed pursuant to the CBMA on entries when appropriate. These amendments to 19 CFR 24.36 would apply to entries that have not been finally liquidated and would be retroactive.

In anticipation of the new regulations, CBP suggests importers file protests on liquidated entries for which a CBMA reduced tax rate or credit may be due. Such protests should, at a minimum, include an Excel spreadsheet with information including entry number(s), line number(s) and the following information by line number: producer, alcohol type (beer, wine, cider or distilled spirits), tax rate or credit assigned and requested, and quantity claimed for tax rate or credit.

Refund requests will be processed no earlier than January 15, 2019.

Post Summary Corrections (PSCs) must not be utilized for requesting refunds until 19 CFR 24.36 has been updated and necessary programming completed. The CBP Centers of Excellence and Expertise (Centers) will reject any PSCs pursuant to CBMA claims pending a regulatory change to 19 CFR 24.36.

Once the regulations are amended and CBP commences accepting CBMA refund requests, importers will need to identify entry summary lines that they believe qualify for excise tax relief under the CBMA. This identification will serve as the importer's request for relief. CBP plans to develop a flag at the entry summary line level in the Automated Commercial Environment (ACE) that importers may utilize to request a refund. Further instructions will be published via CSMS once CBP is capable of accepting refund requests.

For the importer to substantiate its eligibility to receive the reduced tax rates or the tax credits and meet its reasonable care obligations, its internal records should, at a minimum, include:

- Foreign producer's name;
  - Foreign producer's manufacturing facility address and FSMA registration number;
  - Number of barrels of beer, number of gallons of wine, and number of proof gallons of distilled spirits eligible for each reduced rate/tax credit assigned to the importer for the calendar year by the representative of the foreign producer authorized to assign its allotment, and documentation showing that quantity as assigned to that specific importer;
  - Contact information for such authorized representative; and
  - Statement from the authorized representative of the qualifying foreign producer that the number of barrels or wine/proof gallons assigned by the foreign producer (including any members of a controlled group) to all importers for the calendar year does not exceed the quantities allowed by law and does not exceed the foreign producers capacity.
- Importers who are assigned reduced tax rates and/or tax credits from multiple foreign producers should maintain in their records the above information applicable to each foreign producer.

If you have any questions or require additional information, please contact [OTEntrySummary@cbp.dhs.gov](mailto:OTEntrySummary@cbp.dhs.gov).





Form  
**GA-110L**  
State Form 615  
(R12 / 1-19)

**Indiana Department of Revenue**  
**Claim for Refund**

POA-1 form Included

Name of Taxpayer			Taxpayer Identification Number (include 3 digit location)
Address			Federal Identification Number
City	State	Zip	Social Security Number

Indicate only one tax type from one of the following sections:

<b>Section A</b>					
<input type="checkbox"/> County Innkeepers	<input type="checkbox"/> Food & Beverage	<input type="checkbox"/> Motor Vehicle Rental	<input type="checkbox"/> Sales & Use (Not Fuel Related)	<input type="checkbox"/> Penalty	
<input type="checkbox"/> Sales & Use (Utilities)	<input type="checkbox"/> Withholding	<input type="checkbox"/> Collection Fees	<input type="checkbox"/> HRT-103	<input type="checkbox"/> Other _____	
<b>Section B</b>					
<input type="checkbox"/> Aviation Fuel Excise	<input type="checkbox"/> Gasoline Use	<input type="checkbox"/> Oil Inspection Fee	<input type="checkbox"/> Sales (Diesel)		
<input type="checkbox"/> Surcharge (Special Fuel - see instructions)	<input type="checkbox"/> Other Fuel Related _____				
<b>Section C</b>					
<input type="checkbox"/> Aeronautics	<input type="checkbox"/> Cigarette Excise	<input type="checkbox"/> Alcohol Excise	<input type="checkbox"/> Other Tobacco Products Excise		
<b>Section D</b>					
<input type="checkbox"/> BAS	<input type="checkbox"/> IFTA	<input type="checkbox"/> IRP/BPR	<input type="checkbox"/> Motor Carrier Fuel Tax	<input type="checkbox"/> Oversize/Overweight	<input type="checkbox"/> UCR
Provide the explanation as to why a refund is due:					
Year or Period Ending (mm/dd/yyyy)	Requested Refund Amount	Date(s) of Tax Payment(s)	Year or Period Ending (mm/dd/yyyy)	Requested Refund Amount	Date(s) of Tax Payment(s)

I hereby certify that the foregoing account is just and correct; that the amount claimed is legally due, after allowing all just credits; and that no part of the same has been paid. I further understand that this refund may be applied to any liability which I currently have outstanding. Under penalties of perjury, I declare that I have examined this form, including the accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Sign Form GA-110L and include evidence to support your claim. Failure to attach ALL documentation with your claim may result in your claim being rejected or denied.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Daytime Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_ Date: \_\_\_\_\_

**For Department Use Only**

Tax Analyst/Auditor: \_\_\_\_\_ Date: \_\_\_\_\_ Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Claim Number: \_\_\_\_\_

Year	Interest Paid From	Interest Paid To	Total Interest Amount	Total Refund Amount	DLN

## Instructions for Completing Form GA-110L

Complete a separate Form GA-110L for each tax type and location. Fill-in all blanks because any **missing or incomplete information may delay the processing of your Claim for Refund or may cause the Claim for Refund to be rejected or denied.** Make sure any and all returns have been filed. **Due to security reasons we are not able to accept flash drives.**

- Include the taxpayer’s name, address, and correct Taxpayer Identification Number with location number that was assigned by the state for your specific location.
- Check only ONE Tax Type.
  - **Each tax type requires a separate GA-110L.**
  - Refunds of the Surcharge tax are available to non-motor carriers who purchased special fuel (diesel, biodiesel, compressed natural gas or liquified natural gas) in Indiana from July 1, 2017 through June 30, 2018. The vehicle make, model and Vehicle Identification Number (VIN) must be included, along with purchase receipts.
- Include a complete explanation of why the refund is due. Attach ALL evidence to support your claim. Examples but not all inclusive: invoices showing tax paid; copy of exemption certificate if it is an exempt customer; purchase agreement and contract for items such as software and warranties; proof of payment (credit invoice or canceled checks); utility bills showing meter number; use tax journal and any additional documentation to support your claim. Failure to attach ALL documentation with your claim may result in your claim being rejected or denied. **Due to security reasons we are not able to accept flash drives.**
- For a refund claim to be valid, a refund amount must be a request for the amount legally due for a specific tax period. Refund claim amounts must be separately stated by period or tax year. Include each requested refund amount for the appropriate period(s).
- Be sure to sign the GA-110L form and include a daytime phone number and email address. The form must be signed to be a valid refund claim.
  - **Including a correct email address could help expedite the refund process.**
- Complete and attach a Power of Attorney (POA-1) form authorizing the department to discuss your claim and specific tax type with someone other than the taxpayer.

Please allow 60 days for processing before contacting the department regarding the status of your claim.

For a refund to be valid, it must meet the statutory requirements of a claim for refund and at a minimum include:

1. the refund amount;
2. the tax period for which the refund is due;
3. the reason for the refund; and
4. the taxpayer’s signature.

If your claim does not include these items, it will be rejected.

### Mailing/Contact Information

Please use the information below based on the tax type selected.

Section A	Section B	Section C	Section D
Indiana Dept. of Revenue P.O. Box 935 Indianapolis, IN 46206-0935  (317) 232-2339 <a href="mailto:Refundclaim@dor.in.gov">Refundclaim@dor.in.gov</a>	Indiana Dept. of Revenue P.O. Box 1971 Indianapolis, IN 46206-1971  (317) 615-2552 <a href="mailto:fetax@dor.in.gov">fetax@dor.in.gov</a>	Indiana Dept. of Revenue P.O. Box 901 Indianapolis, IN 46206-0901  (317) 615-2710 <a href="mailto:excisetax@dor.in.gov">excisetax@dor.in.gov</a>	Indiana Dept. of Revenue P.O. Box 6075 Indianapolis, IN 46206-6075  (317) 615-7345 <a href="mailto:IndianaMotorFuel@dor.in.gov">IndianaMotorFuel@dor.in.gov</a>



Form  
**ALC-M**  
State Form 55548  
(R / 5-14)

Indiana Department of Revenue  
**Indiana Brewer/Distiller/Rectifier/Vintner  
Excise Tax Return**

<input type="checkbox"/>	Amended Return
<input type="checkbox"/>	No Activity

Reporting Month \_\_\_\_\_ Year \_\_\_\_\_

This return must be postmarked on or before the 20th day of the month following the reporting month.

Section A: Taxpayer Information				
Name (As Appears on Permit)	Federal Identification Number			
Physical Address/City/State/ZIP	IN Taxpayer Identification Number			
Mailing Address/ City/State/ZIP	Telephone Number			
Indiana Alcoholic Beverage Permit Number(s)				
Section B: Excise Tax Calculation				
	BEER Tax rate = \$0.115	CIDER Tax rate = \$0.115	LIQUOR Tax rate = \$2.68	WINE Tax rate = \$0.47
1. Gallons Withdrawn for Sale or Gift in Indiana.				
2. Tax-exempt Gallons Sold (from Schedule ALC-M-S Transaction Type A).				
3. Gallons Returned to Manufacturer (from Schedule ALC-M-S Transaction Type B).				
4. Deduction Subtotal: Add Lines 2 and 3.				
5. Total Taxable Gallons: Line 1 minus Line 4.				
6. Gross Alcohol Tax Due: Multiply Line 5 by tax rate in each column.				
7. Total Tax Due: Add Line 6 amounts from all columns.				
8. Collection Allowance for Timely Payment: Multiply Line 7 by 0.015.				
9. Penalty: Multiply Line 7 by 0.10 (or \$5, whichever is greater).				
10. Interest.				
11. Total Amount Due: Line 7 minus Line 8 plus Line 9 plus Line 10.				

**I hereby certify, under penalty of perjury, that the information contained herein and on supporting documents, is true, correct, and complete to the best of my knowledge and belief.**

Name of Business/Taxpayer: \_\_\_\_\_ Email Address: \_\_\_\_\_

Signature of Agent or Officer: \_\_\_\_\_ Date: \_\_\_\_\_

**Mail to:** Indiana Department of Revenue  
P.O. Box 6114  
Indianapolis, IN 46206-6114

Questions related to this form:  
Call (317) 615-2710  
Email [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov)

## Instructions for Completing Indiana Brewer/Distiller/Rectifier/Vintner Excise Tax Return

### What Is the ALC-M?

The ALC-M return is used to report all transactions related to the production and sale of alcoholic beverages in Indiana.

### Who Must File?

The holder of a brewer, distiller, rectifier, and/or vintner permit(s).

### Reporting Requirements

The holder of a brewer, distiller, rectifier, and/or vintner permit(s) shall file a monthly return with the Indiana Department of Revenue on or before the 20<sup>th</sup> day of the month following the month in which the liability for the tax accrues. Payment of the excise tax due shall accompany the return. **A return must be filed even if there is no activity within Indiana during the reporting period.**

To be considered timely filed, monthly returns must be filed on or before the 20<sup>th</sup> day of the month immediately following the last day of the month being reported. If the 20<sup>th</sup> day of the month falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, a Sunday, or such holiday.

### Penalty

Taxpayers who fail to file timely are subject to a penalty of \$5 or 10% of tax due, whichever is greater.

### Questions

If you need further assistance, you can contact us at (317) 615-2710 or at [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov).

### Section A: Taxpayer Information

Indicate the month and year for which the return is being filed in the appropriate spaces provided.

**Name (As Appears on Permit)** – Indicate the entity name as it appears on the Indiana Alcoholic Beverage Permit.

**Physical Address** – Indicate the actual location of your business by providing the street address, city, state, and ZIP Code. **Note:** A post office box is not acceptable as a business location address.

**Mailing Address** – Indicate the mailing address for your business. Include the street address, post office box, city, state, and ZIP Code.

**Indiana Alcoholic Beverage Permit Number(s)** – Indicate the Indiana Alcoholic Beverage Permit Number(s) obtained from the Indiana Alcohol and Tobacco Commission.

**Federal Identification Number** – Indicate the nine-digit federal employer identification number (FEIN).

**Indiana Taxpayer Identification Number** – Indicate the ten-digit Indiana taxpayer identification number (TID). If you do not have an Indiana TID, leave the space blank and one will be assigned to you.

**Telephone Number** – Indicate the point of contact phone number for the person(s) responsible for completing this return. Include extension numbers when applicable.

### Section B: Excise Tax Calculation

**Line 1** – Enter the number of gallons withdrawn for sale or gift during the reporting period. Round gallons to two decimal places (0.00).

**Line 2** – The total gallons will be the amount reported on Line 10 of Schedule ALC-M-S. Use the appropriate column for the alcohol type being reported.

**Line 3** – The total gallons will be the amount reported on Line 11 of Schedule ALC-M-S. Use the appropriate column for the alcohol type being reported.

**Line 4** – Line 2 plus Line 3.

**Line 5** – Line 1 minus Line 4.

**Line 6** – Multiply Line 5 by the tax rate indicated for each column. (Beer: \$0.115, Cider: \$0.115, Liquor: \$2.68, Wine: \$0.47)

**Line 7** – Add the Line 6 totals from each column.

**Line 8** – If the return is filed on or before the due date, multiply Line 7 by 0.015.

**Line 9** – If the return is filed after the due date, enter 10% of Line 7 or \$5, whichever is greater. (The penalty is \$5 if the return is late with no tax due.)

**Line 10** – If your tax liability is not paid on or before the due date, you are subject to interest from the date the tax return was due until the date the tax return was postmarked. The interest rate is determined on a calendar-year basis and can change from year to year. **Please refer to our website at [www.in.gov/dor/files/dn03.pdf](http://www.in.gov/dor/files/dn03.pdf) for the current interest rate.** An example of an interest calculation follows:

**Tax due:** \$5,000  
**Return due:** 08/15/2014  
**Return filed:** 10/04/2014  
**Days late:** 50  
**Interest rate:** 3% (rate for year 2014)

$(50 \text{ days} / 365 \text{ days}) \times 3\% \times \$5,000 = \$20.55$   
interest

**Line 11** – If timely filed, subtract Line 8 from Line 7. If filed after the due date, add Line 7, Line 9, and Line 10.



Form  
**ALC-W**  
State Form 55553  
(R / 5-14)

Indiana Department of Revenue  
**Alcoholic Beverage Wholesaler's Excise Tax Return**

Reporting Month \_\_\_\_\_ Year \_\_\_\_\_

<input type="checkbox"/>	Amended Return
<input type="checkbox"/>	No Activity

This return must be postmarked on or before the 20th day of the month following the reporting month.

Section A: Taxpayer Information				
Name (As It Appears on Permit)		Federal Identification Number		
Physical Address/City/State/ZIP		IN Taxpayer Identification Number		
Mailing Address/City/State/ZIP		Telephone Number		
Indiana Alcoholic Beverage Permit Number(s)				
Section B: Excise Tax Calculation				
	<b>BEER</b> Tax rate = \$0.115	<b>CIDER</b> Tax rate = \$0.115	<b>LIQUOR</b> Tax rate = \$2.68	<b>WINE</b> Tax rate = \$0.47
1.	Gallons Received During Reporting Month (from Schedule ALC-W-S Transaction Type A).			
2.	Gallons Returned to Manufacturer/Importer or Destroyed (from Schedule ALC-W-S Transaction Type B).			
3.	Tax-exempt Gallons (from Schedule ALC-W-S Transaction Type C).			
4.	Subtotal: Add Lines 2 and 3 of each column.			
5.	Total Taxable Gallons: Subtract Line 4 from Line 1.			
6.	Gross Alcohol Tax Due: Multiply Line 5 by the tax rate in each column.			
7.	Total Tax Due: Add Line 6 amounts from all columns.			
8.	Collection Allowance for Timely Payment: Multiply Line 7 by 0.015.			
9.	Adjustments: Authorized by the Indiana Department of Revenue.			
10.	Penalty: Multiply Line 7 by 0.10 (or \$5, whichever is greater).			
11.	Interest.			
12.	Total Amount Due: Line 7 minus Line 8 plus/minus Line 9 plus Line 10 plus Line 11.			
Additional Information - Not Part of Tax Calculation				
13.	Tax Paid Gallons Received (from Schedule ALC-W-S Transaction Type D)			

**I hereby certify, under penalty of perjury, that the information contained herein and on supporting documents, is true, correct, and complete to the best of my knowledge and belief.**

Name of Business/Taxpayer: \_\_\_\_\_ Email Address: \_\_\_\_\_

Signature of Agent or Officer: \_\_\_\_\_ Date: \_\_\_\_\_

**Mail to:** Indiana Department of Revenue  
P.O. Box 6114  
Indianapolis, IN 46206-6114

Questions related to this form:  
Call (317) 615-2710  
Email [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov)

## Instructions for Completing Alcoholic Beverage Wholesalers Excise Tax Return

### What is the ALC-W?

The ALC-W return is used to report transactions related to the wholesale/distribution of alcoholic beverages in Indiana.

### Who Must File?

The holder of a beer, cider, liquor, and/or wine wholesaler permit.

### Reporting Requirements

The holder of a beer, cider, liquor, and/or wine wholesaler permit(s) shall file a monthly return with the Indiana Department of Revenue on or before the 20<sup>th</sup> day of the month following the month in which the liability for the tax accrues. Payment of the excise tax due shall accompany the return. **A return must be filed even if there is no activity within Indiana during the reporting period.**

To be considered timely filed, monthly returns must be filed on or before the 20<sup>th</sup> day of the month immediately following the last day of the month being reported. If the 20<sup>th</sup> day of the month falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, a Sunday, or such holiday.

### Penalty

Taxpayers who fail to file timely are subject to a penalty of \$5 or 10% of tax due, whichever is greater.

### Questions

If you need further assistance, you can contact us at (317) 615-2710 or at [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov).

### Section A: Taxpayer Information

Indicate the month and year for which the return is being filed in the appropriate spaces provided.

**Name (As It Appears on Permit)** – Indicate the entity name as it appears on the Indiana Alcoholic Beverage Permit.

**Physical Address** – Indicate the actual location of your business by providing the street address, city, state, and ZIP Code. **Note:** A post office box is not acceptable as a business location address.

**Mailing Address** – Indicate the mailing address for your business. Include the street address, post office box, city, state, and ZIP Code.

**Federal Identification Number** – Indicate the nine-digit federal employer identification number (FEIN).

**Indiana Alcoholic Beverage Permit Number(s)** – Indicate the Indiana Alcoholic Beverage Permit Number(s) obtained from the Indiana Alcohol and Tobacco Commission.

**Indiana Taxpayer Identification Number** – Indicate the ten-digit Indiana taxpayer identification number (TID). If you do not have a TID, leave this space blank and one will be assigned to you.

**Telephone Number** – Indicate the point of contact phone number for the person(s) responsible for completing the return. Include extension numbers when applicable.

### Section B: Excise Tax Calculation

**Line 1** – The total gallons will be the amount reported on Line 12 of Schedule ALC-W-S. Use the appropriate column for the alcohol type being reported.

**Line 2** – The total gallons will be the amount reported on Line 13 of Schedule ALC-W-S. Use the appropriate column for the alcohol type being reported.

**Line 3** – The total gallons will be the amount reported on Line 14 of Schedule ALC-W-S. Use the appropriate column for the alcohol type being reported.

**Line 4** – Add Lines 2 and 3 of each column.

**Line 5** – Subtract Line 4 from Line 1.

**Line 6** – Multiply Line 5 by the tax rate indicated for each column. (Beer: \$0.115, Cider: \$0.115, Liquor: \$2.68, Wine: \$0.47)

**Line 7** – Add the Line 6 totals from each column.

**Line 8** – If the return is filed on or before the due date, multiply Line 7 by 0.015.

**Line 9** – Any entry here must be previously authorized by the Indiana Department of Revenue.

**Line 10** – If the return is filed after the due date, enter 10% of Line 7 or \$5, whichever is greater. (The penalty is \$5 if the return is late with no tax due.)

**Line 11** – If your tax liability is not paid on or before the due date, you are subject to interest from the date the tax return was due until the date the tax return was postmarked. The interest rate is determined on a calendar-year basis and can change from year to year. **Please refer to our website at [www.in.gov/dor/files/dn03.pdf](http://www.in.gov/dor/files/dn03.pdf) for the current interest rate.** An example of an interest calculation follows:

**Tax due:** \$5,000  
**Return due:** 08/15/2014  
**Return filed:** 10/04/2014  
**Days late:** 50  
**Interest rate:** 3% (rate for year 2014)

$(50 \text{ days} / 365 \text{ days}) \times 3\% \times \$5,000 = \$20.55$   
interest

**Line 12** – If timely filed, subtract Line 8 from Line 7. If filed after the due date, add Line 7, Line 10, and Line 11.

**Line 13** – The total gallons will be the amount(s) reported in Column 11 of Schedule ALC-W-S for Transaction Type D for all alcohol types.



Form  
**ALC-FW**  
State Form 55569  
(R / 5-14)

Indiana Department of Revenue  
**Indiana Farm Winery Excise Tax Return**

<input type="checkbox"/>	Amended Return
<input type="checkbox"/>	No Activity

Reporting Month \_\_\_\_\_ Year \_\_\_\_\_

This return must be postmarked on or before the 20th day of the month following the reporting month.

Section A: Taxpayer Information	
Name (As It Appears on Permit)	Federal Identification Number
Physical Address/City/State/ZIP	Indiana Tax Identification Number
Mailing Address/City/State/ZIP	Telephone Number
Business Web Address	Indiana Alcoholic Beverage Permit Number(s)

Section B: Excise Tax Calculation	
	Wine Tax rate = \$0.47
1. Gallons Taken Out of Bond.	
2. Tax-exempt Gallons (from Schedule ALC-FW-S Transaction Type A).	
3. Gallons Returned to Winery (from Schedule ALC-FW-S Transaction Type B).	
4. Deduction Subtotal: Add Lines 2 and 3.	
5. Total Taxable Gallons: Line 1 minus Line 4.	
6. Gross Wine Tax Due: Multiply Line 5 by \$0.47.	
7. Collection Allowance for Timely Payment: Multiply Line 6 by 0.015.	
8. Penalty: Multiply Line 6 by 0.10 (or enter \$5, whichever is greater).	
9. Interest.	
10. Total Amount Due: Line 6 minus Line 7 plus Line 8 plus Line 9.	

I hereby certify, under penalty of perjury, that the information contained herein and on supporting documents, is true, correct, and complete to the best of my knowledge and belief.

Name of Business/Taxpayer: \_\_\_\_\_ Email: \_\_\_\_\_

Signature of Agent or Officer: \_\_\_\_\_ Date: \_\_\_\_\_

**Mail to:** Indiana Department of Revenue  
P.O. Box 6114  
Indianapolis, IN 46206-6114

Questions related to this form:  
Call (317) 615-2710  
Email [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov)

## Instructions for Completing Indiana Farm Winery Excise Tax Return

### What Is The ALC-FW?

The ALC-FW return is used to report wine taken out of bond in Indiana.

### Who Must File?

The holder of a farm winery permit.

### Reporting Requirements

The holder of a farm winery permit shall file a monthly return with the Indiana Department of Revenue on or before the 20<sup>th</sup> day of the month following the month in which the liability for the tax accrues. Payment of the excise tax due shall accompany the return. **A return must be filed even if there is no activity within Indiana during the reporting period.**

To be considered timely filed, monthly returns must be filed on or before the 20<sup>th</sup> day of the month immediately following the last day of the month being reported. If the 20<sup>th</sup> day of the month falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, a Sunday, or such holiday.

### Penalty

Taxpayers who fail to file timely are subject to a penalty of \$5 or 10% of tax due, whichever is greater.

### Questions

If you need further assistance, you can contact us at [excisetax@dor.in.gov](mailto:excisetax@dor.in.gov) or (317) 615-2710.

### Section A: Taxpayer Information

Indicate the month and year for which the return is being filed in the appropriate spaces provided.

**Name (As It Appears on Permit)** – Indicate the entity name as it appears on the Indiana Alcoholic Beverage Permit.

**Physical Address** – Indicate the actual location of your business by providing the street address, city, state, and ZIP Code. **Note:** A post office box is not acceptable as a business location address.

**Mailing Address** – Indicate the mailing address for your business. Include the street address, post office box, city, state, and ZIP Code.

**Business Web Address** – Indicate the business web address.

**Federal Identification Number** – Indicate the nine-digit federal employer identification number (FEIN).

**Indiana Tax Identification Number** – Indicate the ten-digit Indiana taxpayer identification number (TID). If you do not have an Indiana TID, leave the space blank and one will be assigned to you.

**Telephone Number** – Indicate the point of contact phone number for the person(s) responsible for completing this return. Include extension numbers when applicable.

**Indiana Alcoholic Beverage Permit Number(s)** – Indicate the Indiana Alcoholic Beverage Permit Number(s) obtained from the Indiana Alcohol and Tobacco Commission.

### Section B: Excise Tax Calculation

**Line 1** – Indicate the number of gallons taken out of bond during the reporting period. Round gallons to two decimal places (0.00).

**Line 2** – The total gallons will be the amount reported on Line 11 of Schedule ALC-FW-S.

**Line 3** – The total gallons will be the amount reported on Line 12 of Schedule ALC-FW-S.

**Line 4** – Add Lines 2 and 3.

**Line 5** – Line 1 minus Line 4.

**Line 6** – Multiply Line 5 by \$0.47.

**Line 7** – If the return is filed on or before the due date, multiply Line 6 by 0.015.

**Line 8** – If the return is filed after the due date, add 10% of Line 7 or \$5.00, whichever is greater. (The penalty is \$5 if the return is late with no tax due.)

**Line 9** – If your tax liability is not paid on or before the due date, you are subject to interest from the date the tax return was due until the date the tax return was postmarked. The interest rate is determined on a calendar-year basis and can change from year to year. **Please refer to our website at [www.in.gov/dor/files/dn03.pdf](http://www.in.gov/dor/files/dn03.pdf) for the current interest rate.** An example of an interest calculation follows:

<b>Tax due:</b>	\$5,000
<b>Return due:</b>	08/15/2014
<b>Return filed:</b>	10/04/2014
<b>Days late:</b>	50
<b>Interest rate:</b>	3% (rate for year 2014)

$(50 \text{ days} / 365 \text{ days}) \times 3\% \times \$5,000 = \$20.55$   
interest

**Line 10** – Line 6 minus Line 7 plus Line 8 plus Line 9.

115TH CONGRESS  
1ST SESSION

# S. 236

To amend the Internal Revenue Code of 1986 to reform taxation of alcoholic beverages.

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IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2017

Mr. WYDEN (for himself, Mr. BLUNT, Mr. CARPER, Mr. ROBERTS, Ms. STABENOW, Mr. MORAN, Mr. CASEY, Mr. PORTMAN, Mr. BENNET, Mrs. CAPITO, Ms. BALDWIN, and Mr. GARDNER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to reform taxation of alcoholic beverages.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; RULE OF**  
4 **CONSTRUCTION.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Craft Beverage Modernization and Tax Reform Act of  
7 2017”.

8 (b) TABLE OF CONTENTS.—The table of contents of  
9 this Act is as follows:

Sec. 1. Short title; table of contents; rule of construction.

