



BOOZE
BARRISTERS
ALCOHOL INDUSTRY NEWS



ALCOHOL INDUSTRY HAPPY ABOUT PASSAGE OF REPUBLICAN TAX BILL

HOWEVER, TAX SAVINGS WILL NOT LIKELY TRICKLE DOWN
TO RETAILERS AND CONSUMERS



Everyone seems to have an opinion on the Tax Cut and Jobs Act pushed through Congress by Republicans and signed by President Trump earlier this year. With so many divergent opinions out there, it's hard to tell partisan blustering from genuine analysis. But one thing is clear: the alcohol industry is happy with the legislation.

The Craft Beverage Modernization and Tax Reform Act is nestled within the headline-grabbing Tax Cut and Jobs Act. Wine and craft beer producers say the reduction in excise taxes will allow producers to invest in their companies and in some cases add jobs.

According to Wine Institute, the new law will reduce excise taxes on small to medium-sized wineries by 55 to 70 percent. The law allows large excise tax credits on annual production up to 750,000 gallons. The more wine a company produces, the more advantageous the tax credit. For the first time, sparkling wine counts toward the tax credits.

The amount of the excise tax dropped from \$1.57 to \$1.07 per gallon. At the same time, the alcohol concentration threshold for applying the excise tax increased from 14 percent alcohol by volume to 16 percent meaning more wine varieties do not meet the alcohol concentration requirement for federal excise tax.

"Wine Institute applauds today's Congressional action to enact the first reduction in wine excise taxes in over 80 years and only the second reduction in the nation's history," Wine Institute said in a December 20 press release. "The comprehensive tax legislation ... will provide significant benefits for all wineries." President Trump signed the Tax Cuts and Jobs Act two days later.

Brewers are also happy with the tax reforms. Like vintners, brewers will see substantial reduction in excise taxes.

"Under the bill, the federal excise tax on beer will be reduced to \$3.50/barrel (from \$7/barrel) on the first 60,000 barrels for domestic brewers producing less than 2 million barrels annually, and reduced to \$16/barrel (from \$18/barrel) on the first 6 million barrels for all other brewers and all beer importers," Brewers Association president and CEO Bob Pease explained in a December 20 article. "The bill maintains the current \$18/barrel rate for barrelage over 6 million. In total, this represents more than \$142 million in annual savings, which will allow America's small brewers — who are

manufacturers and entrepreneurs — to reinvest in their businesses, expand their operations, and hire more workers."

Reinvestment of excise tax savings has been a key bone of contention between proponents and opponents of the Tax Cut and Jobs Act. Proponents have said business owners -- including those benefiting from the Craft Beverage Modernization and Tax Reform Act -- will use the savings to improve their operations, grow their businesses and hire more workers. Opponents have said business owners will simply pocket the money and thus widen the gap between the US economy's have and have-nots.

Only time will tell what the outcome will be and how the tax savings will be invested. But, after a long fought battle, it is unlikely suppliers will pass their savings on to retailers and consumers.

TTB CONTINUES JOINT TASK FORCE CRACK-DOWN ON PAY-TO-PLAY RETAILER INCENTIVES

NOW IS THE TIME TO AUDIT INTERNAL COMPLIANCE PROTOCOLS



The U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") continues its crackdown on "pay-to-play" schemes involving alcohol retailers throughout the U.S. and specifically the South Florida area. Last year, the TTB announced that it was conducting a joint operation with the Florida Division of Alcoholic Beverages and Tobacco ("DABT") into what it described as "the largest trade practice enforcement operation that TTB has initiated to date." Based on media accounts, Miami retailers including various bars, hotels and restaurants may come under attack based on complaints filed by industry members.

The TTB's jurisdiction over retailers has frequently been questioned but now the agency is pairing with state regulators to further its objectives. Aside from its recent and public partnership with the DABT, the TTB also announced its partnership with the Illinois Liquor Control Commission and has previously worked with the New York State Liquor Authority and Massachusetts Alcohol Beverage Control Board. In 2009, 10 Illinois wine distributors paid over \$800,000 as a result of a TTB investigation into payments made by distributors to retailers for shelf space. Less than a year ago, the TTB reached a \$750,000 settlement with a Massachusetts distributor that had spent approximately \$120,000 in payments to Boston retailers in exchange for favorable product placement and shelf space.

Under federal and state tied-house laws, it is unlawful for an alcohol beverage manufacturer or distributor to give anything of value, either directly or indirectly, to any alcohol beverage retailer (e.g. bar, hotel or restaurant) unless such gift is expressly permitted by law. Additionally, retailers cannot purchase any products from a supplier to the exclusion, in whole or in part, of other suppliers' products based on any prohibited arrangement or agreement. "Pay-to-play" schemes generally involve some form of payment or gift by an alcohol beverage supplier to an on- or off-premise retailer in exchange for tap or shelf space and in some cases even exclusivity.

The validity of these restrictive laws has frequently been challenged as being violative of First Amendment rights. However, such challenges have generally failed and recent activity throughout the country indicates that the TTB is taking an aggressive approach in enforcing compliance. Smaller businesses are most affected by tied-house restrictions because they are at a disadvantage overall in competing with larger, national retailers that can more easily benefit from legal inducements.