TITLE I—PRODUCTION PERIOD

Sec. 101. Production period for beer, wine, and distilled spirits.

TITLE II—BEER

Sec. 201. Reduced rate of excise tax on beer.

Sec. 202. Use of wholesome products suitable for human food consumption in the production of fermented beverages.

Sec. 203. Simplification of rules regarding records, statements, and returns.

Sec. 204. Transfer of beer between bonded facilities.

TITLE III—WINE

Sec. 301. Reduced rate of excise tax on certain wine.

Sec. 302. Adjustment of alcohol content level for application of excise tax rates.

Sec. 303. Definition of mead and low alcohol by volume wine.

TITLE IV—DISTILLED SPIRITS

Sec. 401. Reduced rate of excise tax on certain distilled spirits.

Sec. 402. Bulk distilled spirits.

TITLE V—FUNDING

Sec. 501. Increased funding for the Alcohol and Tobacco Tax and Trade Bureau.

1 (c) RULE OF CONSTRUCTION.—Nothing in this Act,  
2 the amendments made by this Act, or any regulation pro-  
3 mulgated under this Act or the amendments made by this  
4 Act, shall be construed to preempt, supersede, or other-  
5 wise limit or restrict any State, local, or tribal law that  
6 prohibits or regulates the production or sale of distilled  
7 spirits, wine, or malt beverages.

8 **TITLE I—PRODUCTION PERIOD**

9 **SEC. 101. PRODUCTION PERIOD FOR BEER, WINE, AND DIS-**  
10 **TILLED SPIRITS.**

11 (a) IN GENERAL.—Section 263A(f) of the Internal  
12 Revenue Code of 1986 is amended—

1           (1) by redesignating paragraph (4) as para-  
2 graph (5), and

3           (2) by inserting after paragraph (3) the fol-  
4 lowing new paragraph:

5           “(4) EXEMPTION FOR AGING PROCESS OF  
6 BEER, WINE, AND DISTILLED SPIRITS.—For pur-  
7 poses of this subsection, the production period shall  
8 not include the aging period for—

9           “(A) beer (as defined in section 5052(a)),

10           “(B) wine (as described in section  
11 5041(a)), or

12           “(C) distilled spirits (as defined in section  
13 5002(a)(8)), except such spirits that are unfit  
14 for use for beverage purposes.”.

15       (b) CONFORMING AMENDMENT.—Paragraph  
16 (5)(B)(ii) of section 263A(f) of the Internal Revenue Code  
17 of 1986, as redesignated by this section, is amended by  
18 inserting “except as provided in paragraph (4),” before  
19 “ending on the date”.

20       (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to interest costs paid or incurred  
22 in taxable years ending on or after December 31, 2018.

## TITLE II—BEER

### SEC. 201. REDUCED RATE OF EXCISE TAX ON BEER.

(a) IN GENERAL.—Paragraph (1) of section 5051(a) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) IN GENERAL.—

“(A) IMPOSITION OF TAX.—A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be—

“(i) \$16 on the first 6,000,000 barrels of beer—

“(I) brewed by the brewer and removed during the calendar year for consumption or sale, or

“(II) imported by the importer into the United States during the calendar year, and

“(ii) \$18 on any barrels of beer to which clause (i) does not apply.

“(B) BARREL.—For purposes of this section, a barrel shall contain not more than 31 gallons of beer, and any tax imposed under this

1 section shall be applied at a like rate for any  
 2 other quantity or for fractional parts of a bar-  
 3 rel.”.

4 (b) REDUCED RATE FOR CERTAIN DOMESTIC PRO-  
 5 DUCTION.—Subparagraph (A) of section 5051(a)(2) of the  
 6 Internal Revenue Code of 1986 is amended—

7 (1) in the heading, by striking “\$7” and insert-  
 8 ing “\$3.50”, and

9 (2) by striking “\$7” and inserting “\$3.50”.

10 (c) APPLICATION OF REDUCED TAX RATE FOR FOR-  
 11 EIGN MANUFACTURERS AND IMPORTERS.—Subsection (a)  
 12 of section 5051 of the Internal Revenue Code of 1986 is  
 13 amended—

14 (1) in subparagraph (A)(i)(II) of paragraph (1),  
 15 as amended by subsection (a) of this section, by in-  
 16 serting “but only if the importer is an electing im-  
 17 porter under paragraph (4) and the barrels have  
 18 been assigned to the importer pursuant to such  
 19 paragraph” after “during the calendar year”, and

20 (2) by adding at the end the following new  
 21 paragraph:

22 “(4) REDUCED TAX RATE FOR FOREIGN MANU-  
 23 FACTURERS AND IMPORTERS.—

24 “(A) IN GENERAL.—In the case of any  
 25 barrels of beer which have been brewed or pro-

1           duced outside of the United States and im-  
2           ported into the United States, the rate of tax  
3           applicable under clause (i) of paragraph (1)(A)  
4           (referred to in this paragraph as the ‘reduced  
5           tax rate’) may be assigned by the brewer (pro-  
6           vided that the brewer makes an election de-  
7           scribed in subparagraph (B)(ii)) to any electing  
8           importer of such barrels pursuant to the re-  
9           quirements established by the Secretary of the  
10          Treasury under subparagraph (B).

11           “(B) ASSIGNMENT.—The Secretary of the  
12          Treasury, in consultation with the Secretary of  
13          Health and Human Services and the Secretary  
14          of the Department of Homeland Security, shall,  
15          through such rules, regulations, and procedures  
16          as are determined appropriate, establish proce-  
17          dures for assignment of the reduced tax rate  
18          provided under this paragraph, which shall in-  
19          clude—

20                   “(i) a limitation to ensure that the  
21                   number of barrels of beer for which the re-  
22                   duced tax rate has been assigned by a  
23                   brewer—

24                           “(I) to any importer does not ex-  
25                           ceed the number of barrels of beer

1 brewed or produced by such brewer  
2 during the calendar year which were  
3 imported into the United States by  
4 such importer, and

5 “(II) to all importers does not  
6 exceed the 6,000,000 barrels to which  
7 the reduced tax rate applies,

8 “(ii) procedures that allow the election  
9 of a brewer to assign and an importer to  
10 receive the reduced tax rate provided under  
11 this paragraph,

12 “(iii) requirements that the brewer  
13 provide any information as the Secretary  
14 determines necessary and appropriate for  
15 purposes of carrying out this paragraph,  
16 and

17 “(iv) procedures that allow for revoca-  
18 tion of eligibility of the brewer and the im-  
19 porter for the reduced tax rate provided  
20 under this paragraph in the case of any er-  
21 roneous or fraudulent information provided  
22 under clause (iii) which the Secretary  
23 deems to be material to qualifying for such  
24 reduced rate.

1           “(C) CONTROLLED GROUP.—For purposes  
 2           of this section, any importer making an election  
 3           described in subparagraph (B)(ii) shall be  
 4           deemed to be a member of the controlled group  
 5           of the brewer, as described under paragraph  
 6           (5).”.

7           (d) CONTROLLED GROUP AND SINGLE TAXPAYER  
 8           RULES.—Subsection (a) of section 5051 of the Internal  
 9           Revenue Code of 1986, as amended by this section, is  
 10          amended—

11           (1) in paragraph (2)—

12                   (A) by striking subparagraph (B), and

13                   (B) by redesignating subparagraph (C) as  
 14           subparagraph (B), and

15           (2) by adding at the end the following new  
 16          paragraph:

17           “(5) CONTROLLED GROUP AND SINGLE TAX-  
 18          PAYER RULES.—

19                   “(A) IN GENERAL.—Except as provided in  
 20           subparagraph (B), in the case of a controlled  
 21           group, the 6,000,000 barrel quantity specified  
 22           in paragraph (1)(A)(i) and the 2,000,000 barrel  
 23           quantity specified in paragraph (2)(A) shall be  
 24           applied to the controlled group, and the  
 25           6,000,000 barrel quantity specified in para-

1 graph (1)(A)(i) and the 60,000 barrel quantity  
2 specified in paragraph (2)(A) shall be appor-  
3 tioned among the brewers who are members of  
4 such group in such manner as the Secretary or  
5 his delegate shall by regulations prescribe. For  
6 purposes of the preceding sentence, the term  
7 ‘controlled group’ has the meaning assigned to  
8 it by subsection (a) of section 1563, except that  
9 for such purposes the phrase ‘more than 50  
10 percent’ shall be substituted for the phrase ‘at  
11 least 80 percent’ in each place it appears in  
12 such subsection. Under regulations prescribed  
13 by the Secretary or his delegate, principles simi-  
14 lar to the principles of the preceding two sen-  
15 tences shall be applied to a group of brewers  
16 under common control where one or more of the  
17 brewers is not a corporation.

18 “(B) FOREIGN MANUFACTURERS AND IM-  
19 PORTERS.—For purposes of paragraph (4), in  
20 the case of a controlled group, the 6,000,000  
21 barrel quantity specified in paragraph (1)(A)(i)  
22 shall be applied to the controlled group and ap-  
23 portioned among the members of such group in  
24 such manner as the Secretary or his delegate  
25 shall by regulations prescribe. For purposes of

1           the preceding sentence, the term ‘controlled  
 2           group’ has the meaning given such term under  
 3           subparagraph (A). Under regulations prescribed  
 4           by the Secretary or his delegate, principles simi-  
 5           lar to the principles of the preceding two sen-  
 6           tences shall be applied to a group of brewers  
 7           under common control where one or more of the  
 8           brewers is not a corporation.

9           “(C) SINGLE TAXPAYER.—Pursuant to  
 10          rules issued by the Secretary, two or more enti-  
 11          ties (whether or not under common control)  
 12          that produce beer marketed under a similar  
 13          brand, license, franchise, or other arrangement  
 14          shall be treated as a single taxpayer for pur-  
 15          poses of the application of this subsection.”.

16          (e) EFFECTIVE DATE.—

17           (1) IN GENERAL.—Subject to paragraph (2),  
 18          the amendments made by this section shall apply to  
 19          beer removed after September 30, 2019.

20           (2) PRORATION.—For purposes of the fourth  
 21          calendar quarter of 2019, the Secretary of the  
 22          Treasury (or the Secretary’s delegate) shall issue  
 23          such guidance, rules, or regulations as are deemed  
 24          appropriate to provide that the amendments made

1 by this section are applied on a prorated basis for  
 2 purposes of beer removed during such quarter.

3 **SEC. 202. USE OF WHOLESOME PRODUCTS SUITABLE FOR**  
 4 **HUMAN FOOD CONSUMPTION IN THE PRO-**  
 5 **DUCTION OF FERMENTED BEVERAGES.**

6 (a) IN GENERAL.—Not later than the date that is  
 7 1 year after the date of the enactment of this Act, the  
 8 Secretary of the Treasury or the Secretary of the Treas-  
 9 ury’s delegate shall amend subpart F of part 25 of sub-  
 10 chapter A of chapter I of title 27, Code of Federal Regula-  
 11 tions, to ensure that, for purposes of such part, wholesome  
 12 fruits, vegetables, and spices suitable for human food con-  
 13 sumption that are generally recognized as safe for use in  
 14 an alcoholic beverage and that do not contain alcohol are  
 15 generally recognized as a traditional ingredient in the pro-  
 16 duction of fermented beverages.

17 (b) DEFINITION.—For purposes of this section, the  
 18 term “fruit” means whole fruit, fruit juices, fruit puree,  
 19 fruit extract, or fruit concentrate.

20 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
 21 tion shall be construed to revoke, prescribe, or limit any  
 22 other exemptions from the formula requirements under  
 23 subpart F of part 25 of subchapter A of chapter I of title  
 24 27, Code of Federal Regulations, for any ingredient that  
 25 has been recognized before, on, or after the date of the

1 enactment of this Act as a traditional ingredient in the  
2 production of fermented beverages.

3 **SEC. 203. SIMPLIFICATION OF RULES REGARDING**  
4 **RECORDS, STATEMENTS, AND RETURNS.**

5 (a) IN GENERAL.—Subsection (a) of section 5555 of  
6 the Internal Revenue Code of 1986 is amended by adding  
7 at the end the following: “The Secretary shall permit a  
8 person to employ a unified system for any records, state-  
9 ments, and returns required to be kept, rendered, or made  
10 under this section for any beer produced in the brewery  
11 for which the tax imposed by section 5051 has been deter-  
12 mined, including any beer which has been removed for  
13 consumption on the premises of the brewery.”.

14 (b) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to any calendar quarters beginning  
16 more than 1 year after the date of the enactment of this  
17 Act.

18 **SEC. 204. TRANSFER OF BEER BETWEEN BONDED FACILI-**  
19 **TIES.**

20 (a) IN GENERAL.—Section 5414 of the Internal Rev-  
21 enue Code of 1986 is amended to read as follows:

22 **“SEC. 5414. TRANSFER OF BEER BETWEEN BONDED FACILI-**  
23 **TIES.**

24 “(a) IN GENERAL.—Beer may be removed from one  
25 brewery to another bonded brewery, without payment of

1 tax, and may be mingled with beer at the receiving brew-  
 2 ery, subject to such conditions, including payment of the  
 3 tax, and in such containers, as the Secretary by regula-  
 4 tions shall prescribe, which shall include—

5           “(1) any removal from one brewery to another  
 6 brewery belonging to the same brewer,

7           “(2) any removal from a brewery owned by one  
 8 corporation to a brewery owned by another corpora-  
 9 tion when—

10           “(A) one such corporation owns the con-  
 11 trolling interest in the other such corporation,  
 12 or

13           “(B) the controlling interest in each such  
 14 corporation is owned by the same person or per-  
 15 sons, and

16           “(3) any removal from one brewery to another  
 17 brewery when—

18           “(A) the proprietors of transferring and  
 19 receiving premises are independent of each  
 20 other and neither has a proprietary interest, di-  
 21 rectly or indirectly, in the business of the other,  
 22 and

23           “(B) the transferor has divested itself of  
 24 all interest in the beer so transferred and the

1 transferee has accepted responsibility for pay-  
2 ment of the tax.

3 “(b) TRANSFER OF LIABILITY FOR TAX.—For pur-  
4 poses of subsection (a)(3), such relief from liability shall  
5 be effective from the time of removal from the transferor’s  
6 bonded premises, or from the time of divestment of inter-  
7 est, whichever is later.”.

8 (b) REMOVAL FROM BREWERY BY PIPELINE.—Sec-  
9 tion 5412 of the Internal Revenue Code of 1986 is amend-  
10 ed by inserting “pursuant to section 5414 or” before “by  
11 pipeline”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to any calendar quarters beginning  
14 more than 1 year after the date of the enactment of this  
15 Act.

## 16 **TITLE III—WINE**

### 17 **SEC. 301. REDUCED RATE OF EXCISE TAX ON CERTAIN** 18 **WINE.**

19 (a) IN GENERAL.—Section 5041(c) of the Internal  
20 Revenue Code of 1986 is amended—

21 (1) in the heading, by striking “FOR SMALL  
22 DOMESTIC PRODUCERS”,

23 (2) by amending paragraph (1) to read as fol-  
24 lows:

25 “(1) ALLOWANCE OF CREDIT.—

1           “(A) IN GENERAL.—There shall be allowed  
2 as a credit against any tax imposed by this title  
3 (other than chapters 2, 21, and 22) an amount  
4 equal to the sum of—

5           “(i) \$1 per wine gallon on the first  
6 30,000 wine gallons of wine, plus

7           “(ii) 90 cents per wine gallon on the  
8 first 100,000 wine gallons of wine to which  
9 clause (i) does not apply, plus

10          “(iii) 53.5 cents per wine gallon on  
11 the first 620,000 wine gallons of wine to  
12 which clauses (i) and (ii) do not apply,

13 which are produced by the producer and re-  
14 moved during the calendar year for consump-  
15 tion or sale, or which are imported by the im-  
16 porter into the United States during the cal-  
17 endar year.

18          “(B) ADJUSTMENT OF CREDIT FOR HARD  
19 CIDER.—In the case of wine described in sub-  
20 section (b)(6), subparagraph (A) of this para-  
21 graph shall be applied—

22          “(i) in clause (i) of such subpara-  
23 graph, by substituting ‘6.2 cents’ for ‘\$1’,

1                   “(ii) in clause (ii) of such subpara-  
2                   graph, by substituting ‘5.6 cents’ for ‘90  
3                   cents’, and

4                   “(iii) in clause (iii) of such subpara-  
5                   graph, by substituting ‘3.3 cents’ for ‘53.5  
6                   cents.’”,

7                   (3) by striking paragraph (2),

8                   (4) by redesignating paragraphs (3) through  
9                   (7) as paragraphs (2) through (6), respectively, and

10                  (5) by amending paragraph (6), as redesignated  
11                  by paragraph (4) of this subsection, to read as fol-  
12                  lows:

13                  “(6) REGULATIONS.—The Secretary may pre-  
14                  scribe such regulations as may be necessary to carry  
15                  out the purposes of this subsection, including regula-  
16                  tions to ensure proper calculation of the credit pro-  
17                  vided in this subsection.”.

18                  (b) CONTROLLED GROUP AND SINGLE TAXPAYER  
19                  RULES.—Paragraph (3) of section 5041(c), as redesignig-  
20                  nated by subsection (a)(4), is amended by striking “sec-  
21                  tion 5051(a)(2)(B)” and inserting “section 5051(a)(5)”.

22                  (c) ALLOWANCE OF CREDIT FOR FOREIGN MANU-  
23                  FACTURERS AND IMPORTERS.—Subsection (c) of section  
24                  5041 of the Internal Revenue Code of 1986, as amended  
25                  by subsection (a), is amended—

1           (1) in subparagraph (A) of paragraph (1), by  
2 inserting “but only if the importer is an electing im-  
3 porter under paragraph (6) and the wine gallons of  
4 wine have been assigned to the importer pursuant to  
5 such paragraph” after “into the United States dur-  
6 ing the calendar year”,

7           (2) by redesignating paragraph (6) as para-  
8 graph (7), and

9           (3) by inserting after paragraph (5) the fol-  
10 lowing new paragraph:

11           “(6) ALLOWANCE OF CREDIT FOR FOREIGN  
12 MANUFACTURERS AND IMPORTERS.—

13           “(A) IN GENERAL.—In the case of any  
14 wine gallons of wine which have been produced  
15 outside of the United States and imported into  
16 the United States, the credit allowable under  
17 paragraph (1) (referred to in this paragraph as  
18 the ‘tax credit’) may be assigned by the person  
19 who produced such wine (referred to in this  
20 paragraph as the ‘foreign producer’), provided  
21 that such person makes an election described in  
22 subparagraph (B)(ii), to any electing importer  
23 of such wine gallons pursuant to the require-  
24 ments established by the Secretary of the  
25 Treasury under subparagraph (B).

1           “(B) ASSIGNMENT.—The Secretary of the  
2 Treasury, in consultation with the Secretary of  
3 Health and Human Services and the Secretary  
4 of the Department of Homeland Security, shall,  
5 through such rules, regulations, and procedures  
6 as are determined appropriate, establish proce-  
7 dures for assignment of the tax credit provided  
8 under this paragraph, which shall include—

9           “(i) a limitation to ensure that the  
10 number of wine gallons of wine for which  
11 the tax credit has been assigned by a for-  
12 eign producer—

13           “(I) to any importer does not ex-  
14 ceed the number of wine gallons of  
15 wine produced by such foreign pro-  
16 ducer during the calendar year which  
17 were imported into the United States  
18 by such importer, and

19           “(II) to all importers does not  
20 exceed the 750,000 wine gallons of  
21 wine to which the tax credit applies,

22           “(ii) procedures that allow the election  
23 of a foreign producer to assign and an im-  
24 porter to receive the tax credit provided  
25 under this paragraph,

1           “(iii) requirements that the foreign  
2           producer provide any information as the  
3           Secretary determines necessary and appro-  
4           priate for purposes of carrying out this  
5           paragraph, and

6           “(iv) procedures that allow for revoca-  
7           tion of eligibility of the foreign producer  
8           and the importer for the tax credit pro-  
9           vided under this paragraph in the case of  
10          any erroneous or fraudulent information  
11          provided under clause (iii) which the Sec-  
12          retary deems to be material to qualifying  
13          for such credit.

14          “(C) CONTROLLED GROUP.—For purposes  
15          of this section, any importer making an election  
16          described in subparagraph (B)(ii) shall be  
17          deemed to be a member of the controlled group  
18          of the foreign producer, as described under  
19          paragraph (3).”.

20          (d) EFFECTIVE DATE.—

21           (1) IN GENERAL.—Subject to paragraph (2),  
22          the amendments made by this section shall apply to  
23          wine removed after September 30, 2019.

24           (2) PRORATION.—For purposes of the fourth  
25          calendar quarter of 2019, the Secretary of the

1 Treasury (or the Secretary's delegate) shall issue  
 2 such guidance, rules, or regulations as are deemed  
 3 appropriate to provide that the amendments made  
 4 by this section are applied on a prorated basis for  
 5 purposes of wine removed during such quarter.

6 **SEC. 302. ADJUSTMENT OF ALCOHOL CONTENT LEVEL FOR**  
 7 **APPLICATION OF EXCISE TAX RATES.**

8 (a) IN GENERAL.—Paragraphs (1) and (2) of section  
 9 5041(b) of the Internal Revenue Code of 1986 are amend-  
 10 ed by striking “14 percent” each place it appears and in-  
 11 serting “16 percent”.

12 (b) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to wine removed during calendar  
 14 years beginning after December 31, 2018.

15 **SEC. 303. DEFINITION OF MEAD AND LOW ALCOHOL BY**  
 16 **VOLUME WINE.**

17 (a) IN GENERAL.—Section 5041 of the Internal Rev-  
 18 enue Code of 1986 is amended—

19 (1) in subsection (a), by striking “Still wines”  
 20 and inserting “Subject to subsection (h), still  
 21 wines”, and

22 (2) by adding at the end the following new sub-  
 23 section:

24 “(h) MEAD AND LOW ALCOHOL BY VOLUME  
 25 WINE.—

1           “(1) IN GENERAL.—For purposes of sub-  
 2 sections (a) and (b)(1), mead and low alcohol by vol-  
 3 ume wine shall be deemed to be still wines con-  
 4 taining not more than 16 percent of alcohol by vol-  
 5 ume.

6           “(2) DEFINITIONS.—

7           “(A) MEAD.—For purposes of this section,  
 8 the term ‘mead’ means a wine—

9           “(i) containing not more than 0.64  
 10 gram of carbon dioxide per hundred milli-  
 11 liters of wine, except that the Secretary  
 12 may by regulations prescribe such toler-  
 13 ances to this limitation as may be reason-  
 14 ably necessary in good commercial prac-  
 15 tice,

16           “(ii) which is derived solely from  
 17 honey and water,

18           “(iii) which contains no fruit product  
 19 or fruit flavoring, and

20           “(iv) which contains less than 8.5 per-  
 21 cent alcohol by volume.

22           “(B) LOW ALCOHOL BY VOLUME WINE.—  
 23 For purposes of this section, the term ‘low alco-  
 24 hol by volume wine’ means a wine—

1                   “(i) containing not more than 0.64  
 2                   gram of carbon dioxide per hundred milli-  
 3                   liters of wine, except that the Secretary  
 4                   may by regulations prescribe such toler-  
 5                   ances to this limitation as may be reason-  
 6                   ably necessary in good commercial prac-  
 7                   tice,

8                   “(ii) which is derived—  
 9                       “(I) primarily from grapes, or  
 10                       “(II) from grape juice con-  
 11                       centrate and water,  
 12                   “(iii) which contains no fruit product  
 13                   or fruit flavoring other than grape, and  
 14                   “(iv) which contains less than 8.5 per-  
 15                   cent alcohol by volume.”.

16           (b) **EFFECTIVE DATE.**—The amendments made by  
 17 this section shall apply to wine removed during calendar  
 18 years beginning after December 31, 2018.

## 19       **TITLE IV—DISTILLED SPIRITS**

### 20       **SEC. 401. REDUCED RATE OF EXCISE TAX ON CERTAIN DIS-** 21       **TILLED SPIRITS.**

22           (a) **IN GENERAL.**—Section 5001 of the Internal Rev-  
 23 enue Code of 1986 is amended by redesignating subsection  
 24 (c) as subsection (d) and by inserting after subsection (b)  
 25 the following new subsection:

1 “(c) REDUCED RATE.—

2 “(1) IN GENERAL.—In the case of a distilled  
3 spirits operation, the otherwise applicable tax rate  
4 under subsection (a)(1) shall be—

5 “(A) \$2.70 per proof gallon on the first  
6 100,000 proof gallons of distilled spirits, and

7 “(B) \$13.34 per proof gallon on the first  
8 22,130,000 of proof gallons of distilled spirits  
9 to which subparagraph (A) does not apply,

10 which have been distilled or processed by such oper-  
11 ation and removed during the calendar year for con-  
12 sumption or sale, or which have been imported by  
13 the importer into the United States during the cal-  
14 endar year.

15 “(2) CONTROLLED GROUPS.—

16 “(A) IN GENERAL.—In the case of a con-  
17 trolled group, the proof gallon quantities speci-  
18 fied under subparagraphs (A) and (B) of para-  
19 graph (1) shall be applied to such group and  
20 apportioned among the members of such group  
21 in such manner as the Secretary or his delegate  
22 shall by regulations prescribe.

23 “(B) DEFINITION.—For purposes of sub-  
24 paragraph (A), the term ‘controlled group’ shall  
25 have the meaning given such term by subsection

1 (a) of section 1563, except that ‘more than 50  
2 percent’ shall be substituted for ‘at least 80  
3 percent’ each place it appears in such sub-  
4 section.

5 “(C) RULES FOR NON-CORPORATIONS.—  
6 Under regulations prescribed by the Secretary,  
7 principles similar to the principles of subpara-  
8 graphs (A) and (B) shall be applied to a group  
9 under common control where one or more of the  
10 persons is not a corporation.

11 “(D) SINGLE TAXPAYER.—Pursuant to  
12 rules issued by the Secretary, two or more enti-  
13 ties (whether or not under common control)  
14 that produce distilled spirits marketed under a  
15 similar brand, license, franchise, or other ar-  
16 rangement shall be treated as a single taxpayer  
17 for purposes of the application of this sub-  
18 section.”.

19 (b) CONFORMING AMENDMENT.—Section 7652(f)(2)  
20 of the Internal Revenue Code of 1986 is amended by strik-  
21 ing “section 5001(a)(1)” and inserting “subsection (a)(1)  
22 of section 5001, determined as if subsection (c)(1) of such  
23 section did not apply”.

24 (c) APPLICATION OF REDUCED TAX RATE FOR FOR-  
25 EIGN MANUFACTURERS AND IMPORTERS.—Subsection (c)

1 of section 5001 of the Internal Revenue Code of 1986,  
2 as added by subsection (a), is amended—

3 (1) in paragraph (1), by inserting “but only if  
4 the importer is an electing importer under para-  
5 graph (3) and the proof gallons of distilled spirits  
6 have been assigned to the importer pursuant to such  
7 paragraph” after “into the United States during the  
8 calendar year”, and

9 (2) by adding at the end the following new  
10 paragraph:

11 “(3) REDUCED TAX RATE FOR FOREIGN MANU-  
12 FACTURERS AND IMPORTERS.—

13 “(A) IN GENERAL.—In the case of any  
14 proof gallons of distilled spirits which have been  
15 produced outside of the United States and im-  
16 ported into the United States, the rate of tax  
17 applicable under paragraph (1) (referred to in  
18 this paragraph as the ‘reduced tax rate’) may  
19 be assigned by the distilled spirits operation  
20 (provided that such operation makes an election  
21 described in subparagraph (B)(ii)) to any elect-  
22 ing importer of such proof gallons pursuant to  
23 the requirements established by the Secretary  
24 of the Treasury under subparagraph (B).

1           “(B) ASSIGNMENT.—The Secretary of the  
2 Treasury, in consultation with the Secretary of  
3 Health and Human Services and the Secretary  
4 of the Department of Homeland Security, shall,  
5 through such rules, regulations, and procedures  
6 as are determined appropriate, establish proce-  
7 dures for assignment of the reduced tax rate  
8 provided under this paragraph, which shall in-  
9 clude—

10           “(i) a limitation to ensure that the  
11 number of proof gallons of distilled spirits  
12 for which the reduced tax rate has been as-  
13 signed by a distilled spirits operation—

14           “(I) to any importer does not ex-  
15 ceed the number of proof gallons pro-  
16 duced by such operation during the  
17 calendar year which were imported  
18 into the United States by such im-  
19 porter, and

20           “(II) to all importers does not  
21 exceed the 22,230,000 proof gallons of  
22 distilled spirits to which the reduced  
23 tax rate applies,

24           “(ii) procedures that allow the election  
25 of a distilled spirits operation to assign

1 and an importer to receive the reduced tax  
2 rate provided under this paragraph,

3 “(iii) requirements that the distilled  
4 spirits operation provide any information  
5 as the Secretary determines necessary and  
6 appropriate for purposes of carrying out  
7 this paragraph, and

8 “(iv) procedures that allow for revoca-  
9 tion of eligibility of the distilled spirits op-  
10 eration and the importer for the reduced  
11 tax rate provided under this paragraph in  
12 the case of any erroneous or fraudulent in-  
13 formation provided under clause (iii) which  
14 the Secretary deems to be material to  
15 qualifying for such reduced rate.

16 “(C) CONTROLLED GROUP.—

17 “(i) IN GENERAL.—For purposes of  
18 this section, any importer making an elec-  
19 tion described in subparagraph (B)(ii)  
20 shall be deemed to be a member of the  
21 controlled group of the distilled spirits op-  
22 eration, as described under paragraph (2).

23 “(ii) APPORTIONMENT.—For purposes  
24 of this paragraph, in the case of a con-

1                   trolled group, rules similar to section  
2                   5051(a)(5)(B) shall apply.”.

3           (d) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Subject to paragraph (2),  
5           the amendments made by this section shall apply to  
6           distilled spirits removed after September 30, 2019.

7           (2) PRORATION.—For purposes of the fourth  
8           calendar quarter of 2019, the Secretary of the  
9           Treasury (or the Secretary’s delegate) shall issue  
10           such guidance, rules, or regulations as are deemed  
11           appropriate to provide that the amendments made  
12           by this section are applied on a prorated basis for  
13           purposes of distilled spirits removed during such  
14           quarter.

15   **SEC. 402. BULK DISTILLED SPIRITS.**

16           (a) IN GENERAL.—Section 5212 of the Internal Rev-  
17           enue Code of 1986 is amended—

18           (1) by striking “Bulk distilled spirits on which”  
19           and inserting “Distilled spirits on which”, and

20           (2) by striking “bulk” each place it appears.

21           (b) EFFECTIVE DATE.—The amendments made by  
22           this section shall apply distilled spirits transferred in bond  
23           in any calendar quarters beginning more than 1 year after  
24           the date of the enactment of this Act.

**TITLE V—FUNDING**

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**SEC. 501. INCREASED FUNDING FOR THE ALCOHOL AND TOBACCO TAX AND TRADE BUREAU.**

(a) IN GENERAL.—For necessary expenses of carrying out section 1111(d) of the Homeland Security Act of 2002 (6 U.S.C. 531(d)), there are authorized to be appropriated—

(1) for fiscal year 2017, \$116,439,000, to remain available until September 30, 2018; and

(2) for fiscal year 2018, \$119,081,000, to remain available until September 30, 2019.

(b) AVAILABILITY OF FUNDS.—Of the amounts authorized to be appropriated under subsection (a), for each of fiscal years 2017 and 2018—

(1) \$5,000,000 shall be for the costs of accelerating the processing of formula and label applications;

(2) \$5,000,000 shall be for the costs of programs to enforce trade practice violations of the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); and

(3) \$5,000,000 shall be for the purpose of carrying out the provisions of this Act and the amendments made by this Act, including accelerating the

- 1 processing of permit applications for non-industrial
- 2 alcohol production and distribution.



**Application for Registration  
 (For Certain Excise Tax Activities)**

OMB No. 1545-0014

▶ Go to [www.irs.gov/Form637](http://www.irs.gov/Form637) for the latest information.

**Part I Identification of Applicant**

Type or print	Legal name of entity (or individual) for which the employer identification number (EIN) was secured	Employer identification number (EIN)
	Trade name of business if different from above	Telephone number
	Mailing address (number, street, and room or suite no.; if P.O. box, see instructions)	Fax number
	City or town, state or province, country, and ZIP or foreign postal code	
	If you listed a P.O. box above, or if your street address is different from your mailing address, list your street address (including city or town, state or province, country, and ZIP or foreign postal code)	

**Part II Activities.** Enter the activity letter from the chart on pages 2–4 and a brief description of each activity for which you’re applying for registration. Also, attach the **Additional Information Required** for each activity to which this application applies.

Activity Letter	Activity Description

**Part III General Information**

**Section A—For All Applicants**

Answer all the questions below. Attach a separate sheet(s), as needed, to answer items **2b** through **7**. Identify each sheet with your name and employer identification number at the top, and write the number of the item to which each answer applies. If any questions don’t apply to you, explain why.

- 1a Are you filing, or will you be required to file, Form 720, Quarterly Federal Excise Tax Return? . . . . .  Yes  No
- b Have you previously applied to be registered by any IRS office? . . . . .  Yes  No
- c Have you, or any related entity, had a Certificate of Registry or Letter of Registration revoked, or suspended by any IRS office? . . . . .  Yes  No
- d If you answered “Yes” to (b) or (c), enter the name of the IRS office \_\_\_\_\_
- 2a List the date your business started ▶ Month \_\_\_\_\_ Year \_\_\_\_\_
- b Explain in detail your business activity.
  
- 3 For all other business entities to which you’re related, list:
  - a The name and EIN of the related entity,
  - b The percentage of ownership, and
  - c How you are related (for example, stock, partnership, etc.).
  
- 4 List all addresses of current business operations (include out-of-state or foreign operations, if applicable).
  
- 5 List the address where your books and records are kept (if different from the address in Part I).
  
- 6 List the names and taxpayer identification numbers (TINs) of all business owners, corporate officers, members, or partners.
  
- 7 List the name and phone number of a person whom we can contact about this application.

**Section B—For All Fuel Applicants**

If you are applying for fuel activities **K, M, S, X, Y, AB, AF, AL, AM, CC, NB, SB, UA, UB, UP, UV, or QR**, you must answer question 8.

- 8 Describe any changes in your ownership or changes of controlling stock ownership in the past 2 years. If none, enter “None.” Also see *Changes in Registration* in the instructions.

Go to Section C on Page 2

**Section C—For Certain Fuel Applicants**

If you're applying for fuel activities **K, M, S,** or **Y,** answer each question below by checking the **"Yes"** or **"No"** box. If you answer **"Yes"** to any of these questions, provide a full explanation. Attach additional sheets if needed.

Have you or any related person (see Regulations section 48.4101-1(b)(5)) been:

- 9** Assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any state) for fraudulently failing to file any return or pay any tax, and the penalty hasn't been wholly abated, refunded, or credited?  **Yes**  **No**
- 10** Assessed any penalty under chapter 68 of the Internal Revenue Code, and the penalty hasn't been wholly abated, refunded, or credited?  **Yes**  **No**
- 11** Convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any state), or of conspiracy to commit such a crime, and the conviction hasn't been wholly reversed by a court of competent jurisdiction?  **Yes**  **No**
- 12** Convicted, under the laws of the United States or any state, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction hasn't been wholly reversed by a court of competent jurisdiction?  **Yes**  **No**
- 13** Assessed any tax under section 4103 (willful failure to pay the tax imposed by section 4041(a)(1) or 4081) and the tax hasn't been wholly abated, refunded, or credited?  **Yes**  **No**
- 14** Advised that your registration has been revoked?  **Yes**  **No**

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this application, and accompanying schedules and statements, and, to the best of my knowledge and belief, they are true, correct, and complete.
	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p>Signature</p> </div> <div style="text-align: center;"> <p>Title</p> </div> <div style="text-align: center;"> <p>Date</p> </div> </div> <p style="text-align: center; margin-top: 5px;">Type or print name below your signature.</p>

Activity Letter	Additional Information Required
<b>A</b> Manufacturer of gas guzzler automobiles, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, arrow shafts, taxable tires, taxable medical devices, or vaccines.	<ol style="list-style-type: none"> <li>1. List all articles you manufactured. Include advertising brochures, if available.</li> <li>2. List the organizations or businesses (for example, state or local government or school) to which you intend to sell articles tax free.</li> <li>3. List the monthly volume of tax-free articles you intend to sell. Also, list the monthly volume of taxed articles you intend to sell.</li> </ol>
<b>B</b> Buyer of sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, gas guzzler automobiles, bows, quivers, broadheads, points, taxable medical devices, or vaccines for further manufacture or for resale to a buyer for further manufacture.	<ol style="list-style-type: none"> <li>1. List articles you intend to purchase for further manufacturing or for resale for use by the buyer for further manufacturing.</li> <li>2. List the businesses that you will sell articles to for use in further manufacturing, if applicable.</li> <li>3. List your other types of sales of articles other than for further manufacturing.</li> </ol>
<b>C</b> Buyer of taxable tires for use on or in connection with the sale of another article the buyer manufactures and sells (1) for export, (2) to state and local governments, (3) to nonprofit educational organizations, or (4) as supplies for vessels or aircraft.	<ol style="list-style-type: none"> <li>1. List the type and weight of the tires you bought.</li> <li>2. List the articles you manufactured (a) on which the tires will be used, or (b) in connection with which the tires will be sold.</li> <li>3. List the organizations or businesses with which you intend to have tax-exempt sales.</li> </ol>
<b>D</b> Buyer with a place of business in the United States purchasing taxable medical devices, vaccines, gas guzzler automobiles, taxable tires, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, or arrow shafts for export or for resale to a second purchaser for export.	<ol style="list-style-type: none"> <li>1. List the articles you intend to buy for export or resale to others for export.</li> <li>2. List the businesses to which you intend to sell articles for export.</li> </ol>

Activity Letter	Additional Information Required
<b>E</b> Buyer (other than state or local government) of gas guzzler automobiles for ambulance, law enforcement, or firefighting.	Provide the general information for all applicants.
<b>F</b> Nonprofit educational organization, other than a public school, buying taxable tires, certain heavy vehicles, sport fishing equipment (including fishing rods and fishing poles), fishing tackle boxes, bows, quivers, broadheads, points, or arrow shafts for its exclusive use.	<ol style="list-style-type: none"> <li>1. Provide a general description of the type of your educational facility, including faculty, curriculum, and student body.</li> <li>2. Provide a copy of the IRS determination letter granting your exemption from federal income tax.</li> <li>3. List products subject to federal excise tax you bought for the exclusive use of your organization and how the products will be used in the operation of your organization.</li> <li>4. List activities (other than educational) conducted by the organization.</li> </ol>
<b>I</b> Buyer (other than nonprofit educational organization or state or local government) of taxable tires for use on certain intercity, local, or school buses.	<ol style="list-style-type: none"> <li>1. List types and weights of tires you bought.</li> <li>2. Describe the types of buses (intercity, local, or school) on which the tires are used.</li> <li>3. Describe how the buses are used in the operation of the business.</li> </ol>
<b>K</b> Buyer of kerosene for a feedstock purpose.	List the type of kerosene you purchased; and describe the product and manufacturing process for which the kerosene will be used as a feedstock.
<b>M</b> Blender of gasoline, diesel fuel (including a diesel-water fuel emulsion), or kerosene, producing a taxable fuel outside the bulk transfer/terminal system, including blenders of alcohol fuel mixtures, alternative fuel mixtures, biodiesel mixtures, and renewable diesel mixtures.	<ol style="list-style-type: none"> <li>1. List the products you bought or produced for blending with gasoline, diesel fuel, or kerosene.</li> <li>2. List the annual volume of products you bought for blending.</li> <li>3. List the annual volume of blended taxable fuel you produced.</li> </ol>
<b>Q</b> First retail seller of certain heavy vehicles.	<ol style="list-style-type: none"> <li>1. Describe the heavy vehicles you intend to sell.</li> <li>2. Describe the exempt sales of the heavy vehicles you intend to make.</li> </ol>
<b>S</b> Enterer, position holder, refiner, terminal operator, or throughputter of gasoline, diesel fuel (including a diesel-water fuel emulsion), or kerosene, or industrial user of gasoline.	<ol style="list-style-type: none"> <li>1. List the annual volume of gasoline, diesel fuel, and kerosene you entered into the United States or produced.</li> <li>2. List the locations and a description of your refineries, terminals, and pipelines.</li> <li>3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any fuel.</li> <li>4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any gasoline, diesel fuel, and kerosene.</li> <li>5. Provide the annual volume of gasoline, diesel fuel, and kerosene you buy, sell, trade, transfer, or exchange.</li> </ol>
<b>V</b> Manufacturer, importer, or buyer of ozone-depleting chemicals (ODCs) for export.	<ol style="list-style-type: none"> <li>1. List the ODCs you import or manufacture for export.</li> <li>2. List the companies from which you buy ODCs for export.</li> <li>3. List the number of pounds for each type of ODC you exported in this calendar year and an estimate for next calendar year.</li> <li>4. List your export locations, and list your production allowance, consumption allowance, export allowance, and export percentage as set by the Environmental Protection Agency.</li> </ol>
<b>X</b> Pipeline operator or vessel operator (including certain deep-draft vessels) within the bulk transfer/terminal system.	<ol style="list-style-type: none"> <li>1. Schematic or map of your pipeline locations.</li> <li>2. Names and addresses of facilities served by your pipeline or vessel.</li> <li>3. Number, description, and capacities of your vessels used to transport taxable fuel.</li> </ol>
<b>Y</b> Buyer of kerosene for its use in commercial aviation (other than foreign trade).	<ol style="list-style-type: none"> <li>1. List the quantity, types, and gross take-off weights of all aircraft you own and/or operate. Include the countries of registration. Aircraft that you operate but that are owned by other persons should be clearly designated. Information should be included as to the operating arrangements.</li> <li>2. List the average number of operating hours (per month) of each aircraft that is listed in item 1. Show the number of hours for commercial aviation (other than foreign trade) and noncommercial aviation.</li> <li>3. If you maintain kerosene storage facilities, list the location and capacity of each facility.</li> </ol>
<b>AB</b> Producers and importers of agri-biodiesel.	<ol style="list-style-type: none"> <li>1. List the annual volume of agri-biodiesel you produced in or entered into the United States.</li> <li>2. List the locations and a description of your production facilities.</li> <li>3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any agri-biodiesel.</li> <li>4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any agri-biodiesel.</li> <li>5. Provide the annual volume of agri-biodiesel you buy, sell, trade, transfer, or exchange.</li> </ol>
<b>AF</b> Producers and importers of alcohol.	<ol style="list-style-type: none"> <li>1. List the annual volume of alcohol you produced in or entered into the United States.</li> <li>2. List the locations and a description of your production facilities.</li> <li>3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any alcohol.</li> <li>4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any alcohol.</li> <li>5. Provide the annual volume of alcohol you buy, sell, trade, transfer, or exchange.</li> </ol>

Activity Letter	Additional Information Required
<b>AL</b> Alternative fueler that sells for use or uses alternative fuel as a fuel in a motor vehicle or motorboat.	Provide the general information for all applicants.
<b>AM</b> Alternative fueler that produces an alternative fuel mixture that is sold for use or used in the alternative fueler's trade or business.	Provide the general information for all applicants.
<b>BC</b> Qualified blood collector organization buying taxable fuel, taxable tires, and certain heavy vehicles; claiming exemption from the communications tax and heavy highway vehicle use tax; or to claim a credit or payment of certain excise taxes, for its exclusive use in the collection, storage, or transportation of blood.	<ol style="list-style-type: none"> <li>1. Provide a general description of your blood collection activity.</li> <li>2. Provide a copy of the IRS determination letter granting you an exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3).</li> <li>3. Provide evidence of your registration with the Food and Drug Administration as a blood collector.</li> </ol>
<b>SB</b> Producers of second generation biofuel.	<ol style="list-style-type: none"> <li>1. List the annual volume of cellulosic biofuel (including second generation biofuel) you produced in the United States.</li> <li>2. List the plant material you used to produce the cellulosic biofuel (including second generation biofuel).</li> <li>3. List the locations and a description of your production facilities.</li> <li>4. List the names and addresses of any person(s) who will be acting for you as an agent or broker in buying, selling, or transporting any cellulosic biofuel (including second generation biofuel).</li> <li>5. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any cellulosic biofuel (including second generation biofuel).</li> <li>6. Provide the annual volume of cellulosic biofuel (including second generation biofuel) you buy, sell, trade, transfer, or exchange.</li> </ol>
<b>CC</b> Credit card issuer that issues credit cards for sales of taxable fuel to a state or local government for its exclusive use or for sales of gasoline to a nonprofit educational organization for its exclusive use.	Provide the general information for all applicants.
<b>NB</b> Producers and importers of biodiesel (other than agri-biodiesel) and renewable diesel.	<ol style="list-style-type: none"> <li>1. List the annual volume of biodiesel and renewable diesel you produced in or entered into the United States.</li> <li>2. List the locations and a description of your production facilities.</li> <li>3. List the names and addresses of any person(s) who will be acting for you as an agent or broker in entering, buying, selling, or transporting any biodiesel and renewable diesel.</li> <li>4. List the business entities to whom you sell and with which you buy, trade, transfer, or exchange any biodiesel and renewable diesel.</li> <li>5. Provide the annual volume of biodiesel and renewable diesel you buy, sell, trade, transfer, or exchange.</li> </ol>
<b>QR</b> Qualified retailer of diesel fuel or kerosene sold in Alaska for nontaxable uses.	Provide the general information for all applicants.
<b>UA</b> Ultimate vendor that sells kerosene for use in aviation.	Provide the general information for all applicants.
<b>UB</b> Ultimate vendor that sells undyed diesel fuel or undyed kerosene for use in certain intercity and local buses.	Provide the general information for all applicants.
<b>UP</b> Ultimate vendor that sells kerosene from a blocked pump.	<ol style="list-style-type: none"> <li>1. Describe the blocked pumps you used to sell kerosene in your business.</li> <li>2. List the location of your blocked pumps.</li> </ol>
<b>UV</b> Ultimate vendor that sells (a) undyed diesel fuel or undyed kerosene to a state or local government for its exclusive use, or (b) gasoline (including aviation gasoline) to a state or local government for its exclusive use or to a nonprofit educational organization for its exclusive use.	Provide the general information for all applicants.

Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form 637 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/Form637](http://www.irs.gov/Form637).

## What's New

### Part I

- The first line is revised to request the legal name of the entity.
- The second line is revised to request a trade name.

### Other changes

- Fuel applicants no longer have to attach a copy of their federal income tax return or other evidence that reflects financial responsibility.
- Activity code **QR** is added for qualified retailers of diesel fuel or kerosene sold in Alaska for nontaxable uses.
- Mail Stop 5701 is added to the filing address. See *Where To Apply*, later.
- Additional instructions are added to clarify who can sign Form 637 and who has the authority to bind an applicant. See *Signature*, later.

## General Instructions

### Purpose of Form

Use Form 637 to apply for excise tax registration for activities under sections 4101, 4222, and 4682. See the chart on pages 2–4 for the list of activities. Each business unit that has, or is required to have, a separate EIN is treated as a separate person.

The following persons **must** be registered.

- Pipeline operator or vessel operator: activity letter **X**.
- Enterers, position holders, refiners, and terminal operators: activity letter **S**.
- Blenders: activity letter **M**.
- Producers or importers of alcohol, agri-biodiesel, and biodiesel (including renewable diesel): activity letters **AF**, **AB**, and **NB**, respectively.
- Producers of second generation biofuel: activity letter **SB**. Current **CB** registrants will not need to reapply for new **SB** registrations.

Pub. 510, Excise Taxes, has more information regarding registrations.

### Penalty

The penalty for failure to register, if you're required to register, is \$10,000 for the initial failure, and \$1,000 for each day following that you fail to register. The penalty applies unless the failure to register is due to reasonable cause.

### How To Apply

Complete Form 637 and submit it with the required additional information described on the chart on pages 2–4. You may use additional sheets for your explanations. Write your name and EIN on each sheet you attach. You must send all of the required information or the processing of your application will be delayed. The IRS will ask you for additional information if needed, or you may provide additional information at any time.

The application must be reviewed and approved before you're registered for any activity. The review may include inspection of your premises during normal business hours without advance notice. If your application is approved, the IRS will issue a Letter

of Registration. The letter will include the activities you're registered for, the effective date of the registration, and your registration number. A copy of Form 637 isn't a Letter of Registration. If your application is denied, you will be notified by the IRS in writing, including the reason for the denial.

### Employer Identification Number (EIN)

Enter your EIN. If you don't have an EIN, you may apply for one online. Go to the IRS website at [www.irs.gov/EIN](http://www.irs.gov/EIN) and click on the "Employer ID Numbers (EINs)" link. You may also apply for an EIN by faxing or mailing Form SS-4, Application for Employer Identification Number, to the IRS.

### P.O. Box

If the Post Office doesn't deliver mail to your street address and you have a P.O. box, show the box number instead of the street address.

### Signature

Form 637 must be signed by a person with authority to bind the applicant.

The authority to bind means the ability to execute agreements that are binding and legally enforceable against the applicant under state law. Form 637 submitted by:

- **An individual or sole proprietorship**—must be signed by that individual;
- **A partnership**—must be signed by any one of the general partners;
- **A limited liability company (LLC)**—must be signed by a person that complies with the federal tax treatment of the LLC; if the LLC is taxed as a partnership, then Form 637 must be signed by a member manager of the LLC; if the LLC is taxed as a corporation, then the rules for corporations must be followed;
- **A corporation**—must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act for the corporation;
- **A government agency**—must be signed by any person legally authorized to act for the agency;
- **A tax-exempt organization**—must be signed by any person legally authorized to act for the organization; if the organization is a corporation, the rules for corporations must be followed; if the entity is a trust or other type of entity, those rules must be followed; or
- **An estate or trust**—must be signed by a fiduciary or authorized representative.

### Where To Apply

Send Form 637 to:

Department of the Treasury  
Internal Revenue Service  
Excise Operations Unit—Form 637  
Mail Stop 5701G  
Cincinnati, OH 45999

### Changes in Registration

If an IRS office has issued you a Certificate of Registry or a Letter of Registration that is still in effect for an activity, you don't have to reapply for registration for that activity unless notified to do so. However, see *Reregistration for fuel activities*, later. To confirm the status of a registration, visit <https://apps.irs.gov/app/exciseTax>. To apply for another activity or to cancel a registration, you must contact the IRS office in which you're registered.

Notify the IRS office within 10 days if any information submitted with an application changes. This includes, but isn't limited to, address changes or changes in business activities. A registrant may not sell, lease, or otherwise allow another person to use its registration.

**Reregistration for fuel activities.** You must reregister with the IRS if there's a change of more than 50% of the ownership of a registrant and you're registered for activity letters **K, M, S, Y, AB, AF, SB, or NB**. In this instance, a change in ownership means that after a transaction (or series of transactions), more than 50% of the ownership interests in, or assets of, a registrant are held by persons other than persons (or persons related thereto) who held more than 50% of such interests or assets before the transaction (or series of transactions). Reregistration doesn't apply to companies whose stock is regularly traded on an established securities market. If you fail to reregister as required, see *Penalty*, earlier.

To reregister, send a newly completed Form 637 to the address under *Where To Apply*, earlier. On line 1d, enter your current registration number. The IRS will revoke the current registration number and issue a new registration to the new ownership (registrant).

### Additional Registration Information

For registration relating to:

- Taxable fuel, see Regulations section 48.4101-1.
- Exports of ozone-depleting chemicals, see Regulations section 52.4682-5.
- All other articles, see Regulations section 48.4222(a)-1.

See the Instructions for Form 720 for a list of notices providing additional guidance.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on Form 637 to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Subtitle D of the Internal Revenue Code, Miscellaneous Excise Taxes, imposes certain excise taxes.

Section 4101 requires certain persons to register for excise taxes on fuel, as imposed by sections 4041 and 4081. Sections 4101, 4222, and 4682 allow certain other manufacturers, sellers, or purchasers to register to be eligible for credits or to be exempt from the excise tax on taxable articles. If you're required to register under section 4101 or if you elect to register for credits and/or exemption, you are required to provide the

information requested on this form. Failure to provide this information may subject persons required to register to penalties, and may delay or prevent the processing of a voluntary registration for credits or exemption; providing false information may subject you to penalties. Section 6109 requires you to provide the requested identification numbers.

You're not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give such information to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions to administer their tax laws; and to other countries under a tax treaty. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 637 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 7 hr., 39 min.; **Learning about the law or the form**, 1 hr., 37 min.; and **Preparing and sending the form to the IRS**, 4 hr., 13 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 637 simpler, we'd be happy to hear from you. You can send us comments from [www.irs.gov/FormComments](http://www.irs.gov/FormComments). Or you can write to:

Internal Revenue Service  
Tax Forms and Publications  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

Don't send Form 637 to this address. Instead, see *Where To Apply*, earlier.



DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

**WINE**

BOTTLE SIZE	EQUIVALENT FLUID OUNCES	BOTTLES PER CASE	LITERS PER CASE	U.S. GALLONS PER CASE	CORRESPONDS TO
3 liters	101 Fl. Oz.	4	12.00	3.17004	4/5 Gallon
1.5 liters	50.7 Fl. Oz.	6	9.00	2.37753	2/5 Gallon
1 liter	33.8 Fl. Oz.	12	12.00	3.17004	1 Quart
750 milliliters	25.4 Fl. Oz.	12	9.00	2.37753	4/5 Quart
500 milliliters	16.9 Fl. Oz.	24	12.00	3.17004	1 Pint
375 milliliters	12.7 Fl. Oz.	24	9.00	2.37753	4/5 Pint
187 milliliters	6.3 Fl. Oz.	48	8.976	2.37119	2/5 Pint
100 milliliters	3.4 Fl. Oz.	60	6.00	1.58502	2, 3, & 4 Oz.
50 milliliters	1.7 Fl. Oz.	120	6.00	1.58502	1, 1.6, & 2 Oz.

Official Conversion Factor: 1 Liter = 0.26417 U.S. Gallon.  
Mandatory date for conversion: January 1, 1979.

TTB P 5100.10 (4-2005)



DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
**DISTILLED SPIRITS**

BOTTLE SIZE	EQUIVALENT FLUID OUNCES	BOTTLES PER CASE	LITERS PER CASE	U.S. GALLONS PER CASE	CORRESPONDS TO
1.75 liters	59.2 Fl. Oz.	6	10.50	2.773806	1/2 Gallon
1.00 liters	33.8 Fl. Oz.	12	12.00	3.170064	1 Quart
750 milliliters	25.4 Fl. Oz.	12	9.00	2.377548	4/5 Quart
375 milliliters	12.7 Fl. Oz.	24	9.00	2.377548	4/5 Pint
200 milliliters	6.8 Fl. Oz.	48	9.60	2.536051	1/2 Pint
100 milliliters	3.4 Fl. Oz.	60	6.00	1.585032	1/4 Pint
50 milliliters	1.7 Fl. Oz.	120	6.00	1.585032	1, 1.6, & 2 Oz.

Official Conversion Factor: 1 Liter = 0.264172 U.S. Gallon.  
Mandatory date for conversion: January 1, 1980.

TTB P-5100.10 (4-2005)



Form ST-107FAB  
(R3 / 03-16)

### County 1% Food and Beverage Tax Chart (including Indiana 7% Sales Tax)

Total Sale Amount Between	Collect Indiana Sales Tax	Collect County Food and Beverage Tax	Collect Total Tax
0 - 0.07	0.00	0.00	0.00
0.08 - 0.21	0.01	0.00	0.01
0.22 - 0.35	0.02	0.00	0.02
0.36 - 0.49	0.03	0.00	0.03
0.50 - 0.64	0.04	0.01	0.05
0.65 - 0.78	0.05	0.01	0.06
0.79 - 0.92	0.06	0.01	0.07
0.93 - 1.07	0.07	0.01	0.08
1.08 - 1.21	0.08	0.01	0.09
1.22 - 1.35	0.09	0.01	0.10
1.36 - 1.49	0.10	0.01	0.11
1.50 - 1.64	0.11	0.02	0.13
1.65 - 1.78	0.12	0.02	0.14
1.79 - 1.92	0.13	0.02	0.15
1.93 - 2.07	0.14	0.02	0.16
2.08 - 2.21	0.15	0.02	0.17
2.22 - 2.35	0.16	0.02	0.18
2.36 - 2.49	0.17	0.02	0.19
2.50 - 2.64	0.18	0.03	0.21
2.65 - 2.78	0.19	0.03	0.22
2.79 - 2.92	0.20	0.03	0.23
2.93 - 3.07	0.21	0.03	0.24
3.08 - 3.21	0.22	0.03	0.25
3.22 - 3.35	0.23	0.03	0.26
3.36 - 3.49	0.24	0.03	0.27
3.50 - 3.64	0.25	0.04	0.29
3.65 - 3.78	0.26	0.04	0.30
3.79 - 3.92	0.27	0.04	0.31
3.93 - 4.07	0.28	0.04	0.32
4.08 - 4.21	0.29	0.04	0.33
4.22 - 4.35	0.30	0.04	0.34
4.36 - 4.49	0.31	0.04	0.35
4.50 - 4.64	0.32	0.05	0.37
4.65 - 4.78	0.33	0.05	0.38
4.79 - 4.92	0.34	0.05	0.39
4.93 - 5.07	0.35	0.05	0.40
5.08 - 5.21	0.36	0.05	0.41
5.22 - 5.35	0.37	0.05	0.42
5.36 - 5.49	0.38	0.05	0.43
5.50 - 5.64	0.39	0.06	0.45
5.65 - 5.78	0.40	0.06	0.46
5.79 - 5.92	0.41	0.06	0.47
5.93 - 6.07	0.42	0.06	0.48
6.08 - 6.21	0.43	0.06	0.49
6.22 - 6.35	0.44	0.06	0.50
6.36 - 6.49	0.45	0.06	0.51
6.50 - 6.64	0.46	0.07	0.53
6.65 - 6.78	0.47	0.07	0.54
6.79 - 6.92	0.48	0.07	0.55
6.93 - 7.07	0.49	0.07	0.56
7.08 - 7.21	0.50	0.07	0.57
7.22 - 7.35	0.51	0.07	0.58
7.36 - 7.49	0.52	0.07	0.59

Total Sale Amount Between	Collect Indiana Sales Tax	Collect County Food and Beverage Tax	Collect Total Tax
7.50 - 7.64	0.53	0.08	0.61
7.65 - 7.78	0.54	0.08	0.62
7.79 - 7.92	0.55	0.08	0.63
7.93 - 8.07	0.56	0.08	0.64
8.08 - 8.21	0.57	0.08	0.65
8.22 - 8.35	0.58	0.08	0.66
8.36 - 8.49	0.59	0.08	0.67
8.50 - 8.64	0.60	0.09	0.69
8.65 - 8.78	0.61	0.09	0.70
8.79 - 8.92	0.62	0.09	0.71
8.93 - 9.07	0.63	0.09	0.72
9.08 - 9.21	0.64	0.09	0.73
9.22 - 9.35	0.65	0.09	0.74
9.36 - 9.49	0.66	0.09	0.75
9.50 - 9.64	0.67	0.10	0.77
9.65 - 9.78	0.68	0.10	0.78
9.79 - 9.92	0.69	0.10	0.79
9.93 - 10.07	0.70	0.10	0.80
10.08 - 10.21	0.71	0.10	0.81
10.22 - 10.35	0.72	0.10	0.82
10.36 - 10.49	0.73	0.10	0.83
10.50 - 10.64	0.74	0.11	0.85
10.65 - 10.78	0.75	0.11	0.86
10.79 - 10.92	0.76	0.11	0.87
10.93 - 11.07	0.77	0.11	0.88
11.08 - 11.21	0.78	0.11	0.89
11.22 - 11.35	0.79	0.11	0.90
11.36 - 11.49	0.80	0.11	0.91
11.50 - 11.64	0.81	0.12	0.93
11.65 - 11.78	0.82	0.12	0.94
11.79 - 11.92	0.83	0.12	0.95
11.93 - 12.07	0.84	0.12	0.96
12.08 - 12.21	0.85	0.12	0.97
12.22 - 12.35	0.86	0.12	0.98
12.36 - 12.49	0.87	0.12	0.99
12.50 - 12.64	0.88	0.13	1.01
12.65 - 12.78	0.89	0.13	1.02
12.79 - 12.92	0.90	0.13	1.03
12.93 - 13.07	0.91	0.13	1.04
13.08 - 13.21	0.92	0.13	1.05
13.22 - 13.35	0.93	0.13	1.06
13.36 - 13.49	0.94	0.13	1.07
13.50 - 13.64	0.95	0.14	1.09
13.65 - 13.78	0.96	0.14	1.10
13.79 - 13.92	0.97	0.14	1.11
13.93 - 14.07	0.98	0.14	1.12
14.08 - 14.21	0.99	0.14	1.13
14.22 - 14.35	1.00	0.14	1.14
14.36 - 14.49	1.01	0.14	1.15
14.50 - 14.64	1.02	0.15	1.17
14.65 - 14.78	1.03	0.15	1.18
14.79 - 14.92	1.04	0.15	1.19
14.93 - 15.07	1.05	0.15	1.20
15.08 - 15.21	1.06	0.15	1.21
15.22 - 15.35	1.07	0.15	1.22
15.36 - 15.49	1.08	0.15	1.23
15.50 - 15.64	1.09	0.16	1.25

Total Sale Amount Between	Collect Indiana Sales Tax	Collect County Food and Beverage Tax	Collect Total Tax
15.65 - 15.78	1.10	0.16	1.26
15.79 - 15.92	1.11	0.16	1.27
15.93 - 16.07	1.12	0.16	1.28
16.08 - 16.21	1.13	0.16	1.29
16.22 - 16.35	1.14	0.16	1.30
16.36 - 16.49	1.15	0.16	1.31
16.50 - 16.64	1.16	0.17	1.33
16.65 - 16.78	1.17	0.17	1.34
16.79 - 16.92	1.18	0.17	1.35
16.93 - 17.07	1.19	0.17	1.36
17.08 - 17.21	1.20	0.17	1.37
17.22 - 17.35	1.21	0.17	1.38
17.36 - 17.49	1.22	0.17	1.39
17.50 - 17.64	1.23	0.18	1.41
17.65 - 17.78	1.24	0.18	1.42
17.79 - 17.92	1.25	0.18	1.43
17.93 - 18.07	1.26	0.18	1.44
18.08 - 18.21	1.27	0.18	1.45
18.22 - 18.35	1.28	0.18	1.46
18.36 - 18.49	1.29	0.18	1.47
18.50 - 18.64	1.30	0.19	1.49
18.65 - 18.78	1.31	0.19	1.50
18.79 - 18.92	1.32	0.19	1.51
18.93 - 19.07	1.33	0.19	1.52
19.08 - 19.21	1.34	0.19	1.53
19.22 - 19.35	1.35	0.19	1.54
19.36 - 19.49	1.36	0.19	1.55
19.50 - 19.64	1.37	0.20	1.57
19.65 - 19.78	1.38	0.20	1.58
19.79 - 19.92	1.39	0.20	1.59
19.93 - 20.07	1.40	0.20	1.60
20.08 - 20.21	1.41	0.20	1.61
20.22 - 20.35	1.42	0.20	1.62
20.36 - 20.49	1.43	0.20	1.63
20.50 - 20.64	1.44	0.21	1.65
20.65 - 20.78	1.45	0.21	1.66
20.79 - 20.92	1.46	0.21	1.67
20.93 - 21.07	1.47	0.21	1.68
21.08 - 21.21	1.48	0.21	1.69
21.22 - 21.35	1.49	0.21	1.70
21.36 - 21.49	1.50	0.21	1.71
21.50 - 21.64	1.51	0.22	1.73



# Negotiating/Drafting Brewery and Distillery Contracts



Jeffrey C. O'Brien

1

## Topics To Be Covered:

- Distribution Agreements
- Contract Production Agreements
- Agreements With Suppliers
- Licensing Agreements
- Alternating Proprietorships
- Equipment, Retail, Production, and Distribution Space Leases
- Sample Agreements

2

# Distribution Agreements



3

# Distribution Agreements

- Laws vary from state to state
- Creation
- Termination
- Scope of Agreement
- Small Brewer Exemptions

4

## Contract Brewing/Licensing

- Definition: a brewery that hires another brewery to produce its beer. The licensor generally handles marketing and brand development of the beer, while leaving the brewing and packaging to the licensee brewery.
- Pros of Contract Brewing:
  - Can help alleviate producer brewery supply issues to meet demands.
  - Producer breweries avoid costs since they do not need to own a brewing facility

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## Alternating Proprietorship

- Definition: An arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewery", agrees to rent space and equipment to a new "tenant brewer."
- Pros of an Alternating Proprietorship:
  - Tenant brewers can develop a brand before they are ready to invest in their own premises and equipment.
  - Tenant brewer may be eligible for a lower tax rate on beer.
  - Host breweries can offset their investment by renting out their excess capacity.

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## Alt Prop vs. Contract Brewing

	ALT PROP	CONTRACT BREWING
Title Ownership	Tenant brewer holds title to its beer, including the ingredients and raw materials it uses to produce its beer, during all stages of production.	Contract brewer holds title to the beer, including the ingredients and raw materials used to brew the beer, during all stages of production.
Record Keeping	Tenant brewer and host brewer each retain their own records for production and removal of beer and each provides reports to the TTB.	Contract brewer retains all records of production and removal of beer and provides reports to the TTB.
Taxes	Tenant brewer and host brewer are individually responsible for paying their own taxes on their own beer removed from the brewery.	Contract brewer is solely responsible for paying taxes on beer removed from the brewery.
Brewer Licensure	Tenant brewer and host brewer must each qualify as a brewer and have separate licenses.	Only the contract brewer must qualify as a brewer, so the producer brewer does not need a license.
Ease of Paperwork	Requires significant paperwork for both parties.	Simple agreement; Brand is added to the contract brewer's Notice.

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# **Negotiating Brewery and Distillery Contracts**

**Submitted by Jeffrey C. O'Brien**

## I. Brewing Models

### A. Production Brewery

1. **Definition:** A brewery that brews its own beer onsite and packages its beer for sale largely off-premise. May have a tasting room.
2. **Examples of Large Production Breweries:** Lagunitas, Bell's, Stone.

### B. Brewpub

1. **Definition:** A brewery whose beer is brewed primarily on the same site from which it is sold to the public, such as a pub or restaurant. If the amount of beer that a brewpub distributes off-site exceeds 75%, it may also be described as a craft or microbrewery. Most brewpubs must adhere to laws which limit the total ratio of beer sales to food sales. A brewpub cannot be considered a bar or beer garden which offers a limited amount of food or limits the restaurant's hours of operation. It must operate as a public restaurant which happens to offer a wide selection of micro-brewed beers.
2. **Pros of a Brewpub**
  - a. Brewpubs create marketing to new customers who may not be willing to go to a brewery just to taste beer, but who may be willing to try a new restaurant closer to home.
  - b. Brewpubs may be located in a more accessible location to attract more people because the brewery is not actually manufacturing beer onsite.
  - c. Brewpubs can easily develop their own identity by designing the brewpub to reflect their branding and style.
3. **Examples of National/Regional Brewpubs:** Rock Bottom Brewery, Gordon Biersch, etc.

## **C. Alternating Proprietorship (AP)**

**1. Definition:** An arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewery," agrees to rent space and equipment to a new "tenant brewer." Under this arrangement, tenant brewers are solely responsible for brewing their beer, maintaining all of the brewing records, labeling the beer using their own name and address, and paying tax on the beer upon their removal of the beer from the brewery.

### **2. Pros of an Alternating Proprietorship**

- a.** Tenant brewers can develop a brand before they are ready to invest in their own premises and equipment.
- b.** Tenant brewers can begin placing their product in the stream of commerce to better preserve intellectual property rights.
- c.** Host breweries can offset their investment by renting out their excess capacity.
- d.** Host breweries often serve as a buffer to allow for easy transition into a highly-regulated industry.
- e.** Host breweries take on much of the physical pressure, burden and liability of the brewing operation.
- f.** Tenant brewer may be eligible for a lower tax rate on beer. Where a brewer produces less than 2,000,000 barrels of beer during a calendar year, there is a reduced tax rate of \$7 per barrel on the first 60,000 barrels on beer produced that is also consumed or sold in that same year.

**3. Examples of Alternating Proprietorships:** 21st Amendment Brewery in CA (Tenant Brewer) within Cold Spring Brewery in MN (Host Brewer), Avery Brewing in CO (Tenant Brewer) within New Belgium Brewing in CO (Host Brewer).

## **D. Contract Brewing**

**1. Definition:** A business that hires another brewery to produce its beer. It can also be a brewery that hires another brewery to produce additional beer. The contract brewing company handles marketing, sales and distribution of its beer, while generally leaving the brewing and packaging to its producer brewery. The producer brewery provides the recipes for the beer to the contract brewer.

### **2. Pros of Contract Brewing**

**a.** Producer breweries that cannot supply enough beer to meet demands can contract with a larger brewery to help alleviate their supply issues.

**b.** Producer breweries do not need to own a brewing facility, so they can avoid the costs associated with a physical brewery.

**c.** Producer breweries do not need a separate license.

**3. Example of Contract Brewing:** Gluek Brewing Company in MN (Producer Brewery) within Hard Energy Company in CA (Contract Brewery)

## Comparison of Alternating Proprietorship and Contract Brewing Models

Differences	Alternating Proprietorship	Contract Brewing
<b>Title Ownership</b>	Tenant brewer holds title to its beer, including the ingredients and raw materials it uses to produce its beer, during all stages of production.	Contract brewer holds title to the beer, including the ingredients and raw materials used to brew the beer, during all stages of production.
<b>Record Keeping</b>	Tenant brewer and host brewer each retain their own records for production and removal of beer and each provides reports to the Alcohol and Tobacco Tax and Trade Bureau (TTB).	Contract brewer retains all records of production and removal of beer and provides reports to the TTB.
<b>Taxes</b>	Tenant brewer and host brewer are individually responsible for paying their own taxes on their own beer removed from the brewery.	Contract brewer is solely responsible for paying taxes on beer removed from the brewery.
<b>Brewer Licensure</b>	Tenant brewer and host brewer must each qualify as a brewer and have separate licenses.	Only the contract brewer must qualify as a brewer, so the producer brewer does not need a license.
<b>Ease of Paperwork</b>	Requires significant paperwork for both parties.	Simple agreement; Brand is added to the contract brewer's Notice.

## **II. Negotiating Brewery and Distillery Contracts**

### **A. Distribution Agreements**

#### **State Distribution Laws**

- i. Distribution laws vary between states. See Appendix 1 for a summary of each state's law.

#### **Franchise Laws**

A majority of the states have enacted full-fledged beer franchise laws. Although it is not hard to detect a whiff of protectionism in these enactments, their stated purpose is to correct the perceived imbalance in bargaining power between brewers (who are presumed to be big and rich) and wholesalers (who are presumed to be small and local). Temperance concerns are also cited. A full-fledged beer franchise law will usually:

- Define franchise agreements to include informal, oral arrangements, making any shipment to a wholesaler the start of a franchise relationship.
- Prohibit coercive brewer practices, most often including actions in which a brewer (a) requires the wholesaler to engage in illegal acts, (b) forces acceptance of unordered beer, or (c) withholds shipments in order to impose terms on the wholesaler.
- Require "good cause" or "just cause" before a brewer can terminate a wholesaler.

- The burden is generally on the brewer to demonstrate cause for termination.
- "Good cause" is usually defined to include a significant breach of a "reasonable" and "material" term in the parties' agreement.
- Dictate that a brewer give prior written notice (60 or 90 days is common) to a wholesaler before termination is effective, with the notice detailing the alleged deficiencies that justify termination.
- Grant wholesalers an opportunity to cure the deficiencies alleged in a termination notice, with termination ineffective if a wholesaler cures the defect(s) or presents a plan to cure the defect(s).
  - "Notice-and-cure" requirements usually are waived under certain circumstances. These most often include a wholesaler's (a) insolvency, (b) conviction or guilty plea to a serious crime, or (c) loss of a license to do business. Many franchise laws also permit expedited termination where a wholesaler (d) has acted fraudulently or (e) has defaulted on a payment under the agreement despite a written demand for payment.
- Require wholesalers to provide brewers with notice of any proposed change in ownership of the wholesaler, giving the brewer an opportunity to object. The brewer's approval of an ownership change cannot be "unreasonably" withheld.

- Brewers usually have little or no right to block a transfer to a previously designated family successor.
- Create remedies for unfair termination, generally granting wholesalers the right to receive “reasonable compensation” following termination.
  - Most beer franchise laws grant wholesalers the right to seek an injunction that, if granted, would quickly halt termination proceedings pending the resolution of wrongful termination claims. The forum for such relief can be either a state court or the state’s alcohol control authorities.
  - Although arbitration of the entire dispute is not required, and sometimes prohibited, disputes over what constitutes “reasonable compensation” often must be arbitrated at the request of a party.
  - Even if the franchise law prohibits arbitration, an arbitration clause in the parties’ written agreement is likely enforceable under the Federal Arbitration Act if the parties reside in different jurisdictions.
- Declare any waiver of franchise law protections void and unenforceable.
- Set a date that the law becomes effective. Some franchise agreements may predate franchise acts’ effective dates, likely making the franchise law inapplicable to that agreement.

In addition to the extremely common provisions described above, other terms may:

- Require beer franchise agreements to be in writing.
- Mandate that sales territories be exclusive.
  - Wholesalers may face substantial penalties for making deliveries outside their designated territory, and such conduct may permit expedited termination by the brewer.
  - Territorial designations may need to be filed with state liquor control authorities.
- Restrict a brewer's ability to dictate prices, with restrictions that often go beyond the strictures of antitrust law. Common provisions prohibit brewer price fixing, require brewers to file and adhere to periodic price schedules, and ban price discrimination between wholesalers within the state.
- Provide that the prevailing party in a termination dispute will be compensated for its attorneys fees.
- Bind succeeding brand owners to existing franchise agreements, although some permit not-for-cause termination after a change in brand ownership, as long as compensation is paid.
- Impose a good faith obligation on both parties. Under modern contract law, this good faith obligation is already implied in all contractual relations.

- Impose specific obligations on wholesalers, occasionally specified to include a duty to properly rotate stock, maintain tap lines, and comply with other reasonable quality control instructions.

Most states have enacted at least a few laws that regulate brewer-wholesaler relations. In some, beer wholesalers are covered by a franchise law protecting all alcohol beverage wholesalers. In a few states, beer wholesalers are protected by franchise laws that apply to a variety of franchise relationships, from beer to burgers. Still others partially regulate beer franchise relationships through their alcohol control laws by, for example, requiring exclusive territories as a condition for licensing. Finally, a few states and the District of Columbia have, to date, left brewer-wholesaler relations essentially unregulated, thereby allowing the franchise relationship to be governed exclusively by the terms of the parties' agreement, to be enforced under general contract law principles.

Appendix 1 sets forth a state-by-state summary of beer distribution laws.

### **Self-Distribution**

Many states permit breweries below a certain production threshold to distribute their product directly to retailers without the use of a distributor. While self-distribution can be a viable means around the complex and onerous franchise laws, the time and capital required to operate an effective distribution system is significant and tends to detract

from other operations. Further, breweries that grow beyond the production thresholds are forced into the franchise system as they lose their rights of self-distribution.

Appendix 2 sets forth a state-by-state summary of these self-distribution laws.

### **Small Brewer Exemptions**

In response to the continued consolidation of beer wholesalers in the U.S. and the imbalance in negotiations between larger wholesalers and small craft brewers, several states have created exemptions within their distribution laws for “small brewers” relative to the onerous termination provisions:

- Arkansas: Small brewers within the state are fully exempt from any remedies under the state’s franchise act. Ark. Code Ann. §§ 3-5-1102(12)(B); 3-5-1403(13).  
An Arkansas statute defines a small brewery as a “licensed facility that manufactures fewer than thirty thousand (30,000) barrels of beer and malt beverages per year for sale or consumption.” Ark. Code Ann. § 3-5-1403(13).
- Colorado: None of the state’s franchise protections are enforceable against small manufacturers. Colo. Rev. Stat. § 12-47-406.3(8). Specifically, the applicable statute exempts manufacturers that produce “less than three hundred thousand [300,000] gallons of malt beverages per calendar year.” *Id.*
- Illinois: The state’s franchise provisions allow small brewers whose annual volume of beer products supplied represents 10 percent or less of the wholesaler’s entire

business to terminate upon payment of reasonable compensation to the wholesaler. 815 Ill. Comp. Stat. 720/7.

- Nevada: The state's good cause franchise protection against terminations is not enforceable against small suppliers in-state and out-of-state. Nev. Rev. Stat. § 597.160(2). Specifically, the statute exempts suppliers that sell "less than 2,000 barrels of malt beverages . . . in this state in any calendar year." *Id.*
- New Jersey: A brewer from within or without the state who succeeds another brewer is exempt from a rebuttable presumption that favors an injunction preventing termination of the preexisting wholesaler when the affected brands represent a small portion (*i.e.*, less than 20 percent) of the terminated wholesaler's gross sales, the terminated wholesaler receives compensation, and the brewer assigns the brands to a wholesaler that already distributes its other brands. N.J. Rev. Stat. § 33:1-93.15(4)(d)(1).
- New York: A small brewer whose annual volume is less than 300,000 barrels produced in the state or outside of the state and who represents only a small amount (*i.e.*, no more than three percent) of a wholesaler's total annual sales volume, measured in case equivalent sales of twenty-four-twelve ounce units, may terminate a wholesaler upon payment of compensation for only the distribution rights lost or diminished by the termination. N.Y. Alco. Bev. Cont. Law § 55-c(4)(c)(i). The statute defines "annual volume" as "the aggregate

number of barrels of beer” brewed by or on behalf of the brewer under trademarks owned by the brewery, or the aggregate number of barrels of beer brewed by or on behalf of any person controlled by or under common control with the brewer, “during the measuring period, on a worldwide basis.” N.Y. Alco. Bev. Cont. Law § 55-c(4)(c)(iv).

- North Carolina: A small brewer may terminate a wholesaler upon payment of compensation for the distribution rights with five days’ written notice without establishing good cause. N.C. Gen. Stat. § 18B-1305(a1). North Carolina’s alcohol beverage statutes define a small brewer as “a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000 barrels . . . of malt beverages produced by it per year.” N.C. Gen. Stat. § 18B-1104(8).
- Pennsylvania: Although not a small brewer carve-out, the state’s franchise provisions exempt in-state manufacturers whose principal place of business is in the state, “unless they name or constitute [or have named or constituted] a distributor or importing distributor as a primary or original supplier of their products.” 47 Pa. Cons. Stat. § 431(d)(5). **Warning**: this provision likely violates the Commerce Clause of the U.S. Constitution.
- Rhode Island: Although not a small brewer carve-out, the state’s franchise laws exempt Rhode Island-licensed manufacturers. R.I. Gen. Laws § 3-13-1(5).

**Warning:** this provision likely violates the Commerce Clause of the U.S. Constitution.

- Washington: Small brewers holding certificates of approval are excluded from the state's franchise protections. Wash. Rev. Code § 19.126.020(10). Specifically Washington's franchise law excludes from the definition of "supplier" "any brewer or manufacturer of malt liquor producing less than two hundred thousand [200,000] barrels of malt liquor annually." *Id.*

### **Distillery Distribution Issues**

- ii. Regarding distilleries, most states do not have statutory distribution provisions similar to breweries. In Minnesota, for example, a distillery can have a distribution agreement for a term certain and is not subject to the franchise-type termination provisions described hereinabove. However, distilleries typically have little to no rights of self-distribution

### **B. Contract Production Agreements**

- Definition: a brewery that hires another brewery to produce its beer. The licensor generally handles marketing and brand development of the beer, while leaving the brewing and packaging to the licensee brewery.
- Pros of Contract Brewing:
  - Can help alleviate producer brewery supply issues to meet demands.
  - Producer breweries avoid costs since they do not need to own a brewing facility

Most states provide that employees are "at will" employees; that is, they can leave their employment whenever they wish, for any reason or no reason. If a business owner has a

key employee that is integral to its success, that employee should have a written employment agreement that provides for a fixed term of employment. A covenant not to compete can be included to deter a key employee from leaving to work for a competitor. Absent this type of agreement, the key employee can leave at any time.

A written employment agreement is imperative for your head brewer who knows a brewery's formulas could do the most damage to the business working for the competition. Hence, a master brewer employment agreement should include a covenant not to compete and provisions that clearly state that the beer formulas are "trade secrets" and thus the property of the brewery.

Covenants not to compete must be narrowly tailored to balance the interests of employer and employee. The employer must show (i) the covenant not to compete was supported by consideration when it was signed (if the consideration for the covenant is the continued employment of the employee, then the covenant must be signed prior to the start of employment to be valid); (ii) the covenant protects a legitimate business interest of the employer; and (iii) the covenant is reasonable in duration and geographic scope to protect the employer without being unduly burdensome on the former employee's right to earn a living.

### **Use of "Volunteers"**

Many breweries take advantage of the abundance of people interested in helping their business grow by allowing them to volunteer at the brewery. Depending upon the nature of the duties they are performing, classifying an individual who ought to be treated – and compensated – as an employee as a “volunteer” can lead to significant penalties under Minnesota and federal law. In the past few years as both state and federal government have tried to get more revenue, they have focused on going after employers for misclassification of workers, whether they be independent contractors, interns or the use of volunteers.

### **Minnesota Law:**

There is a presumption anyone performing work for a “for-profit” enterprise is an employee. In Minnesota, the nature of the employment relationship is determined by using worker classification tests, similar to the manner in which employee status is determined under both workers’ compensation and unemployment insurance laws. Compensation of Minnesota employees is determined under Minn. Stat. § 181.722, Subd. 3, and the federal Fair Labor Standard Act. Correctly assessing a worker as an employee, student/intern, independent contractor, or volunteer is critical.

Minnesota Statute Section 177.23 governs the use of volunteers. Minn. Stat. §177.23, Subd. 5 states that “Employ” means “to permit to work”, and Subd. 6 states that an

"Employee" means any individual employed by an employer, subject to certain enumerated exceptions. There is an exception for "any individual who renders service gratuitously for a nonprofit organization", but there is no exception for an individual who renders service gratuitously for a for-profit organization.

**Federal Law:**

The Fair Labor Standards Act (FLSA) defines employment very broadly, i.e., "to suffer or permit to work." However, the Supreme Court has made it clear that the FLSA was not intended "to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another." In administering the FLSA, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar non-profit organizations that receive their service. Members of civic organizations may help out in a sheltered workshop; men's or women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or elderly; parents may assist in a school library or cafeteria as a public duty to maintain effective services for their children or they may volunteer to drive a school bus to carry a football team or school band on a trip. Similarly, an

individual may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with disabled children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs.

Under the FLSA, employees may not volunteer services to for-profit private sector employers. On the other hand, in the vast majority of circumstances, individuals can volunteer services to public sector employers. When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their employees to volunteer, without compensation, additional time to do the same work for which they are employed. There is no prohibition on anyone employed in the private sector from volunteering in any capacity or line of work in the public sector.

**Student/Interns:**

Until recently, student/interns have not received the same close scrutiny as other groups of workers. Student/interns are not considered employees under both state and federal law, if their use in the workplace generally passes six tests offered by the Department of Labor. The tests are:

1. The training experience is similar to what is provided at school;
2. The training experience is for the benefit of the student/interns;
3. The student/interns do not displace regular employees;
4. The employer providing the training receives no immediate advantage from the activities of the trainees;
5. Student/interns are not necessarily entitled to a job at the conclusion of the training; and
6. The employer and the student/interns understand the work is unpaid training.

Whether an employment relationship exists is not always clear. Instead, whether an intern or trainee is entitled to such things minimum wage and overtime compensation will often depend upon whether the individual is receiving training without displacing other employees or providing any real benefit to the employer. (Note: a reasonable stipend may be permitted)

### **Independent Contractor:**

Independent contractors are hired to perform special services of a limited scope and duration, and they typically perform the same services for a variety of businesses. The standards in Minnesota to be considered in determining whether or not an individual is an employee or an independent contractor depend upon the purpose for which such classification is to be considered but typically include factors such as:

1. The right to control the means and the manner of performance;
2. The mode of payment;
3. The furnishing of materials or tools;
4. The control of the premises where the work is done; and
5. The right of the employer to discharge the individual.

Generally, the more control, or right of control, an employer has over the individual performing the work, the work site, and the nature, quality, and manner in which work is performed, the more likely the relationship is an employer-employee relationship vs. an independent contractor arrangement.

#### **B. Agreements with Suppliers**

#### **C. Licensing Agreements**

#### **D. Alternating Proprietorships**

Definition: An arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewery", agrees to rent space and equipment to a new "tenant brewer."

Pros of an Alternating Proprietorship:

- i. Tenant brewers can develop a brand before they are ready to invest in their own premises and equipment.
- ii. Tenant brewer may be eligible for a lower tax rate on beer.
- iii. Host breweries can offset their investment by renting out their excess capacity.

	<b>Alt Prop</b>	<b>Contract Brewing</b>
<b>Title Ownership</b>	Tenant brewer holds title to its beer, including the ingredients and raw materials it uses to produce its beer, during all stages of production.	Contract brewer holds title to the beer, including the ingredients and raw materials used to brew the beer, during all stages of production.
<b>Record Keeping</b>	Tenant brewer and host brewer each retain their own records for production and removal of beer and each provides reports to the TTB.	Contract brewer retains all records of production and removal of beer and provides reports to the TTB.
<b>Taxes</b>	Tenant brewer and host brewer are individually responsible for paying their own taxes on their own beer removed from the brewery.	Contract brewer is solely responsible for paying taxes on beer removed from the brewery.
<b>Brewer Licensure</b>	Tenant brewer and host brewer must each qualify as a brewer and have separate licenses.	Only the contract brewer must qualify as a brewer, so the producer brewer does not need a license.
<b>Ease of Paperwork</b>	Requires significant paperwork for both parties.	Simple agreement; Brand is added to the contract brewer's Notice.

## **E. Equipment, Retail, Production and Distribution Space Leases**

### **i. Distribution Space Leases**

- i. As the old cliché goes, in real estate it's all about "location, location, location", and this is especially true for a brewery or distillery business. If you're looking to be the neighborhood hangout complete with a taproom (for breweries) or cocktail room (for distilleries), you'll need to find a suitable space close to home. Should you have larger ambitions, you may seek a more strategic location amenable to later expansion. Whatever the case may be, you'll need to have a space secured in order to complete the licensing process.
- ii. A new brewery or distillery owner will most likely lease a building at the start, and negotiating a suitable lease is a crucial step in the process.

- iii. Commercial lease agreements typically come in one of two varieties: "triple net" and "gross."
- iv. In a triple net, the tenant pays rent to the landlord, as well as a pro rated share of taxes, insurance and maintenance expenses. In the typical triple net lease, the tenant pays a fixed amount of base rent each month as well as an "additional rent" payment which constitutes 1/12 of an estimated amount for taxes, insurance and maintenance expenses (also called CAM or common area maintenance expenses). At the end of the lease year, the estimated amounts are compared to actual expenses incurred and adjusted depending upon whether the tenant paid too much or too little through its monthly payments.
- v. In a "gross" lease, the landlord agrees to pay all expenses which are normally associated with ownership. The tenant pays a fixed amount each month, and nothing more.

#### **F. Additional Contracts and Agreements**

Breweries and distilleries, like most businesses, face a myriad of insurance requirements.

In addition to the surety bond required to obtain their license, breweries and distillers will need several types of coverages including:

- General liability insurance;
- Workers compensation; and

- Dram shop (if the business is serving alcohol for on-premise consumption).

With respect to general liability coverage, given the growth in breweries and distilleries and the increase in trademark and other intellectual property related disputes, it is imperative to carry coverage for these issues.

Many insurance companies now have special "craft brewery programs" which provide breweries with a package tailored to the needs of the industry.

**Appendix 1**  
**Summary of State Beer Franchise/Distribution Laws**

<u>State</u>	<u>Summary of Law</u>	<u>Statutory Citation</u>
Alabama	<ul style="list-style-type: none"> <li>• Written agreement required.</li> <li>• Exclusive territories.</li> <li>• State approval required before a brand is transferred.</li> <li>• Termination upon 60 days' notice, with wholesaler allowed to submit a plan for cure within 30 days and to cure defects within 120 days.</li> <li>• Immediate termination where wholesaler becomes insolvent, loses license for more than 61 days, or is convicted of a felony.</li> <li>• Termination on 15 days' notice for fraudulent conduct, sales outside territory, failure to pay after a written demand for payment, or a transfer of the business without brewer's permission.</li> <li>• Termination must be made in good faith and for good cause.</li> <li>• Good cause includes failure to comply with agreement provision that are reasonable and of material significance.</li> </ul>	Ala. Code §§ 28-8-1 to 28-9-11
Alaska	<ul style="list-style-type: none"> <li>• No beer franchise law</li> </ul>	n/a
Arizona	<ul style="list-style-type: none"> <li>• Exclusive territories are permitted, but not required.</li> <li>• Termination must be made in good faith and for good cause.</li> <li>• Good cause includes a failure to comply with a term in the franchise agreement, unless that term is unconscionable or requires an illegal act.</li> </ul>	Ariz. Rev. Stat. §§ 44-1565 to 44-1567
Arkansas	<ul style="list-style-type: none"> <li>• Exclusive territories, filed with the State.</li> <li>• Termination requires 30 days' notice with opportunity to cure.</li> <li>• No termination without good cause and good faith.</li> <li>• Good cause includes a wholesaler's insolvency, repeated violations of law, or failure to maintain a reasonable sales volume.</li> <li>• Immediate termination permitted for a number of reasons, including insolvency, license loss for more than 31 days, and sales outside of the wholesaler's territory.</li> <li>• Small brewery (less than 30,000 barrels a year) is not a supplier and exempted from the above provisions.</li> </ul>	Ark. Code Ann. §§ 3-5-1101 to 3-5-1111 and § 3-5-1416.

<p>California</p>	<ul style="list-style-type: none"> <li>• Territorial appointments must be in a written agreement, filed with the State.</li> <li>• Regardless of the parties' agreement, supplier may not terminate a wholesaler solely for wholesaler's "failure to meet a sales goal or quota that is not commercially reasonable under prevailing market conditions."</li> <li>• Some brewer-wholesaler relationships, particularly those involving large brewers, might be covered under California's general Franchise Relations Act.</li> <li>• A manufacturer that unreasonably withholds consent to transfer can be liable for damages.</li> <li>• Recent unpublished Attorney General letter suggested that manufacturer approval rights over wholesaler personnel decisions and business plans, impositions of changes to wholesaler standards or agreements, control over other manufacturers' brands, and control of wholesaler ownership changes are unlawful under the California Alcoholic Beverage Control Act.</li> <li>• In <i>Crown Imp., LLC v. Classic Distrib. &amp; Beverage Grp., Inc.</i>, to be published Cal. App. 3d (2014), the court found that even if you interpret the letter to disallow for a manufacturer to unreasonably withhold consent to a sale of the distributorship, the law specifically allows for this and a specific statute controls.</li> </ul>	<p>Cal. Bus. &amp; Prof. Code §§ 25000.2 to 25000.9</p>
<p>Colorado</p>	<ul style="list-style-type: none"> <li>• Exclusive territories in a written contract, filed with the State.</li> <li>• Franchise protections applicable to manufacturers producing at least 300,000 gallons of malt beverages annually.</li> <li>• Termination upon 60 days' notice, with wholesaler opportunity to cure during that period.</li> <li>• Grounds for immediate termination include failure to pay after written demand, insolvency, license loss for more than 14 days, fraud, and sales outside of the wholesaler's territory.</li> <li>• Not-for-cause termination permitted upon 90 days' written notice, with copies to all other wholesalers in all other states with the same agreement.</li> </ul>	<p>Colo. Rev. Stat. §§ 12-47-405 to 12-47-406.3</p>
<p>Connecticut</p>	<ul style="list-style-type: none"> <li>• Franchise protections apply following product distribution for more than six months.</li> <li>• Termination in writing, setting forth reasons and giving the wholesaler an opportunity to challenge.</li> <li>• Prior to termination, a brewer may appoint a replacement wholesaler, provided that the appointment is not effective until six months after the wholesaler receives notice of termination.</li> <li>• Termination for "just and sufficient cause," to be determined in a hearing before the Liquor Control Commission.</li> </ul>	<p>Conn. Gen. Stat. § 30-17</p>

Delaware	<ul style="list-style-type: none"> <li>• Territorial arrangements filed with the State.</li> <li>• Where parties have an exclusive arrangement, brewer must obtain ABCC consent before appointing a second distributor.</li> <li>• Termination upon 60 days' notice, with wholesaler opportunity to cure during the notice period.</li> <li>• Good cause is required to terminate a wholesaler without paying "reasonable compensation," which includes the laid-in cost of inventory and goodwill.</li> <li>• Good cause includes, among others, a wholesaler's refusal to comply with a material provision of the franchise that is essential, fair, and reasonable; failure to meet reasonable and fair performance standards; insolvency; and license loss for more than 30 consecutive business days.</li> <li>• Not-for-cause termination is allowed, provided the brewer receives the permission of the Commission to pay "reasonable compensation" and the termination does not violate the terms of the franchise agreement.</li> </ul>	Del. Code Ann. tit. 6, §§ 2551 to 2556; 4 Del. Code Regs. § 46
District of Columbia	<ul style="list-style-type: none"> <li>• No beer franchise law</li> </ul>	n/a
Florida	<ul style="list-style-type: none"> <li>• Exclusive sales territories, in writing, and filed with the State.</li> <li>• Termination upon 90 days' notice, with wholesaler permitted to cure defects within the notice period.</li> <li>• Termination without good cause is forbidden.</li> <li>• Good cause includes a violation of a reasonable and material contract term.</li> <li>• Termination upon 15 days' notice is allowed in certain instances such as insolvency, license loss for more than 60 days, fraud, and sales outside of the wholesaler's territory.</li> </ul>	Fla. Stat. §§ 563.021 to 563.022
Georgia	<ul style="list-style-type: none"> <li>• Exclusive sales territories, filed with the State.</li> <li>• Termination notice containing specific reasons for termination must be filed with the State, giving the State and wholesaler 30 days to object and request a hearing. Georgia Department of Revenue decides whether to allow a termination.</li> <li>• Justifications for termination include a wholesaler's financial instability, repeated violations of law, or failure to maintain sales volume that is reasonably consistent with other wholesalers of the brand.</li> </ul>	Ga. Code Ann. §§ 3-5-29 to 3-5-34; Ga. Comp. R. & Regs. 560-2-5.10
Hawaii	<ul style="list-style-type: none"> <li>• No beer franchise law</li> </ul>	n/a
Idaho	<ul style="list-style-type: none"> <li>• Territorial agreements must be filed with the State.</li> <li>• Termination upon 90 days' notice, with 30 days to submit a plan of corrective action and an additional 90 days to cure defects.</li> <li>• Termination without notice-and-cure permitted upon the wholesaler's bankruptcy, conviction of a felony, loss of license for more than 30 days, sales outside of the wholesaler's territory, transfer without consent, failure to pay within five business days of written demand for</li> </ul>	Idaho Code Ann. §§ 23-1003; 23-1101 to 23-1113

	<p>payment, or fraud.</p>	
<p>Illinois</p>	<ul style="list-style-type: none"> <li>• Written contract required.</li> <li>• Exclusive territories permitted.</li> <li>• Termination upon 90 days' notice, with opportunity for the wholesaler to cure within notice period.</li> <li>• Immediate termination permitted for wholesaler's insolvency, default on payments, conviction of a serious crime; attempt to transfer business without approval, permit revocation or suspension, or fraud in dealing with the brewer.</li> <li>• Termination must be for good cause, following good faith efforts to resolve disagreements.</li> <li>• Good cause includes failure to comply with essential and reasonable requirements of the franchise agreement that are consistent with the law.</li> <li>• A brewer may not discriminate among wholesalers when enforcing agreements with wholesalers.</li> <li>• Small suppliers whose annual volume of beer products supplied represents 10% or less of wholesaler's entire business have a mechanism to terminate upon payment of reasonable compensation to the wholesaler.</li> <li>• Compensation, if not agreed upon, subject to a potentially lengthy arbitration or litigation process. Pending bill (as of April 2014) seeks to amend to permit termination in 6 months while process proceeds.</li> </ul>	<p>815 Ill. Comp. Stat. 720/1 to 720/10</p>
<p>Indiana</p>	<ul style="list-style-type: none"> <li>• Exclusive territories permitted, not required.</li> <li>• Prohibits unfair terminations by suppliers or wholesalers, described as those without due regard for "the equities of the other party."</li> <li>• Currently pending legislation (as of April 2014) would allow a "small brewer" of less than 30,000 barrels to terminate the agreement without cause with notice and payment of a multiple of gross profit. Number is based on the timing of the termination.</li> </ul>	<p>Ind. Code §§ 7.1-5-5-9</p>
<p>Iowa</p>	<ul style="list-style-type: none"> <li>• Written agreement with exclusive territories required.</li> <li>• Termination upon 90 days' notice, with the wholesaler given 30 days to submit a plan to correct deficiencies within 90 days.</li> <li>• Immediate termination permitted upon a wholesaler's failure to pay when due after written demand, insolvency, dissolution, conviction of a crime that would adversely affect its ability to sell beer, an attempted transfer without approval, fraudulent conduct in dealing with the brewer, license loss for more than 31 days, or sales outside the territory.</li> <li>• Termination must be in good faith and supported by good cause.</li> <li>• Good cause exists if the wholesaler failed to comply with reasonable and materially significant requirements of the agreement that are legal and do not discriminate as compared with the requirements imposed on or enforced against similarly-situated wholesalers.</li> <li>• Good faith means honesty in fact and the observance of reasonable standards of fair dealing in</li> </ul>	<p>Iowa Code §§ 123A.1 to 123A.12</p>

	the trade, as interpreted under Iowa's Uniform Commercial Code.	
Kansas	<ul style="list-style-type: none"> <li>• Agreements must be in writing.</li> <li>• Exclusive territories, filed with the State.</li> <li>• Termination must be for reasonable cause.</li> <li>• Must file written termination notice with the agency at least 30 days before the effective termination date.</li> </ul>	Kan. Stat. Ann. § 41-410
Kentucky	<ul style="list-style-type: none"> <li>• Written contract, designating exclusive territories, filed with the State.</li> <li>• Good cause and good faith required for termination</li> <li>• Termination upon written notice and reasonable opportunity (60 to 120 days) to cure.</li> <li>• Grounds for termination include insolvency, felony conviction, fraud, license loss for more than 31 days, sales outside of the wholesaler's territory, and ownership change without consent.</li> </ul>	Ky. Rev. Stat. Ann. §§ 244.585; 244.602 to 244.606
Louisiana	<ul style="list-style-type: none"> <li>• Written agreement required.</li> <li>• Exclusive territories.</li> <li>• Termination upon 30 days' notice, with termination ineffective if the wholesaler produces a plan for corrective action within the notice period that will cure the defect within 90 days.</li> <li>• Immediate termination permitted for numerous contingencies, including a wholesaler's insolvency, loss of license, conviction of a serious crime, or fraudulent conduct towards the brewer.</li> <li>• Termination for good cause only.</li> <li>• Good cause includes wholesaler's failure to comply with a reasonable and material term of the agreement.</li> </ul>	La. Rev. Stat. Ann. §§ 26:801 to 812
Maine	<ul style="list-style-type: none"> <li>• Exclusive territories, filed with the State.</li> <li>• Termination requires at least 90 days' notice, plus a reasonable time to cure.</li> <li>• Immediate termination permitted upon wholesaler's bankruptcy, loss of license, or conviction of a serious crime.</li> <li>• Termination must be for good cause.</li> <li>• Good cause does not include a change in wholesaler ownership, but includes a wholesaler's loss of license, insolvency, or failure to substantially comply with reasonable and material terms of the agreement.</li> </ul>	Me. Rev. Stat. Ann. tit. 28-A, §§ 1451 to 1465
Maryland	<ul style="list-style-type: none"> <li>• Exclusive territories.</li> <li>• Termination upon 180 days' notice, with 180 days for the wholesaler to cure any deficiency.</li> <li>• No notice required to terminate for a wholesaler's insolvency.</li> <li>• Termination must be for good cause.</li> <li>• Good cause always includes a wholesaler's loss of license.</li> </ul>	Md. Code Ann., art. 2B, §§ 17-101 to 17-107

Massachusetts	<ul style="list-style-type: none"> <li>No refusals to sell after six months of regular sales.</li> <li>Termination upon 120 days' notice to wholesaler and the State.</li> <li>Termination may be suspended upon wholesaler's request, pending a hearing before the Alcoholic Beverage Control Commission.</li> <li>Pending bill (as of April 2014) would allow for a quicker hearing by the Commission.</li> <li>Termination only for good cause.</li> <li>Good cause limited to wholesaler's disparagement of the brewer's product, unfair preference of a competing brand, failure to exercise best efforts, encouragement of improper practices, or failure to comply with contract terms.</li> </ul>	Mass. Gen. Laws. ch. 138, § 25E
Michigan	<ul style="list-style-type: none"> <li>Written agreement with exclusive territories.</li> <li>Termination upon written notice, with the wholesaler having 30 days in which to submit a plan to cure deficiencies within 90 days.</li> <li>Termination upon 15 days' notice is permitted upon a wholesaler's fraud in dealing with the brewer, sales outside its territory, or sales of goods known to be ineligible for sale.</li> <li>Immediate termination is permitted upon a wholesaler's insolvency, loss of license for more than 60 days, or conviction of a felony.</li> <li>Termination by the brewer must be in good faith and for good cause.</li> <li>Good cause is established by a wholesaler's failure to comply with reasonable and material contract terms.</li> </ul>	Mich. Comp. Laws §§ 436.1401; 436.1403
Minnesota	<ul style="list-style-type: none"> <li>Exclusive territories.</li> <li>Termination requires 90 days' notice, during which time the wholesaler may cure deficiencies.</li> <li>Termination upon 15 days' notice permitted upon the wholesaler's insolvency, loss of license, or violation of a significant law.</li> <li>Termination must be for good cause.</li> <li>Good cause does not include a change in brewery ownership, but includes a wholesaler's loss of license, bankruptcy, or failure to substantially comply with reasonable and material terms of the franchise agreement.</li> </ul>	Minn. Stat. §§ 325B.01 to 325B.17
Mississippi	<ul style="list-style-type: none"> <li>Written contract and exclusive territories required.</li> <li>Termination upon 30 days' notice, with the wholesaler given 30 days to submit a plan to cure deficiencies within 90 days.</li> <li>Immediate termination is permitted for a variety of contingencies, including a wholesaler's fraudulent conduct towards the brewer, insolvency, loss of license, or failure to make payments according to established credit terms.</li> <li>Termination must be in good faith, for good cause.</li> <li>Good cause exists when the wholesaler fails to comply with reasonable and material provisions of the agreement, the deficiency arose within the past two years, and the wholesaler failed to cure.</li> </ul>	Miss. Code Ann. §§ 67-7-1 to 67-7-23

Missouri	<ul style="list-style-type: none"> <li>• Written agreement required.</li> <li>• Exclusive territories presumed unless otherwise provided for by written agreement.</li> <li>• Community of Interest must exist for there to be a franchisor-franchisee relationship per Missouri Beverage co., Inc. v. Shelton Bros., Inc. 669 F3d 873 (2012). The court found no relationship because wholesaler's sales of importer's products never exceed 1.16% of wholesaler's annual sales, its name was not used in marketing, and it made no sizable investments particular to the importer.</li> <li>• Termination upon 90 days' notice.</li> <li>• Immediate termination upon criminal misconduct, fraud, abandonment, insolvency, or issuing an NSF check.</li> <li>• Termination requires good cause.</li> <li>• Good cause includes failure to comply substantially with essential and reasonable terms of the parties' contract, bad faith, or wholesaler's loss of license for more than 31 days.</li> </ul>	Mo. Rev. Stat. §§ 311.181 to 311.182; 407.400 to 407.420
Montana	<ul style="list-style-type: none"> <li>• Written contract, filed with the State.</li> <li>• Agreement must include a list of mandatory terms, and designate exclusive territories.</li> <li>• Termination upon 60 days' notice, with the wholesaler given a reasonable time to cure deficiencies.</li> <li>• Mandatory term in every contract includes a procedure for the regular review and correction of wholesaler deficiencies.</li> <li>• Termination must be for just cause or in accordance with brewer's contract terms, as applied equally to all wholesalers within the State.</li> </ul>	Mont. Code Ann. §§ 16-3-217 to 16-3-226
Nebraska	<ul style="list-style-type: none"> <li>• Written agreement required.</li> <li>• Exclusive territories, filed with the State.</li> <li>• Termination upon 30 days' notice, with the wholesaler given a reasonable opportunity to cure deficiencies within 90 days.</li> <li>• Termination upon 15 days' notice permitted in certain circumstances, including a wholesaler's fraudulent conduct towards the brewer, sales outside its territory, failure to pay according to the agreement's terms and after written demand, and intentional cessation of brand business for more than 31 days.</li> <li>• Immediate termination permitted upon the wholesaler's insolvency, loss of license, conviction of a felony, or an agreement to terminate.</li> <li>• Termination must be in good faith and for good cause.</li> <li>• Good cause includes a wholesaler's failure to comply with reasonable and material provisions of the contract.</li> <li>• Good faith means factual honesty and the "observance of reasonable commercial standards of fair dealing in the trade," as interpreted by the Uniform Commercial Code.</li> <li>• Wholesaler is obligated to maintain clean taps, adhere to the brewer's freshness program, and comply with other reasonable written quality control standards.</li> </ul>	Neb. Rev. Stat. §§ 53-201 to 53-223

Nevada	<ul style="list-style-type: none"> <li>• Exclusive territories presumed, but non-exclusive franchise permitted if specified in writing.</li> <li>• Termination upon 90 days' notice, with 60 days to cure deficiencies.</li> <li>• Termination upon written notice after wholesaler's loss of license for more than 31 days, insolvency, conviction of a felony, fraud toward the brewer, sale of beer to an unlicensed retailer, failure to pay according to agreement and seven days after demand for payment, attempt to transfer without notifying the brewer, or discontinuance of the brewer's brand.</li> <li>• Termination must be for good cause.</li> <li>• Good cause means either the wholesaler's failure to substantially comply with essential and reasonable requirements of the agreement or the wholesaler's bad faith acts in carrying out the agreement.</li> <li>• Brewers selling less than 2,500 bbls. within the State in a calendar year are exempt from the good cause termination requirement.</li> </ul>	Nev. Rev. Stat. §§ 597.120 to 597.180
New Hampshire	<ul style="list-style-type: none"> <li>• Written agreement.</li> <li>• Exclusive territories.</li> <li>• Termination upon 90 days' notice, with wholesaler given a reasonable time to cure deficiencies.</li> <li>• Immediate termination permitted upon the wholesaler's insolvency, loss of license, conviction of a serious crime, willful breach of a material provision of the franchise agreement; attempt to transfer business without notice to the brewer, fraud, or failure to pay account upon demand.</li> <li>• Termination only for good cause.</li> <li>• Good cause generally includes a wholesaler's loss of license, insolvency, or failure to substantially comply with the brewer's reasonable and material requirements.</li> </ul>	N.H. Rev. Stat. Ann. §§ 180:1 to 180:12
New Jersey	<ul style="list-style-type: none"> <li>• Exclusive territories required unless dualing prior to March 1, 2006.</li> <li>• Written agreements required.</li> <li>• Termination upon written notice and 120 days to cure</li> <li>• Immediate termination upon insolvency, felony conviction, fraud, license loss for more than 31 days, intentional sales outside of the wholesaler's territory, or transfer of business without consent.</li> <li>• Good cause required for termination.</li> <li>• Good cause means a wholesaler's failure to substantially comply with a reasonable term of the non-discriminatory franchise agreement.</li> </ul>	N.J. Rev. Stat. §§ 33:1-93.12 to 33:1-93.20
New Mexico	<ul style="list-style-type: none"> <li>• Exclusive territories permitted, and must be filed with the State.</li> <li>• Termination must be in good faith, for good cause.</li> <li>• Good faith means factual honesty and observance of reasonable commercial standards under the circumstances.</li> <li>• Good cause includes a wholesaler's failure to substantially comply with essential and reasonable contract provisions, or bad faith actions.</li> <li>• Good cause does not include wholesaler consolidation.</li> </ul>	N.M. Stat. §§ 60-8A-1; 60-8A-2; 60-8A-7 to 60-8A-11

New York	<ul style="list-style-type: none"> <li>• Written agreements required.</li> <li>• Termination for cause upon written notice, with wholesaler given 15 days (or more by court order) to submit a plan to cure deficiencies within 75 days.</li> <li>• Time for corrective action may be limited by a wholesaler's prior failure to satisfactorily cure deficiencies, or if the brewer's product makes up less than either 1,000 cases or 1/2 of 1% of wholesaler's total purchases.</li> <li>• Wholesaler can demand that brewer supply it with a written plan for curing deficiencies.</li> <li>• Immediate termination permitted upon a wholesaler's insolvency, conviction of a felony, loss of license for more than 31 days, fraudulent conduct towards the brewer, failure to pay monies due under the agreement, acts constituting grounds for termination under the agreement, or under a written agreement to terminate.</li> <li>• Upon 15 days' notice, a brewer may terminate a multiple brand wholesaler within 120 days of a competing brewer's loan to or acquisition of an interest in that wholesaler.</li> <li>• Termination only for good cause.</li> <li>• Good cause includes the brewer's implementation of a national or regional consolidation policy (upon 90 days' notice) that is reasonable, nondiscriminatory, essential, and disclosed in writing, or the wholesaler's failure to comply with a material term of the franchise agreement.</li> <li>• Termination based upon consolidation requires payment of to wholesaler of "fair market value" of wholesaler's lost business.</li> <li>• Small brewers (annual volume less than 300,000 barrels and sales to wholesaler 3% or less of wholesaler's annual business) may terminate an agreement without good cause upon payment of fair compensation to the wholesaler.</li> </ul>	N.Y. Alco. Bev. Cont. Law § 55-c
North Carolina	<ul style="list-style-type: none"> <li>• Exclusive territories, filed with the State.</li> <li>• Termination upon 90 days' notice, with wholesaler given 45 days to cure.</li> <li>• Immediate termination permitted upon the wholesaler's insolvency, loss of license for more than 30 days, conviction of a serious felony, fraudulent conduct in dealing with the brewer, failure to pay for delivered beer, or transfer of the business without notice to the brewer.</li> <li>• Termination requires good cause.</li> <li>• Good cause means a wholesaler's failure to comply with contract terms that are reasonable, material, and not unconscionable or discriminatory.</li> <li>• Good cause does not include a change in either brewery ownership or the right to distribute the brand, sale or transfer of brand rights to a successor supplier, a wholesaler's failure to meet performance standards if imposed unilaterally by the supplier, a wholesaler's establishment of a franchise agreement with another supplier, or a supplier's desire to consolidate franchises.</li> <li>• Small brewery (fewer than 25,000 barrels) exception allows for termination absent good cause following the fifth business day after confirmed receipt of written notice and payment of fair market value.</li> </ul>	N.C. Gen. Stat. §§ 18B-1300 to 18B-1308

North Dakota	<ul style="list-style-type: none"> <li>• Written contract with exclusive territories required.</li> <li>• Termination upon 90 days' notice, with the wholesaler having 90 days to rectify deficiencies.</li> <li>• Immediate termination permitted upon the wholesaler's insolvency, loss of license, or significant violation of the law.</li> <li>• Termination must be for good cause.</li> <li>• Good cause does not include a change in brand ownership, but does include the wholesaler's loss of license, insolvency, or failure to comply with reasonable and material obligations of the agreement.</li> </ul>	N.D. Cent. Code §§ 5-04-1 to 5-04-18
Ohio	<ul style="list-style-type: none"> <li>• Agreement must be in writing.</li> <li>• Exclusive territories.</li> <li>• Termination upon 60 days' notice.</li> <li>• Termination without notice permitted upon wholesaler's insolvency or loss of license for more than 30 days.</li> <li>• Termination must be in good faith and for just cause.</li> <li>• Good faith requires fair and equitable business dealings.</li> <li>• Just cause cannot include the failure to perform an illegal act, the restructuring of a brewer's business, or the transfer of a brand.</li> <li>• A wholesaler must act in good faith, properly represent the brewer, adequately serve the public, and protect the brewer's reputation and trade name.</li> </ul>	Ohio Rev. Code Ann. §§ 1333.82 to 1333.87
Oklahoma	<ul style="list-style-type: none"> <li>• Franchise law applies to "low point beer" (not more than 3.2% ABW).</li> <li>• Franchise protections do not apply to suppliers producing fewer than 300,000 gallons of low point beer per calendar year.</li> <li>• Written agreement, designating exclusive territories.</li> <li>• Good cause required for termination.</li> <li>• Must provide written notice of termination and 60 days to cure defects.</li> <li>• Immediate termination upon written notice permitted if wholesaler engages in unapproved sales outside its designated territory, fails to pay upon written demand, insolvency, loss of license for more than 14 days, felony conviction, violation of a serious law, business transfer without approval, fraud, or ceases to do business for five business days.</li> </ul>	Okla. Stat. tit. 37, §§ 163.2; 163.18A to 163.18H (for "low point beer")
Oregon	<ul style="list-style-type: none"> <li>• Agreement must be in writing and filed with the State.</li> <li>• Exclusive territories required.</li> <li>• Termination upon 90 days' notice, with the wholesaler given 30 days to submit a plan that will correct any deficiency within 60 days.</li> <li>• Immediate termination upon written notice permitted upon the wholesaler's insolvency, loss of license for more than 31 days, conviction of a felony, fraudulent conduct towards the brewer, substantial misrepresentations to the brewer, or for certain unapproved assignments of rights under the agreement.</li> <li>• Termination requires good cause, with the brewer acting in good faith.</li> <li>• Good cause exists where the wholesaler fails to comply with a reasonable and material term of the agreement.</li> </ul>	Or. Rev. Stat. §§ 474.005 to 474.115

<p>Pennsylvania</p>	<ul style="list-style-type: none"> <li>• Pennsylvania brewers are exempt from the franchise law's provisions if they do not designate a distributor as a primary or original supplier and had not done so before 1980.</li> <li>• Written agreement, filed with the State.</li> <li>• Exclusive territories.</li> <li>• Termination upon 90 days' notice, with 90 days to cure any deficiencies. If a deficiency relates to inadequate equipment or warehousing, a wholesaler's positive action to comply with the required change satisfies the cure provision.</li> <li>• Immediate termination permitted upon a wholesaler's insolvency, fraudulent conduct towards the brewer, or loss of license for more than 30 days.</li> <li>• Termination must be for good cause.</li> </ul>	<p>47 Pa. Cons. Stat. §§ 4-431, 4-492; 40 Pa. Code § 9.96</p>
<p>Rhode Island</p>	<ul style="list-style-type: none"> <li>• Licensed Rhode Island brewers are not considered suppliers within the meaning of the franchise law, and are exempt from its requirements.</li> <li>• Written contract required.</li> <li>• Exclusive territories.</li> <li>• Termination upon 90 days' notice, with opportunity to cure within the time frame of the notice.</li> <li>• Immediate termination permitted in case of a wholesaler's insolvency, loss of license, or violation of a law significant to the business.</li> <li>• Termination must be for good cause.</li> <li>• Good cause means the failure to substantially comply with a reasonable requirement of the agreement.</li> </ul>	<p>R.I. Gen. Laws §§ 3-13-1 to 3-13-12</p>
<p>South Carolina</p>	<ul style="list-style-type: none"> <li>• Exclusive territories, in writing, filed with the State.</li> <li>• Termination upon 60 days' notice.</li> <li>• Termination by either party must be fair, and for just cause or provocation.</li> </ul>	<p>S.C. Code Ann. §§ 61-4-1100 to 61-4-1320</p>
<p>South Dakota</p>	<ul style="list-style-type: none"> <li>• Exclusive territories, in writing.</li> <li>• Termination upon written notice that gives wholesaler at least 30 days in which to submit a plan to correct deficiencies within 90 days.</li> <li>• Termination by written notice is permitted upon numerous contingencies, including a wholesaler's loss of license for more than 31 days, insolvency, conviction of a felony, or fraudulent conduct towards the brewer.</li> <li>• Termination must be for good cause, and in good faith.</li> <li>• Good faith imposes a duty on each party to act in a fair and equitable manner.</li> <li>• Good cause means a failure to substantially comply with terms that are reasonable, material, and are not unconscionable or discriminatory.</li> </ul>	<p>S.D. Codified Laws §§ 35-8A-1 to 35-8A-20</p>

Tennessee	<ul style="list-style-type: none"> <li>• Exclusive territories for each brand.</li> <li>• Termination upon 90 days' notice, with the wholesaler having 30 days to submit a plan to correct deficiencies within 90 days.</li> <li>• Termination upon 30 days' notice permitted upon a brewer's discontinuance of the brand in the State (which cannot be reintroduced for one year) or wholesaler's conviction for a significant felony.</li> <li>• Termination upon written notice is permitted upon a wholesaler's loss of license for more than 60 days, insolvency, fraud in dealing with the brewer, sales outside its designated territory, or failure to pay monies due under the agreement within five days of demand.</li> <li>• Termination must be in good faith, for good cause.</li> <li>• Good cause exists where the wholesaler failed to substantially comply with essential and reasonable requirements of the agreement, so long as those terms are not discriminatory.</li> </ul>	Tenn. Code Ann. §§ 57-5-501 to 57-5-512; 57-6-104
Texas	<ul style="list-style-type: none"> <li>• Written contract required.</li> <li>• Exclusive territories, filed with the State.</li> <li>• Termination upon 90 days' notice, with the wholesaler having 90 days to cure any deficiencies.</li> <li>• Immediate termination permitted upon a wholesaler's insolvency, conviction of a serious crime, loss of a license for 30 days or more, or failure to pay money when due, after demand.</li> <li>• Termination only for good cause.</li> <li>• Good cause means a failure to substantially comply with an essential, reasonable, and commercially acceptable term of the agreement.</li> </ul>	Tex. Alco. Bev. Code Ann. §§ 102.51; 102.71 to 102.82
Utah	<ul style="list-style-type: none"> <li>• Small brewers (manufacturers producing less than 6,000 barrels per year) exempted from franchise law.</li> <li>• Exclusive territories, filed with the State.</li> <li>• Written agreement required.</li> <li>• Termination upon 90 days' notice, with wholesaler given the opportunity to cure within 90-day period.</li> <li>• Immediate termination permitted for wholesaler's insolvency, conviction or a felony, loss of license for more than 30 days, or fraudulent conduct.</li> <li>• Good cause required for either brewer or wholesaler to terminate contract.</li> <li>• Good cause means the material failure to comply with terms that are essential, reasonable and lawful.</li> </ul>	Utah Code Ann. §§ 32B-1-102; 32B-1-201; 32B-1-503; 32B-14-101 through 32B-14-402
Vermont	<ul style="list-style-type: none"> <li>• Exclusive territories.</li> <li>• Termination upon 120 days' notice, with the wholesaler given 120 days to rectify any deficiency.</li> <li>• Immediate termination permitted upon a wholesaler's insolvency, or when the brewer shows that providing 120 days' notice would cause irreparable harm to the marketing of the brand.</li> <li>• Termination must be for good cause.</li> </ul>	Vt. Stat. Ann. tit. 7, §§ 701 to 710

Virginia	<ul style="list-style-type: none"> <li>• Exclusive territories (except where overlaps are caused by changes in brewer ownership), in writing and filed with the State.</li> <li>• Termination upon 90 days' notice and notice to the State, with a wholesaler given 60 days to provide the brewer with a plan for corrective action.</li> <li>• Immediate termination permitted in the case of a wholesaler's insolvency or loss of license.</li> <li>• Termination requires good cause.</li> <li>• Good cause is determined by the Virginia Department of Alcohol Beverage Control.</li> <li>• Good cause includes a wholesaler's loss of license, insolvency, or failure to substantially comply with reasonable and material requirements. Presumptively legitimate requirements include maintaining a brand's sales volume, providing services at a level comparable to that provided by other Virginia wholesalers, and requiring a brewer's reasonable consent to a transfer of the wholesaler's business.</li> <li>• Obligation of good faith is implied in every contract.</li> </ul>	Va. Code Ann. §§ 4.1-500 to 4.1-517
Washington	<ul style="list-style-type: none"> <li>• Franchise laws do not cover certain domestic suppliers producing fewer than 200,000 barrels of beer annually.</li> <li>• Written contract required.</li> <li>• Termination upon 60 days' notice, giving the wholesaler 60 days to cure any deficiency.</li> <li>• Immediate termination upon a wholesaler's insolvency, loss of license for more than 14 days, or fraud.</li> <li>• Wholesaler required to give a brewery 90 days' notice before termination.</li> </ul>	Wash. Rev. Code §§ 19.126.010 to 19.126.901
West Virginia	<ul style="list-style-type: none"> <li>• Written agreement, filed with the State.</li> <li>• Exclusive territories.</li> <li>• West Virginia must approve all new territorial appointments.</li> <li>• Distributor must be allowed to distribute new brands.</li> <li>• Termination upon 90 days' notice.</li> <li>• Termination must be for just cause.</li> </ul>	W. Va. Code § 11-16-21
Wisconsin	<ul style="list-style-type: none"> <li>• Parties must share a "community of interest" before "dealership" law applies.</li> <li>• Although the "dealership" provisions may not apply, Wisconsin law specifies the compensation due upon certain wholesaler terminations.</li> <li>• Written agreement required.</li> <li>• Exclusive territories required.</li> <li>• Termination upon 90 days' notice, with wholesaler given 60 days to rectify any deficiencies.</li> <li>• Termination upon 10 days' notice permitted where wholesaler is in default on payments under the agreement.</li> <li>• Immediate termination is permitted upon the wholesaler's insolvency.</li> <li>• Termination requires good cause.</li> <li>• Good cause includes the wholesaler's failure to substantially comply with essential and reasonable requirements of the agreement which are not discriminatory, or the wholesaler's bad faith acts.</li> </ul>	Wis. Stat. §§ 125.33 to 125.34; 135.01 to 135.07

Wyoming	<ul style="list-style-type: none"> <li>• Exclusive territorial agreements, filed with the State.</li> <li>• Termination upon 30 days' notice, during which time the wholesaler can cure with a plan to remedy deficiencies within 90 days.</li> <li>• Immediate termination permitted upon a wholesaler's insolvency, loss of license for 60 days or more, conviction of a felony, intentional sales outside the territory, or fraud.</li> <li>• Termination must be in good faith, and for good cause.</li> <li>• Good cause means wholesaler's insolvency, loss of license for more than 60 days, conviction of a felony, intentional sales outside its territory, or failure to comply with a reasonable and material provision of the franchise agreement.</li> <li>• Good faith requires honesty in fact and observance of reasonable commercial standards in the trade.</li> </ul>	Wyo. Stat. Ann. §§ 12-9-101 to 12-9-119
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**Appendix 2**

**Summary of State Beer Self-Distribution Laws**

<u>State</u>	<u>License to Self Distribute</u>	<u>Statutory Citation</u>
Alabama	No	Code of Ala. § 28-3A-6
Alaska	Yes	Alaska Stat. § 04.11.010
Arizona	Yes	A.R.S. § 4-205.08
Arkansas	Yes	A.C.A. § 3-5-1405
California	Yes	Cal Bus & Prof Code § 23357
Colorado	Yes	C.R.S. 12-47-402; C.R.S. 12-47-415
Connecticut	Yes	Conn. Gen. Stat. § 30-16
Delaware	No	4 Del. C. § 512C; Brewpubs at § 512B
District of Columbia	Yes	D.C. Code § 25-110
Florida	No	Fla. Stat. § 563.022
Georgia	No	O.C.G.A. § 3-5-32
Hawaii	Yes	HRS § 281-31
Idaho	Yes	Idaho Code § 23-1003
Illinois	Yes	235 ILCS 5/5-1; 235 ILCS 5/3-12

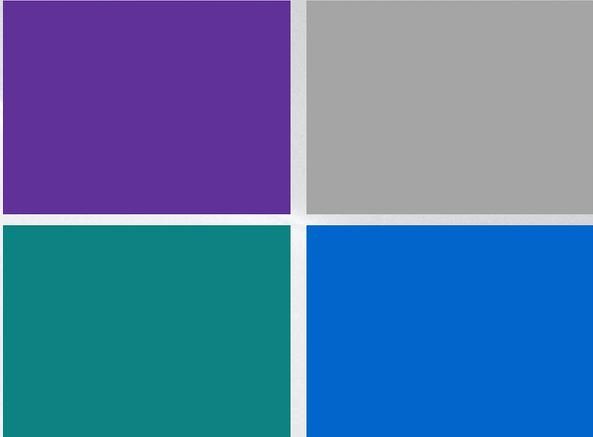
Indiana	Yes	Burns Ind. Code Ann. § 7.1-3-2-7
Iowa	Yes	Iowa Code § 123.124
Kansas	No	K.S.A. § 41-308b
Kentucky	No	KRS § 243.157
Louisiana	No	La. R.S. 26:273
Maine	Yes	28-A M.R.S. § 1355-A
Maryland	Yes	Md. Ann. Code art. 2B, § 2-208
Massachusetts	Yes	ALM GL ch. 138, § 19
Michigan	Yes	MCLS § 436.1401
Minnesota	Yes	Minn. Stat. § 340A.301
Mississippi	No	Miss. Code Ann. § 67-3-46
Missouri	No	§ 311.195 R.S.Mo.
Montana	Yes	Mont. Code Anno., § 16-3-214
Nebraska	No	R.R.S. Neb. § 53-169
Nevada	No	Nev. Rev. Stat. Ann. § 369.382
New Hampshire	Yes	RSA 178:12; RSA 178:12-a; RSA 178:13

New Jersey	Yes	N.J. Stat. § 33:1-10
New Mexico	Yes	N.M. Stat. Ann. § 60-6A-26.1
New York	Yes	NY CLS AL Bev § 51; NY CLS AL Bev § 52; NY CLS AL Bev § 64-c
North Carolina	Yes	N.C. Gen. Stat. § 18B-1104
North Dakota	Yes	N.D. Cent. Code, § 5-01-11; N.D. Cent. Code, § 5-01-14
Ohio	Yes	ORC Ann. 4303.02; ORC Ann. 4303.022; ORC Ann. 4301.24
Oklahoma	Yes	37 Okl. St. § 521
Oregon	Yes	ORS § 471.220; ORS § 471.200
Pennsylvania	Yes	47 P.S. § 4-431
Rhode Island	Yes	R.I. Gen. Laws § 3-6-1
South Carolina	No	S.C. Code Ann. § 61-4-940
South Dakota	No	S.D. Codified Laws § 35-8A-8
Tennessee	Yes	Tenn. Code Ann. § 57-5-101; Tenn. Code Ann. § 57-2-104
Texas	Yes	Tex. Alco. Bev. Code § 62.01; Tex. Alco. Bev. Code § 74.01 and 74.08
Utah	Yes	Utah Code Ann. § 32B-11-503

Vermont	Yes	7 V.S.A. § 230
Virginia	Yes	Va. Code Ann. § 4.1-208
Washington	Yes	Rev. Code Wash. (ARCW) § 66.24.244
West Virginia	Yes	W. Va. Code § 11-16-6; W. Va. Code § 60-4-3
Wisconsin	Yes	Wis. Stat. § 125.29; Wis. Stat. § 125.295
Wyoming	Yes	Wyo. Stat. § 12-2-201; Wyo. Stat. § 12-4-412; Wyo. Stat. § 12-5-401



Intellectual Property and Advertising



**Brewery and Distillery Law in Indiana**

Kenan L. Farrell

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LEGAL

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317-808-0000  
kfarrell@klflegal.com

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2

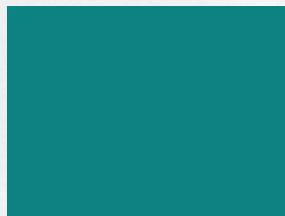
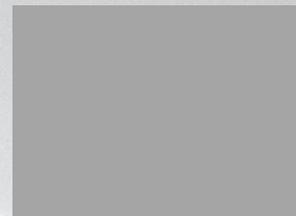
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- Alcoholic Beverage Copyright Filing, Registration and Protection
- Trade Secrets in Brewery and Distillery Law – How, Why and What to Protect
- Brewery and Distillery Confidentiality/Non-Disclosure Agreements
- Review Tips: Non-Compete Agreements
- Top Brewery and Distillery Advertising Mistakes – Social Media and More



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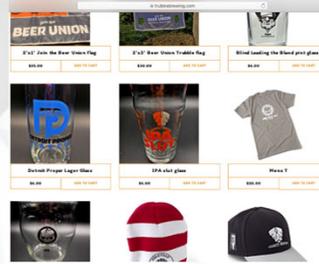
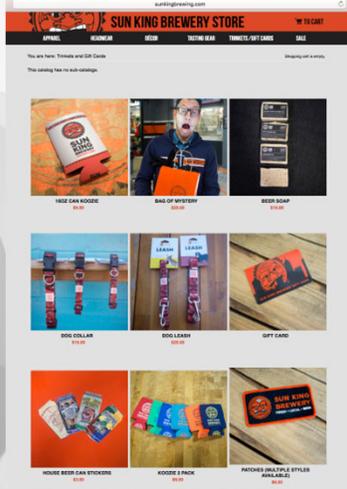
## Trademarks



**A trademark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others**

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## More than just beer...



Goods

Beer

Glassware, Growlers

Bottle Openers

Apparel

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## HOTEL TANGO

**Word Mark** HOTEL TANGO  
**Goods and Services** IC 033, US 047 101, G & S: Bar services; Providing a tasting room where alcoholic beverages are served. FIRST USE: 20140915, FIRST USE IN COMMERCE: 20141000  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 87333253  
**Filing Date** July 18, 2017  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** November 21, 2017  
**Registration Number** 5396177  
**Registration Date** February 6, 2018  
**Owner** (REGISTRANT) Hotel Tango Whiskey, LLC DBA Hotel Tango LIMITED LIABILITY COMPANY INDIANA 702 Virginia Ave, Indianapolis INDIANA 46203  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Matthew J. Clark  
**Prior Registrations** 487793-494948  
**Type of Mark** SERVICE MARK  
**Registrar** PRINCIPAL  
**Live/Dead Indicator** LIVE

## HARD TRUTH

**Word Mark** HARD TRUTH  
**Goods and Services** IC 033, US 047 049, G & S: Distilled spirits. FIRST USE: 20151031, FIRST USE IN COMMERCE: 20151031  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 86227811  
**Filing Date** July 3, 2014  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** May 28, 2015  
**Registration Number** 4825528  
**Registration Date** March 22, 2016  
**Owner** (REGISTRANT) Big Woods Brewing Company LLC LIMITED LIABILITY COMPANY INDIANA 60 Moly Lane Nashville INDIANA 47448  
**Attorney of Record** Jennifer L. Day  
**Type of Mark** TRADEMARK  
**Registrar** PRINCIPAL  
**Live/Dead Indicator** LIVE

## MOGUL DISTILLERY

**Word Mark** MOGUL DISTILLERY  
**Goods and Services** IC 033, US 047 049, G & S: Alcoholic beverages, except beer; Alcoholic beverages, namely, vodka. FIRST USE: 20131201, FIRST USE IN COMMERCE: 20131231  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 87376980  
**Filing Date** March 19, 2017  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** July 18, 2017  
**Registration Number** 5301506  
**Registration Date** October 3, 2017  
**Owner** (REGISTRANT) Joseph & Jones LLC DBA Mogul Distillery LIMITED LIABILITY COMPANY INDIANA 6170 Gulford Avenue Indianapolis INDIANA 46220  
**Attorney of Record** MacChari R. Vanden-Jones  
**Prior Registrations** 456735  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DISTILLERY" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Registrar** PRINCIPAL  
**Live/Dead Indicator** LIVE

## 8TH DAY DISTILLERY

**Word Mark** 8TH DAY DISTILLERY  
**Goods and Services** IC 033, US 047 049, G & S: Distilled Spirits; Gin; Rum; Brandy. FIRST USE: 20170203, FIRST USE IN COMMERCE: 20170303  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 86726202  
**Filing Date** August 17, 2015  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** January 12, 2016  
**Registration Number** 5151968  
**Registration Date** April 25, 2017  
**Owner** (REGISTRANT) 8TH DAY DISTILLERY LLC LIMITED LIABILITY COMPANY INDIANA 108 E BEECHWOOD LANE INDIANAPOLIS INDIANA 46227  
**Attorney of Record** Tyler B. Doolie  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DISTILLERY" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Registrar** PRINCIPAL  
**Live/Dead Indicator** LIVE

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## More than just a brewery...



- Services
- Brewery services
- Retail services
- Restaurant/café services
- Wholesale distributorship services
- Distillery services (distilling for others)
- Arranging, organizing, conducting, and hosting social entertainment events
- Conducting guided tours
- Beer club



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## Distinctiveness

1) Unique 2) Recognized as identifying source of goods 3) Not descriptive

"Inherently distinctive" marks are registrable without proof of acquired distinctiveness

"Descriptive" marks require proof of acquired distinctiveness

"Generic" marks are not registrable

### Descriptiveness

Fanciful – invented words

Arbitrary – common word in a meaningless context

Suggestive – tends to indicate the nature, quality, or a characteristic of the products or services but requires imagination on the part of the consumer to identify the characteristic

Descriptive – has a dictionary meaning which is used in connection with products or services directly relating to that meaning

Generic – common name for products or services



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# Trademark Clearance

- Check Availability
- Spot Potential Confusion Early
- Avoid Expensive Disputes
  - USPTO database
  - Untappd
  - State Trademark database
  - Secretary of State database
  - Alcohol and Tobacco Tax Trade Bureau COLA Registry
  - Major search engines
  - Social media sites
  - Industry websites/forums
  - White pages/yellow pages of major cities
  - International database(s)

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- Search beyond beer
  - Check other alcoholic beverages, breweries, distilleries, meaderies, wineries
  - Search for your intended goods (glassware, apparel, etc.)
  - Search for your intended services (restaurant services, wedding venue, retail, etc.)

If you don't search, what could happen?

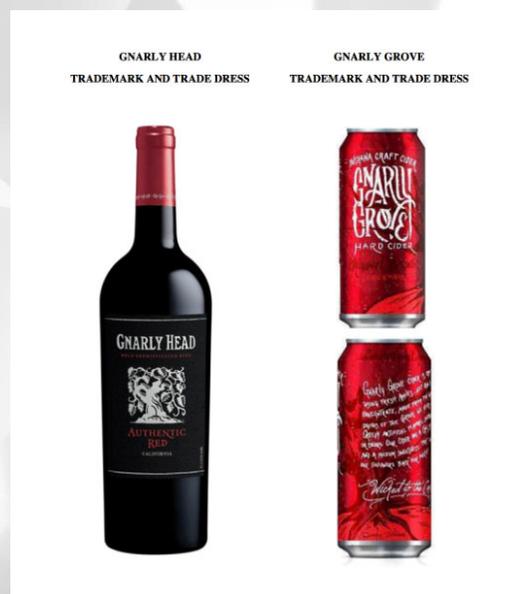
Injunction against selling your product

Payment of infringement damages

Payment of attorney's fees and court costs

Unplanned rebrand

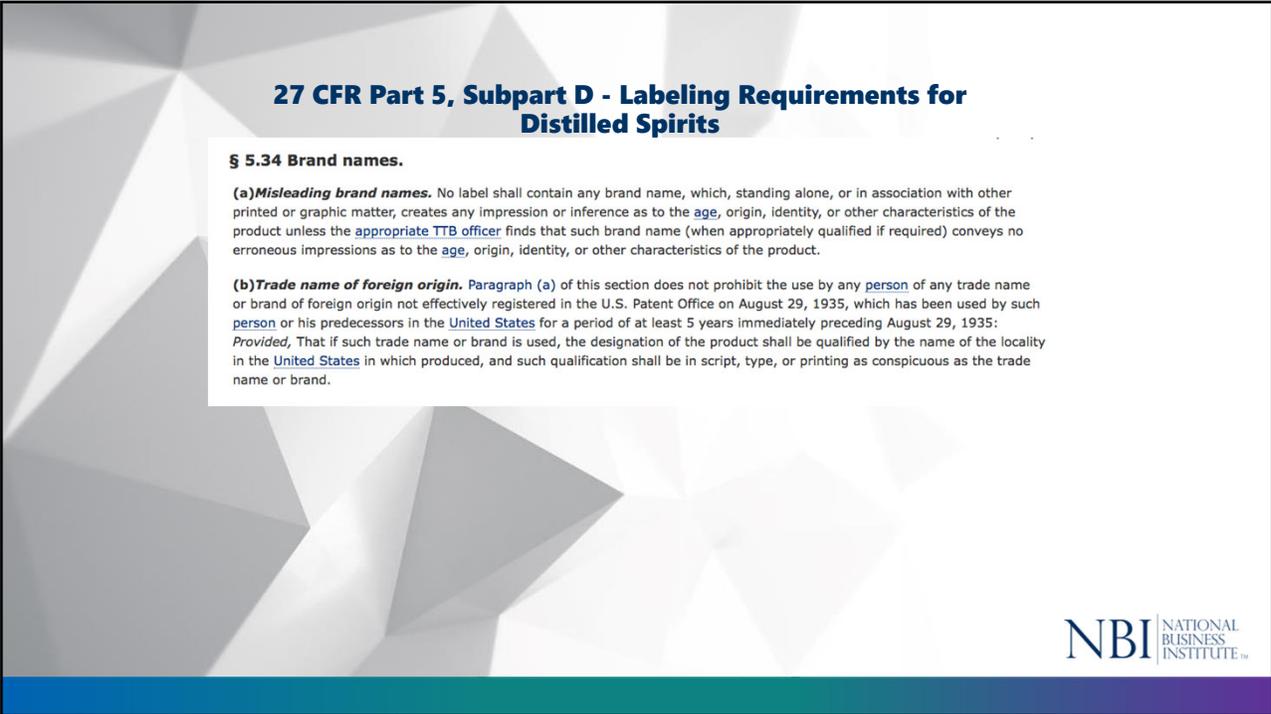
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## COLA (Certification/Exemption of Label/Bottle Approval) database



ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
U.S. Department of the Treasury

### COLA Registry

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

TTB F 5102.31: Application For and Certification/Exemption of Label/Bottle Approval

- Search Public COLA Registry
- COLAs Online FAQs
- Contact Us
- Public COLA Registry Manual
- Download Public COLA Registry Manual
- COLAs Online Login

**Search Results: COLAs**

Printable Version  
Save Search Results To File

1 to 11 of 11 (Total Matching Records: 11)

TTB ID	Permit No.	Serial Number	Completed Date	Fanciful Name	Brand Name	Origin	Origin Desc	Class/Type	Class/Type Desc
18393001000090	DSP-IN-21004	180001	12/19/2016	CHARLIE CHERRY	HOTEL TANGO	19	INDIANA	601	FRUIT FLAVORED LIQUEURS
19027001000054	DSP-IN-21004	190003	02/15/2019	N/A	HOTEL TANGO	19	INDIANA	101	STRAIGHT BOURBON WHISKY
19027001000055	DSP-IN-21004	190004	02/11/2019	SINGLE BARREL	HOTEL TANGO	19	INDIANA	101	STRAIGHT BOURBON WHISKY
19027001000056	DSP-IN-21004	190005	02/11/2019	GOLF GIN	HOTEL TANGO	19	INDIANA	210	GIN
19027001000057	DSP-IN-21004	190006	02/11/2019	LIMA LEMON	HOTEL TANGO	19	INDIANA	609	OTHER FRUITS & PEELS LIQUEURS
19027001000058	DSP-IN-21004	190008	02/12/2019	OSCAR ORANGE	HOTEL TANGO	19	INDIANA	609	OTHER FRUITS & PEELS LIQUEURS
19027001000059	DSP-IN-21004	190007	02/12/2019	ROMEO RUM	HOTEL TANGO	19	INDIANA	419	OTHER RUM (GOLD)
19027001000060	DSP-IN-21004	190007	02/11/2019	VICTOR VODKA	HOTEL TANGO	19	INDIANA	301	VODKA 40-50 PROOF
19027001000061	DSP-IN-21004	190008	02/15/2019	N/A	HOTEL TANGO	19	INDIANA	141	BOURBON WHISKY
19050001001136	DSP-IN-21004	190008	02/28/2019	N/A	HOTEL TANGO	19	INDIANA	102	STRAIGHT RYE WHISKY
19058001000106	DSP-IN-21004	190009	03/07/2019	AMERICAN SAMBUCA	HOTEL TANGO	19	INDIANA	617	SAMBUCA

Printable Version  
1 to 11 of 11 (Total Matching Records: 11)

• <http://www.ttbonline.gov/colasonline/publicSearchColasBasic.do>

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## Registering Trademarks at the State, Federal and International Level

### State Application

- Clearance Search
- Application
  - Trademark
  - Description of Goods/Services
  - Date of First Use
  - Specimen
  - Owner Info
- Registration

State of Indiana  
Office of the Secretary of State  
CERTIFICATE OF TRADEMARK REGISTRATION

I, Corrie Lawson, Secretary of State of Indiana, hereby certify that in accordance with the application filed in this office on behalf of the following:

**BIG WOODS BREWING CO LLC**  
60 MOLLYS LN  
NASHVILLE, IN 47448 USA

The TRADEMARK described below has been duly registered in this office pursuant to Indiana Code 24-2-1-1 et seq.

**BIG WOODS BREWING:**

This mark is used in connection with the following: **BEER, PURE WATER**

DISCLAIMER:

Class of Merchandise: 32  
Date of Registration: 12/30/2009  
Date of first use in the United States: 09/01/2009

FILE No.: 2010-0011  
Date of Expiration: 12/29/2014  
Date of first use in Indiana: 09/01/2009



In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, on April 18, 2017.

*Corrie Lawson*  
Corrie Lawson  
Secretary of State

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**United States of America**  
United States Patent and Trademark Office

BIG WOODS BREWING COMPANY

**Reg. No. 4,504,552**  
**Registered Apr. 1, 2014**  
**Int. Cl.: 30**

**TRADEMARK**  
**PRINCIPAL REGISTER**

BIG WOODS BREWING COMPANY LLC (INDIANA LIMITED LIABILITY COMPANY)  
40 MOLEY LANE  
NASHVILLE, IN 47448  
FOR: DRY SPICE RUB FOR MEATS AND FISH, IN CLASS 30 (U.S. CL. 40)  
FIRST USE 6-30-2011; IN COMMERCE 6-30-2011  
THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BREWING COMPANY", APART FROM THE MARK AS SHOWN.  
SER. NO. 85-991,167, FILED 6-13-2012  
ELLEN PERKINS, EXAMINING ATTORNEY

  
*Michelle K. Lee*  
Deputy Director of the United States  
Patent and Trademark Office

**Federal Application**

- Clearance Search
- Application
- Trademark
- Description of Goods/Services
- Date of First Use
- Specimen
- Owner Info
- Office Action
- Publication
- Registration

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## Benefits of Registration

**Federal** trademark registration provides several advantages:

- constructive notice to the public of the registrant's claim of ownership of the trademark
- a legal presumption of the registrant's ownership of the trademark and the registrant's exclusive right to use the trademark nationwide on or in connection with the goods and/or services listed in the registration
- the ability to bring an action concerning the trademark in federal court
- the use of the U.S. registration as a basis to obtain registration in foreign countries
- the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods
- the ability to claim social media accounts associated with the trademark

**State** registration is cheaper and quicker. Protects "home turf"

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# Madrid Protocol

Antigua and Barbuda	Denmark	Republic of Korea (South Korea)	Romania	Belarus	Ireland	Mongolia	Swaziland
Albania	Estonia	Kazakhstan	Serbia	Switzerland	Israel	Mozambique	Tajikistan
Armenia	Egypt	Liechtenstein	Russian Federation	China	Iran	Mexico	Turkmenistan
Austria	European Union	Liberia	Sudan	Cuba	Iceland	Namibia	Turkey
Australia	Spain	Lesotho	Sweden	Curacao	Italy	Norway	Ukraine
Azerbaijan	Finland	Lithuania	Singapore	Cyprus	Japan	Oman	USA
Bosnia and Herzegovina	France	Latvia	Slovenia	Czech Republic	Kenya	Philippines	Uzbekistan
Bulgaria	United Kingdom	Morocco	Slovakia	Germany	Kyrgyzstan	Poland	Viet Nam
Bahrain	Georgia	Monaco	Sierra Leone	India	Democratic People's Republic of Korea (North Korea)	Portugal	Zambia
Bonaire, Saint Eustatius and Saba	Ghana	Moldova	San Marino				
Bhutan	Greece	Montenegro	Sao Tome and Principe				
Botswana	Croatia	Madagascar	Sint Maarten				
Benelux	Hungary	The Former Yugoslav Rep. of Macedonia	Syrian Arab Republic				

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# Community Trade Mark

1. Austria
2. Benelux
3. Bulgaria
4. Croatia
5. Cyprus
6. Czech Republic
7. Denmark
8. Estonia
9. Finland
10. France
11. Germany
12. Greece
13. Hungary
14. Ireland
15. Italy
16. Latvia
17. Lithuania
18. Malta
19. Poland
20. Portugal
21. Romania
22. Slovakia
23. Slovenia
24. Spain
25. Sweden

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## Trademark Likelihood of Confusion

Likelihood of Confusion Factors:



- (1) The degree of similarity between the marks including visual appearance, sound, connotation, commercial impression, and meaning
- (2) Relatedness of the goods or services (as described in the trademark application)
- (3) Similarities in established trade channels
- (4) The sophistication of the consumers
- (5) The fame of the trademark (amount of sales, amount spent on advertising, length of use of the mark, etc.)
- (6) The number and nature of similar marks in use in commerce on similar goods or in connection with similar services
- (7) Evidence of actual confusion
- (8) Evidence of concurrent use without evidence of actual confusion
- (9) Whether the trademark is used on a variety of goods or only used on a single product (family of marks or house mark)
- (10) The market interface between the applicant and the owner of the prior mark
- (11) The extent to which applicant has a right to exclude others from use of its mark
- (12) The extent of potential confusion, minor or substantial
- (13) Any other established fact probative of the trademark's use in commerce

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## Consent Agreements

The USPTO considers the following factors when reviewing a consent agreement:

- (1) whether the consent shows an agreement between both parties;
- (2) whether the agreement demonstrates that the goods travel in separate trade channels;
- (3) whether the parties agreed to restrict fields of use;
- (4) whether the parties described the efforts they will engage in to prevent confusion in the future; and
- (5) whether the marks have been used for a period of time without evidence of actual confusion.

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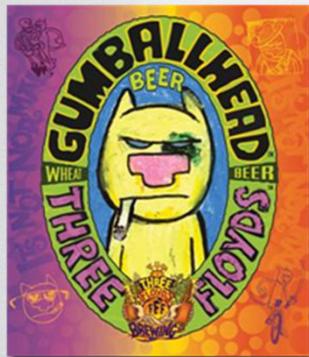
## Trademark Licensing Considerations

- IP Ownership
  - Licensor retains rights
  - Limited use by Licensee
- Quality Control
  - Licensor **MUST** monitor
  - Inspect design and final product
- Royalties
  - Determine current rates for similar businesses
  - Consider costs of production
- Term/Termination
  - How long?
  - Termination for breach, misuse of trademark, operating outside of territory, quality problems, etc.
  - Licensee Right of Renewal
- Indemnification
  - Licensor indemnify for infringement

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## Alcoholic Beverage Copyright Filing, Registration and Protection

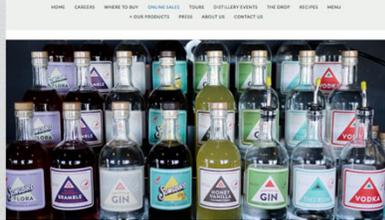


- Determine ownership of artwork (designer or brewery?)
- Does artwork incorporate other copyrighted works?
- Register works with U.S. Copyright Office – [copyright.gov](http://copyright.gov)



28

# Copyrights



Original works of authorship fixed in a tangible medium of expression

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## Copyrightable Works:

- Logo
- Labels
- Label Artwork
- Merchandise Artwork
- Website
- Marketing Materials

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## Trademark + Copyright



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## Benefits of Copyright Registration

- Public notice of ownership
- Ability to sue
- Statutory Damages (\$750-30,000 per infringement, \$150,000 if willful)
- Attorney's Fees
- Prima facie evidence of validity
- Easier to deal with online infringement

### Costs

- \$55 application fee
- Limited attorney time (or file yourself)

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# Trade Dress



- Protects overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others.
- May include design or configuration of product, labeling or packaging, décor or environment in which services are provided
- Cannot be functional
- Can be registered or unregistered
- Indefinite term

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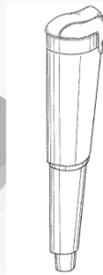
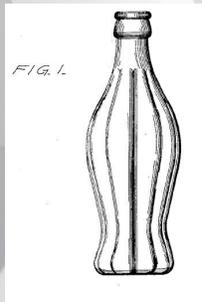
Patron Spirits International AG v. CB Spirits SARL, Opposition No. 91224686 (Trademark Trial & App. Bd.)

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## Design Patent

- Protects unique ornamental features
- Examination at USPTO – no unregistered or common law design rights
- Design must be: 1) ornamental 2) new 3) nonobvious
- Public use more than one year before filing can bar patent rights
- 15-year term



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## International – Call Foreign Counsel

- United States has now subscribed to the Madrid Protocol, which means that through a single application filed in the United States, protection can be obtained in the 60-plus countries, assuming there are no conflicts with existing registrations in those countries.
- European Union Trademark Office to gain protection in all 25 members of the European Union
- Common bars to registration:
  - Likelihood of confusion
  - Generic
  - Surname
  - Geographic
- Common obstacles:
  - Description of goods/services must be modified
  - Unacceptable specimen
  - Disclaimer

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## Trade Secrets – How, Why and What to Protect

Trade secret: confidential business information that provides a competitive advantage

### What to protect:

- recipes/formulations(?)
- proprietary sales and marketing plans
- pricing and distribution plans
- production goals
- growth strategies
- distributor relationship information
- management systems and techniques

### How to protect:

- limit knowledge and access to information only to individuals who require it
- have procedures and documents in place that restrict employees or contractors from disclosing certain information to others i.e. confidentiality agreements and non-disclosure agreements
- password-protect computers systems or programs with competitively sensitive information
- mark documents that contain confidential information and trade secrets

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ST. PAUL  
**Summit Brewing sues two former employees, alleging sharing of trade secrets**

Microbrewer accuses two of giving secrets to "direct competitor."

By Brandon Stahl (http://www.startribune.com/brandon-stahl/18649941) Star Tribune |  
DECEMBER 30, 2016 — 12:07PM

When Summit Brewing Company hired Jeffrey Spaeth in the summer of 1988, the fledgling St. Paul business was just getting on its feet as one of fewer than 20 craft brewers in the country.

Spaeth rose up through Summit's ranks to reach vice president of sales, along the way helping the company become one of the largest microbrewers in the United States amid explosive growth in the industry.

But now Summit is suing Spaeth and another longtime employee, Timothy Daly, accusing both of conspiring to sell the company's confidential trade secrets to high-level executives for "a direct competitor."

Neither Spaeth, his attorney, nor Daly, who was hired in 2000 as sales market manager, could be reached for comment. Summit's CEO, Mark Skutrud, declined to comment.

The lawsuit does not name the competitor, but Spaeth's LinkedIn page shows that he joined Minneapolis-based Surly Brewing Co. as a strategy consultant last May — two months after leaving Summit — and worked there until September.



According to an April 2016 report by the Brewers Association, which represents independent craft brewers, Summit was ranked among the top 50 breweries in the country based on sales volume. Their ranking at No. 29 was good for second-highest in the state, trailing New Ulm-based August Schell Brewing, which was ranked No. 27. Wisconsin has three microbrewers that rank higher than either Minnesota company.

In the lawsuit filed Thursday in Hennepin County, Summit alleged that Spaeth and Daly had access to confidential information about the company, including plans for sales, marketing, pricing and distribution.

When Spaeth left the company in March 2016, he owned 2.5 percent of the company's stock and was given a "generous severance," according to the lawsuit.

But in mid-May 2016, the lawsuit claims that Skutrud became aware that Spaeth had "entered into an independent consulting agreement with Summit's direct competitor."

According to the lawsuit, in August 2016, Daly e-mailed Summit's confidential and trade secret information to Spaeth, which the lawsuit says he then sent on to the company's competitor. Daly was responsible for sales in territory encompassing northern Minnesota, northwestern Wisconsin and parts of the Twin Cities.

A Surly spokeswoman declined to comment.

Summit seeks at minimum \$50,000 from Spaeth and Daly.

brandon.stahl@startribune.com 612-674-4626 b\_stahl

Summit Brewing Co., which celebrated its 30th anniversary this year, is suing two longtime employees, accusing both of conspiring to sell

http://bitmedia.startribune.com/images/cows\_1459268402962\_craft-beer.jpg

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## **Non-Compete Agreements**

Non-compete covenants in employment contracts must be reasonable. When proving reasonableness, an employer must be able to prove the following two elements:

- The employer has a legitimate interest to be protected by the agreement
- The agreement is reasonable in scope as to duration, geography and activity

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## **Top Brewery and Distillery Advertising Mistakes – Social Media and More**

- Get on Untappd
- Claim domain names, social media accounts early
- Routinely check/update contact info
- Trademark registration is a prerequisite to dealing with search engine, social media platforms
- Consider copyright registration for logos to claim statutory damages, get quicker resolution

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## **Brewery and Distillery Law in Indiana Intellectual Property and Advertising**

**By Kenan L. Farrell**

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Much of the same intellectual property law that applies to other industries also applies to breweries and distilleries. However, there are some additional beer and spirit-specific regulations that must also be considered. This material will provide an overview of intellectual property law as it applies to breweries and distilleries, exploring several beer and spirit-specific topics. The information and resources contained in the following text and accompanying slides are intended to help you protect your brewery or distillery client with an effective intellectual property strategy.

### **A. Critical Considerations When Choosing Names**

A trademark is a word, slogan, symbol, design, or combination of these elements, which identifies and distinguishes the goods or services of one party from others.

For breweries and distilleries, protectable trademarks can include the business name, product name(s) and company slogans (e.g. MillerCoors, Coors Light®, The Silver Bullet®).

In addition to words and slogans, trademark law will also protect distinctive logo designs that indicate the source of goods (e.g. beer, vodka, apparel, glassware) or services (e.g. restaurant services, retail services, event hosting). Whether in a liquor store, at a beer festival or on a restaurant menu, a distinctive logo can catch the consumer's eye and be the difference between them choosing your beverage versus all the others. If the customer enjoys the beverage, the distinctive logo can help that customer find that beverage again on a subsequent shopping trip or refer the beverage to others.

"Distinctive" (or "distinctiveness") means that a trademark is unique, not descriptive, and is recognized as an identifying source of goods or services. Beyond the marketing advantages of selecting a distinctive trademark, there are important trademark-related reasons.

A trademark should be unique in that it doesn't copy a trademark already in existence. That may seem difficult given how many trademarks are already being used, but finding the right trademark to represent your goods or services is worth the effort. Common terms used in brewery and distillery trademarks like "brewing company," "ale," and "bourbon" usually cannot be protected as trademarks and must be disclaimed in any application. Common images used in logos (e.g. hops, barley, barrels, still) can mostly be freely used without concern, so long as the logo is not a copy or reproduction of another logo.

There's no clear rule regarding how "unique" a trademark must be or, in other words, how similar it can be to another trademark. That is only answered after an analysis of the following factors, of which comparing the trademarks is only the first factor:

- (1) The degree of similarity between the marks including visual appearance, sound, connotation, commercial impression, and meaning
- (2) Relatedness of the goods or services
- (3) Similarities in established trade channels
- (4) The sophistication of the consumers
- (5) The fame of the trademark (amount of sales, amount spent on advertising, length of use of the mark, etc.)
- (6) The number and nature of similar marks in use in commerce on similar goods or in connection with similar services
- (7) Evidence of actual confusion
- (8) Evidence of concurrent use without evidence of actual confusion
- (9) Whether the trademark is used on a variety of goods or only used on a single product (family of marks or house mark)
- (10) The market interface between the applicant and the owner of the prior mark
- (11) The extent to which applicant has a right to exclude others from use of its mark
- (12) The extent of potential confusion, minor or substantial
- (13) Any other established fact probative of the trademark's use in commerce

In addition to being unique, distinctiveness requires that a trademark not be descriptive. Descriptiveness is measured on the following spectrum:

- Fanciful – invented words
- Arbitrary – common word in a meaningless context

- Suggestive – tends to indicate the nature, quality, or a characteristic of the products or services but requires imagination on the part of the consumer to identify the characteristic
- Descriptive –has a dictionary meaning which is used in connection with products or services directly relating to that meaning
- Generic – common name for the products or services

Importantly, fanciful, arbitrary and suggestive trademarks (referred to as “inherently distinctive” marks) are registrable with the USPTO without proof of distinctiveness. For descriptive trademarks, additional evidence must be provided to the USPTO showing that the consuming public recognizes the trademark as an identifying source of the goods/services. This evidence can include surveys, marketing history, awards, media recognition and any other material that supports a claim of distinctiveness. Accordingly, it is often more costly and difficult to register a “descriptive” trademark.

Every trademark should be subject to a clearance search several times during its lifetime. An initial search should be conducted when selecting a new trademark to check availability and be sure it won’t infringe on any existing trademarks. Once use has begun, regular searches should be conducted to spot confusion early in case a potential infringer should appear. Dealing with trademark confusion situations early is almost always easier and less expensive.

For breweries and distilleries, there are a large number of databases that should be searched when clearing a new trademark. At least the following databases must be searched:

- USPTO database
- State Trademark database
- Secretary of State database
- Alcohol and Tobacco Tax Trade Bureau COLA Registry
- Major search engines
- Social media sites
- Industry websites/forums
- White pages/yellow pages of major cities
- International database(s)

Searching must be conducted beyond just beer or spirits, as there could potentially be confusion with other types of beverages, wineries, restaurants, distributors, etc. The client should brainstorm (to the best of their ability at the

time) all intended goods or services for the trademark. All of those potential uses should be checked in the clearance search.

Failing to conduct a search could lead to several undesirable outcomes. Remedies for trademark infringement include injunction against sales, payment of damages and attorney fees, and often an unplanned rebrand.

## **B. Trademark Clearance, Filing and Protection - Top Mistakes Made by Attorneys**

Registering a trademark at the state, federal or international level is a very important step in protecting your rights. While not very expensive, the application process can be difficult for some clients and non-trademark attorneys, so it is often best to consult with a trademark professional before filing. Benefits of registration are numerous and include the following:

- constructive notice to the public of the registrant's claim of ownership of the trademark
- a legal presumption of the registrant's ownership of the trademark and the registrant's exclusive right to use the trademark nationwide on or in connection with the goods and/or services listed in the registration
- the ability to bring an action concerning the trademark in federal court
- the use of the U.S registration as a basis to obtain registration in foreign countries
- the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods
- the ability to claim social media accounts associated with the trademark

Due to the specific laws and regulations of foreign countries, international applications should almost always be carried out by qualified foreign counsel. To simplify protecting trademarks in multiple countries, the United States has now subscribed to the Madrid Protocol, which means that through a single application filed in the United States, protection can be obtained in 60-plus countries, assuming there are no conflicts with existing registrations in those countries.

If protection is desired solely within Europe, a "Community Trade Mark" application may be filed with the European Union Trademark Office to gain protection in all members of the European Union.

As mentioned previously, to be registrable a trademark must be unique, identify a source of goods/services and be distinctive. Common bars to registration are based on lack of distinctiveness, often based on the trademark being descriptive, or a likelihood of confusion with a pre-existing application or registration.

Trademark licensing can be valuable to both licensor and licensee. From the licensor's perspective, licensing allows opportunities to gain additional profit through licensing royalties, grow an existing brand without the need to expand operations, all while retaining ownership of the licensed intellectual property. On the other hand, a licensee can enjoy enhanced marketability of its own products due to the use of a known trademark, thus increasing profitability.

Breweries and distilleries can frequently expect to encounter licensing provisions in contracts, whether for promotions, collaborations, franchising or to resolve an unexpected dispute.

### **C. Trade Dress and Design Patent**

Trade dress, which is related to trademark law, and design patents both protect three-dimensional designs but serve different purposes within the law. The purpose of design patents is to encourage innovation by protecting the non-functional ornamental design of a product. Many companies use design patents to provide a period of exclusivity when they can recoup their investment in a design. On the other hand, trade dress serves two slightly different purposes. Similar to design patents, trade dress protects an owner's property rights but, significantly, it also serves to prevent consumer confusion.

Trade dress law differs from state to state. Generally, trade dress laws are meant to protect overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others. This promotes consumer protection by allowing consumers to associate a product or service with a particular source. For breweries or distilleries, protectable trade dress may include the design or configuration of product, labeling or packaging, or the décor or environment in which services are provided. Note that, like trademarks, trade dress cannot be functional.

To be registrable, a trade dress must be used in commerce as a source identifier and be distinctive. However, rights in unregistered trade dress can be established at common law simply by adoption and use in commerce. Like trademarks, trade dress infringement requires a showing of likelihood of confusion.

Design patent protection requires that a design be ornamental, new and nonobvious over any prior art. Design patents must go through an examination process with the USPTO (the small entity filing fee is \$200). There are no unregistered or common law design rights in the United States. Design patent infringement requires a showing that an ordinary observer would find the designs in dispute to be substantially the same.

It is important to advise clients of the one-year public use bar that can prevent the acquisition of design patent rights. In other words, a design patent application must be filed within one year of public disclosure of the design.

#### **D. Alcoholic Beverage Copyright Filing, Registration and Protection**

Copyright law applies for breweries and distilleries in much the same way as for any business regularly producing creative works that it doesn't want copied. Copyrightable works include labels, label artwork, certain elements of the company website, the logo, marketing materials and merchandise artwork.

For a relatively inexpensive filing fee (\$55), registering a work with the U.S. Copyright Office provides several valuable benefits:

- Public notice of ownership
- Ability to sue in federal court
- Statutory Damages (\$750-30,000 per infringement, \$150,000 if willful)
- Attorney's Fees
- Prima facie evidence of validity
- Easier to deal with online infringement

#### **E. Trade Secrets in Brewery and Distillery Law - How, Why and What to Protect**

A trade secret is any confidential business information that provides a competitive edge. Such information is not protected by copyright, trademark or patent law because, by its very nature, the information cannot be publicly disclosed. A famous example of a trade secret is the recipe for Coca-Cola, safely protected in a bank vault for almost a century. Perhaps surprisingly, beer recipes are typically not treated as trade secrets and are often freely shared by breweries and industry websites. Rather, breweries and distilleries are often more concerned with protecting financial-related information such as the following:

- proprietary sales and marketing plans
- pricing and distribution plans
- production goals
- growth strategies
- distributor relationship information
- management systems and techniques

Trade secret protection can last indefinitely so long as the information is kept secret and not disclosed. Issues most often arise when an employee leaves to join a competitor and takes information with him/her. It may not be possible to prevent all loss of business information, but every brewery should at least take the following commercially reasonable steps to protect trade secrets:

- limit knowledge and access to information only to individuals who require it
- have procedures and documents in place that restrict employees or contractors from disclosing certain information to others i.e. confidentiality agreements and non-disclosure agreements
- password-protect computers systems or programs with competitively sensitive information
- mark documents that contain confidential information and trade secrets

#### **F. Brewery and Distillery Confidentiality/Non-Disclosure Agreements**

A “confidentiality” or “non-disclosure” agreement outlines confidential material, knowledge, or information that parties wish to share with one another for certain purposes, but wish to restrict access to by third parties. As discussed above, commercially reasonable steps must be taken to protect valuable trade secrets. One such step often includes having employees with access to proprietary information sign a confidentiality agreement, which sets forth the obligations of confidentiality and remedies in case of breach.

Often, these do not need to be stand-alone agreements as confidentiality or non-disclosure language can be included in a standard employment agreement.

#### **G. Review Tips: Non-Compete Agreements**

Indiana courts have long held that non-compete covenants in employment contracts are generally disfavored by the law, and as such, must be carefully

scrutinized before being enforced. In order for a non-compete agreement to be enforceable under Indiana law, it must be reasonable.

When proving reasonableness, an employer must be able to prove the following two elements:

- The employer has a legitimate interest to be protected by the agreement
- The agreement is reasonable in scope as to duration, geography and activity

If desired, breweries and distilleries should work closely with employment counsel to draft reasonable non-compete language for exiting employees.

## **H. Top Brewery and Distillery Advertising Mistakes - Social Media and More**

Recent real-life advertising mistakes by breweries and distilleries will be covered in the presentation slides. The following general tips have been derived from their mistakes:

- Check and secure domain names and social media accounts early in the trademark selection process
- Seek federal registration of intellectual property (registration is often a prerequisite to obtaining any sort of enforcement assistance from social media platforms or search engines)
- Routinely check and update contact information posted online and on social media accounts.

**[Supplementary presentation slides on following pages]**





1



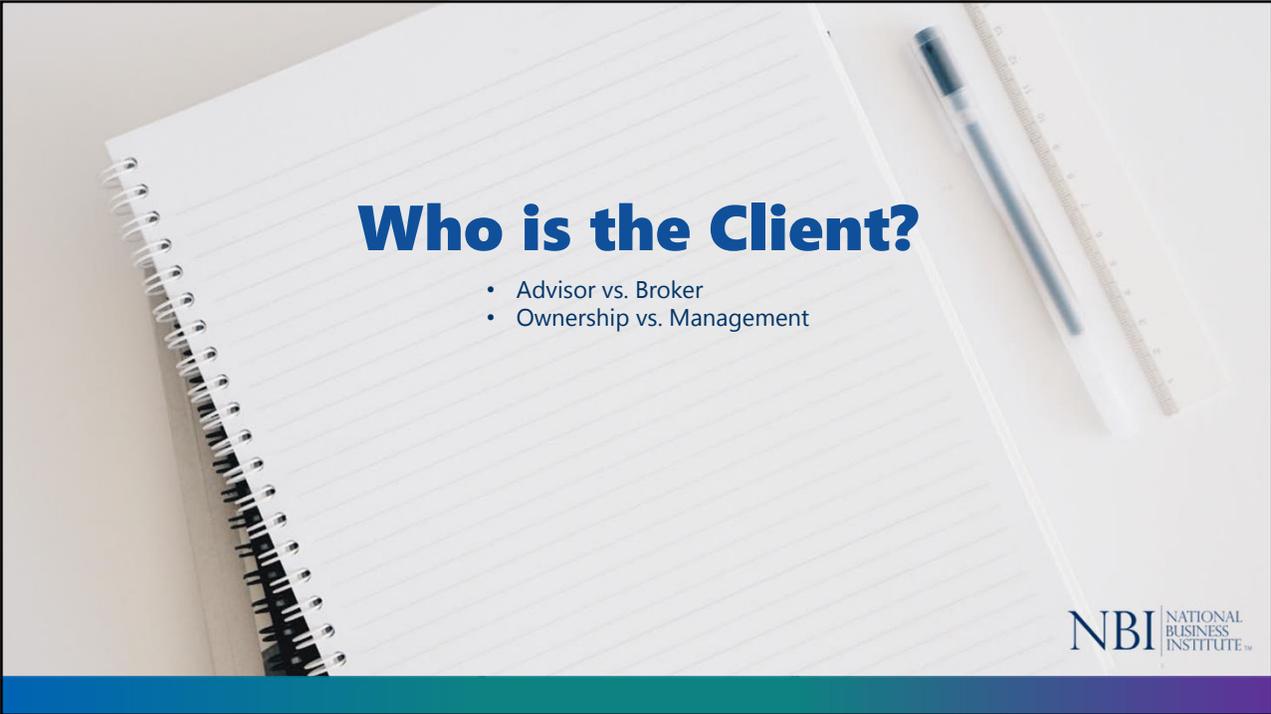
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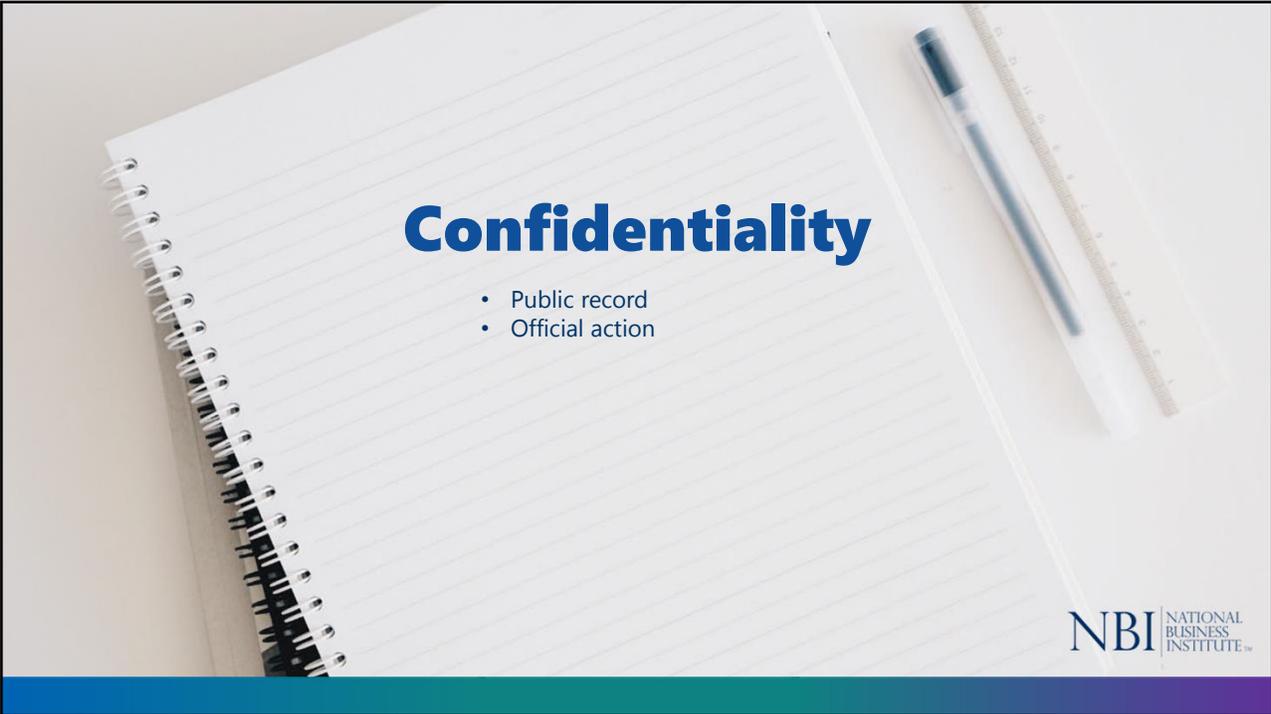
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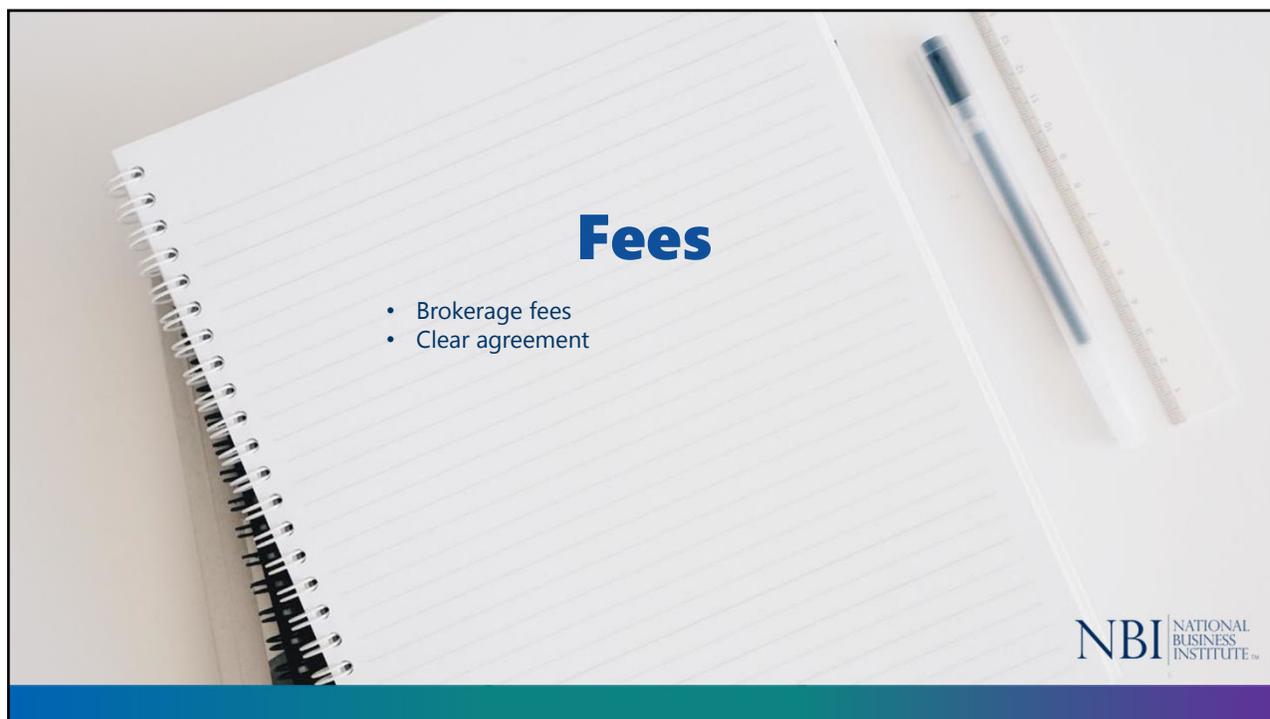
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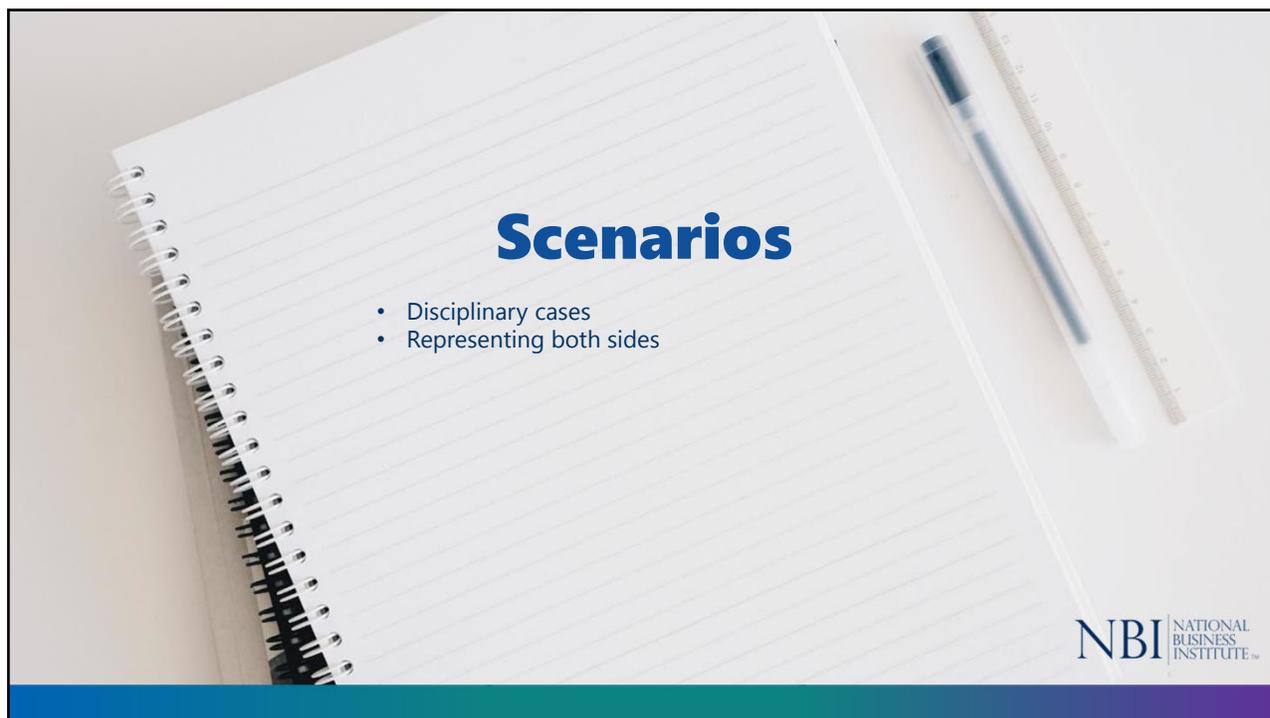
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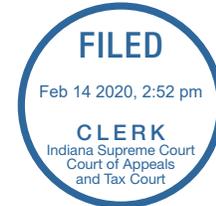
**Questions?**

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# In the Indiana Supreme Court

In the Matter of: Scott A. Adams,  
Respondent

Supreme Court Case No.  
19S-DI-144



## Published Order Approving Statement of Circumstances and Conditional Agreement for Discipline

Pursuant to Indiana Admission and Discipline Rule 23(12.1)(b), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below.

**Stipulated Facts:** Count 1. Respondent was hired by “Client 1” to obtain a guardianship over Client 1’s three grandchildren. Respondent prepared petitions for appointment of a guardian but never filed them. Respondent erroneously told Client 1 that the petitions had been filed, and thereafter did not respond to Client 1’s numerous requests for information. Respondent eventually refunded all attorney fees paid by Client 1.

Count 2. Respondent owns a business account and an IOLTA trust account. From 2011 until 2019, Respondent annually certified his business account as an IOLTA account. In February 2019, Respondent certified his IOLTA account with the Clerk and closed the certification for the business account.

Count 3. Respondent was hired by “Client 3” to represent her in a probation violation matter, accepted a \$1,000 retainer, and thereafter did no work on the case and did not respond to Client 3’s attempts to reach him. Respondent did not refund the \$1,000 fee to Client 3 until after she filed a grievance with the Commission.

Count 4. “Client 4” hired an Illinois law firm to represent him in a post-dissolution matter in Marion County and hired Respondent to serve as local counsel. Respondent was given a \$3,500 payment to serve as local counsel. Shortly thereafter Client 4 terminated the services of the Illinois firm, and Respondent was advised his services were no longer needed. Illinois counsel unsuccessfully tried for several months to obtain a refund of the \$3,500 for Client 4, which Respondent did not provide until after Client 4 filed a grievance with the Commission.

Count 5. “Client 5” hired Respondent to represent him in various expungement matters and paid Respondent a \$2,000 retainer. Respondent filed expungement petitions in Hamilton and Marion Counties in April 2019. The Hamilton County Prosecutor filed an objection arguing the petition was statutorily noncompliant, and the court scheduled a hearing. Respondent did not advise Client 5 of the hearing, neither Respondent nor Client 5 appeared at

the hearing, and the expungement petition was denied as a result. Client 5 was unable to contact Respondent for several months and eventually hired successor counsel, who amended the Hamilton and Marion County petitions and succeeded in obtaining expungements for Client 5 in those counties. Respondent was successful in obtaining an expungement for Client 5 in a third county, and he reimbursed Client 5 for the successor counsel fees in the Hamilton and Marion County cases.

The parties cite Respondent's pattern of misconduct and substantial experience in the practice of law as facts in aggravation. In mitigation the parties cite Respondent's lack of prior discipline, his cooperation with the disciplinary process, and his engagement with JLAP to address factors contributing to his misconduct.

**Violations:** The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

1.3: Failing to act with reasonable diligence and promptness.

1.4(a)(3): Failing to keep a client reasonably informed about the status of a matter.

1.4(a)(4): Failing to comply promptly with a client's reasonable requests for information.

1.15(g): Failing to certify that all client funds which are nominal in amount or to be held for a short period of time are held in an IOLTA account.

1.16(d): Failing to refund unearned fees after termination of representation.

The parties further agree that Respondent's failure to properly certify his IOLTA account with the Clerk also violated Admission and Discipline Rule 2(f).

**Discipline:** The Court, having considered the submission of the parties, now approves the following agreed discipline:

For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law for a period of 180 days, beginning March 26, 2020, with 60 days actively served and the remainder stayed subject to completion of at least two years of probation with JLAP monitoring.** The Court incorporates by reference the terms and conditions of probation set forth in the parties' Conditional Agreement, which include:

- (1) Respondent shall have no violations of the criminal law, Rules of Professional Conduct, or Admission and Discipline Rules during his probation.
- (2) Respondent shall promptly report to the Commission any violation of the terms of Respondent's probation.
- (3) If Respondent violates the terms of his probation, the stay of his suspension may be vacated and the balance of the stayed suspension may be actively served without automatic reinstatement.

Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). Notwithstanding the expiration of the minimum term of probation set forth above, Respondent's probation shall remain in effect until it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(16).

The costs of this proceeding are assessed against Respondent. Pursuant to the parties' stipulation, the Court hereby orders Respondent to pay the following expenses in separate checks to be transmitted to the Commission: (1) \$76.36, payable to the Commission for investigative expenses; and (2) \$250.00, payable to the Clerk for court costs. The expenses of the hearing officer will be separately submitted.

With the acceptance of this agreement, the hearing officer appointed in this case is discharged.

Done at Indianapolis, Indiana, on 2/14/2020.



LOUISE H. RUSH  
Chief Justice of Indiana

All Justices concur.

In the  
Indiana Supreme Court



In the Matter of: Seth B. Haynes,  
Respondent

Supreme Court Case No.  
21S-DI-281

## Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Jeffrey L. Marchal, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Disciplinary Complaint," the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

**Facts:** The Commission filed its disciplinary complaint against Respondent on June 8, 2021. Respondent was served but did not file an answer. The hearing officer granted the Commission's motion for judgment on the complaint and issued his report on December 13, 2021. No petition for review has been filed, although the Commission has filed a brief on sanction.

Respondent was hired, and paid a \$1,000 retainer, by the father of "Client" for purposes of pursuing on Client's behalf a civil lawsuit concerning an alleged breach of a verbal lease agreement. Respondent never filed a lawsuit, but falsely told Client he did and that a \$7,000 judgment had been awarded to her. In subsequent communications with Client, Respondent made various false excuses why the judgment had not yet been paid. Eventually, Client contacted the clerk and learned no lawsuit had been filed on her behalf. Client's father then called Respondent and demanded a refund of the retainer and an additional \$8,000 remittance. Respondent agreed to remit payment, and he refunded the \$1,000 retainer to Client, but he made no other payment. Prior to ending his representation, Respondent never advised Client of the statute of limitations applicable to her claim or the fact she may have an actionable malpractice claim against him.

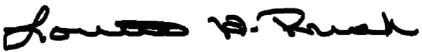
**Violations:** The Court finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

- 1.3: Failing to act with reasonable diligence and promptness.
- 1.4(a)(3): Failing to keep a client reasonably informed about the status of a matter.
- 1.4(b): Failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions.
- 1.16(d): Failing to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation.
- 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

**Discipline:** For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law in this state for a period of not less than one year, without automatic reinstatement, beginning April 7, 2022.** Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(18). Reinstatement is discretionary and requires clear and convincing evidence of the attorney's remorse, rehabilitation, and fitness to practice law. *See* Admis. Disc. R. 23(18)(b).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 2/24/2022.

  
\_\_\_\_\_  
Louise H. Rush  
Chief Justice of Indiana

All Justices concur.

In the  
Indiana Supreme Court

In the Matter of: Grant E. Helms,  
Respondent

Supreme Court Case No.  
21S-DI-262



Published Order Revoking Probation and Imposing Suspension

On July 19, 2021, this Court entered an order approving the parties' conditional agreement for discipline and suspending Respondent from the practice of law for a period of 365 days, effective May 20, 2021, with 90 days actively served and the remainder stayed subject to completion of 24 months of probation with monitoring by the Indiana Judges and Lawyers Assistance Program. Respondent's discipline arose from his January 2021 conviction for possession of methamphetamine, and the terms of his probation prohibited "the consumption of any mind-altering substances except as validly prescribed[.]" Our disciplinary order further provided, consistent with the terms of the conditional agreement, that "[i]f Respondent violates the terms of his probation, the stay of his suspension may be vacated and the balance of the stayed suspension may be actively served without automatic reinstatement."

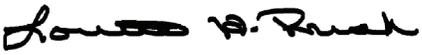
On June 16, 2022, the Commission filed a "Verified Notice of Probation Violation," pursuant to Admission and Discipline Rule 23(16)(c), asserting Respondent tested positive for methamphetamine in March 2022, a result verified by a confirmatory positive test in May 2022. Respondent has filed a response acknowledging his probation violation and requesting to continue his probationary period with additional requirements.

Upon consideration of the materials before us, we conclude that revocation of probation is warranted and that the full balance of Respondent's stayed suspension should be actively served without automatic reinstatement. Accordingly, Respondent's probation is hereby revoked.

**Respondent shall be suspended from the practice of law for a period of not less than 275 days, without automatic reinstatement, beginning September 15, 2022.** Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(18)(b).

The costs of this proceeding are assessed against Respondent.

Done at Indianapolis, Indiana, on 8/5/2022.

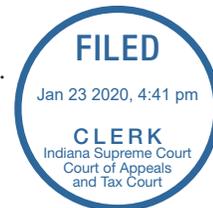
-  \_\_\_\_\_  
Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

# In the Indiana Supreme Court

In the Matter of: James R. Lisher,  
Respondent

Supreme Court Case No.  
19S-DI-535



## Published Order Approving Statement of Circumstances and Conditional Agreement for Discipline

Pursuant to Indiana Admission and Discipline Rule 23(12.1)(b), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below.

**Stipulated Facts:** Respondent employed nonlawyer Heather Brant from 2001 until 2018. Respondent delegated broad authority to Brant to handle most office tasks, including client communication, banking, and electronic court filing. Respondent also failed to maintain appropriate trust account records.

Over the course of several months in 2018, Brant stole several thousand dollars from the firm’s operating account, overdrafted the firm’s trust account, and fraudulently created several purported court orders and other legal documents. Brant’s improper actions were enabled in significant part by Respondent’s failure to appropriately supervise her.

The parties cite Respondent’s substantial experience in the practice of law as a fact in aggravation. In mitigation the parties cite among other things Respondent’s lack of prior discipline, his lack of dishonest or selfish motive, his restitution to affected clients, and his cooperation with the disciplinary process.

**Violations:** The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

Ind. Professional Conduct Rules:

1.15(a): Failing to maintain and preserve complete records of client trust account funds.

5.3(b): Failing to make reasonable efforts to ensure that the conduct of a nonlawyer employee over whom the lawyer has direct supervisory authority is compatible with the professional obligations of the lawyer.

Ind. Admission and Discipline Rules:

23(29)(a)(3): Failing to keep records or ledgers detailing the nominal amount of attorney funds held in a trust account, showing the amount and dates of attorney

funds disbursed or deposited, and a running balance of the amount of attorney funds held in the trust account.

23(29)(a)(7): Failing to keep reconciliation reports for a trust account.

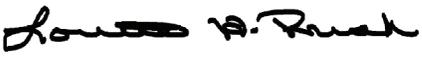
23(29)(c)(7): Failing to reconcile internal trust account records with periodic bank account statements.

**Discipline:** The parties propose the appropriate discipline is a 60-day suspension with automatic reinstatement. The Court, having considered the submissions of the parties, now approves the agreed discipline.

For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law for a period of 60 days, beginning March 5, 2020**. Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the period of suspension, provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, the hearing officer appointed in this case is discharged.

Done at Indianapolis, Indiana, on 1/23/2020.

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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

In the  
**Indiana Supreme Court**



In the Matter of: Christopher D. Stidham,  
Respondent

Supreme Court Case No.  
21S-DI-466

**Published Order Approving Statement of Circumstances and  
Conditional Agreement for Discipline**

Pursuant to Indiana Admission and Discipline Rule 23(12.1)(b), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below.

**Stipulated Facts:** Respondent served as the elected Clerk-Treasurer for the City of Portage from January 2012 through the end of 2019. He applied for admission to the Indiana bar in March 2016 and was admitted to the Indiana bar in October 2016. At the time of his bar application but prior to his bar admission, Respondent, in his capacity as Clerk-Treasurer, was engaged in an illegal scheme involving payments to three companies controlled by his then-girlfriend. This criminal conduct came to light in 2019, Respondent was charged with official misconduct in 2020, and Respondent pled guilty to an amended charge of conflict of interest in 2021.

As a result of his conviction of a crime punishable as a felony, Respondent has been under an order of interim suspension since August 10, 2021.

**Violation:** The parties agree that by failing to disclose on his bar application his payments as Clerk-Treasurer to the entities controlled by his then-girlfriend, Respondent violated Indiana Professional Conduct Rule 8.1(b).

**Discipline:** The parties propose the appropriate discipline is a 180-day suspension with automatic reinstatement, retroactive to the date of interim suspension. The Court, having considered the submissions of the parties, now approves the agreed discipline.

For Respondent’s professional misconduct, the Court **suspends Respondent from the practice of law for a period of 180 days, beginning August 10, 2021.** At the conclusion of the period of suspension, provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

The costs of this proceeding are assessed against Respondent. Pursuant to the parties’ stipulation, the Court hereby orders Respondent to pay \$250.00 by check made payable and transmitted to the Clerk of the Indiana Supreme Court. Because the costs taxed are payable to

the Clerk for court costs, the Clerk shall retain the funds in their entirety upon receipt. The expenses incurred by the Commission will be submitted separately.

With the acceptance of this agreement, the hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 1/6/2022.

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LOUISA H. RUSH  
Chief Justice of Indiana

All Justices concur.



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