For now, large fines and more monitoring in the nation's most populous states mean that Florida producers, distributors and retailers should improve internal monitoring of tied house law compliance. In-house compliance programs and audits may need an upgrade to avoid big fines and greater government oversight. Miami-based Southern Glazer's Wine & Spirits agreed in December to pay a record \$3.5 million civil penalty after its New York salespeople engaged in illegal "credit card swipes." This and other alleged practices led Southern Glazer's and the New York's State Liquor Authority to sign a corporate compliance agreement the NYSLA says is one of the first of its kind. While "pay-to-play" schemes are often viewed as common industry business practices, most are illegal. There are only limited exemptions to tied-house regulations and current practices may be placing a retailer's alcohol license at risk. As the TTB and DABT continue their investigation into unlawful trade practice schemes in Florida, now is the time for compliance audits of current alcohol programs and promotions. Below are a few guidelines on what every producer, distributor and retailer should know and do immediately:

- Develop in-house inspection protocols and procedures for on-site compliance checks or government agent visits;
- Accepting or offering anything of value in exchange for preferential purchasing or exclusive shelf or display space on licensed premises is unlawful;
- Review current promotional programs and employee incentive programs for potential tied-house concerns;
- Managers, sales representatives and in-house marketers should be trained in tied-house laws and prohibitions relating to sponsorship and signage agreements.

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love SLING

1 OZ GIN 

- 1 Pour the gin, grenadine and cherry brandy into shaker.
- 2 Add sour mix, ice, then pour club soda to taste.
- 3 Shake gently.
- 4 Pour & serve.

1/2 OZ. Cherry
 Brandy 

1 DASH SOUR MIX

EQUAL PARTS OF LIME JUICE AND PLAIN SIMPLE SYRUP

1/2 OZ GRENADINE
 splash club soda

SWEET & SOUR KISS

1 Rub rim of glass with grapefruit juice and sugar.

2 Pour grapefruit juice, lime juice, and sugar, mixing until sugar dissolves in cocktail glass.

3 Pour in ice, tequila, and club soda last

4 Garnish with a wedge of grapefruit and serve

 1/4 CUP
TEQUILA

1/4 CUP CLUB SODA

1/4 CUP GRAPEFRUIT
JUICE


1 TBSP FRESH
LIME JUICE
& SUGAR


Grapefruit Wedge



THE FIRM BEHIND THE KNOWLEDGE

STRIVING TO BE AT THE FOREFRONT OF EMERGING INDUSTRY TRENDS



LewisFox is a business and litigation law firm focusing on highly complex areas of regulatory law that require dedicated effort and long-term practical experience. Our attorneys focus their practices primarily in the areas of alcohol regulatory law, cannabis business consulting, criminal law, civil and administrative litigation and regulatory compliance guidance. Our years of experience and collaboration with industry leaders also enables clients to benefit from our trusted relationships.

PRACTICE HIGHLIGHTS

- Complete business permitting, including federal, state and local licensing and business permitting for suppliers, distributors and retailers
- Alcohol related land use and zoning approval processes for new project development or alcohol service integration
- Regulatory compliance review and auditing including corporate disclosure requirements, and operational guidelines
- Counsel clients on trade practice and compliance issues relating to social media and marketing guidelines, direct shipping, brand sponsorships, and cooperative advertising
- Ancillary permitting for collateral hospitality industry amenities such as spas, health clubs and salons
- Defense against regulatory enforcement investigations and administrative and/or criminal charges
- Legislative lobbying and consulting with federal, state and local government agencies
- Acquisition and sale of alcohol licenses including due diligence and transaction closing
- Management and tracking of multi-jurisdictional licensing projects in Florida

ABOUT THE PARTNERS

ROBERT F. LEWIS focuses his practice on the laws governing alcohol industry members at all three tiers as well as tobacco, and other regulated products. Rob has accumulated over 25 years of experience in the alcohol industry including previously serving in law enforcement and as a special agent with the State of Florida Division of Alcoholic Beverages and Tobacco. Rob's experience includes working with foreign and domestic alcohol industry clients on a wide variety of issues including alcohol licensing and structuring of alcohol service operations, alcohol trade practice analysis and consulting, defending regulatory enforcement actions as well as state and federal investigations of alcohol industry members, administrative litigation, land use and zoning analysis and approval processes, and state and local government lobbying efforts. Rob has also served as an expert witness on matters relating to alcohol beverage law in Florida.

MARBET LEWIS has focused her practice on the laws governing the alcohol industry and the manufacture, importation, and sale of alcohol beverage products since 2004. She represents clients in all aspects of alcohol and business licensing in Florida including alcohol licensee mergers and acquisitions, negotiation of asset purchase agreements and required alcohol use provisions, license transfers and licensing due diligence, trade practices, alcohol product advertising and review of marketing agreements, importation agreements, label approvals, and regulatory compliance guidance. Her experience also includes enforcement action defense and administrative litigation, zoning and land use due diligence and approval processes, and state and local government regulatory compliance. She works with domestic and foreign suppliers, wholesalers and a broad range of retailers.

ALEXANDER F. FOX entered private practice by starting his own firm in 2001. Mr. Fox handles a broad range of criminal matters for individuals, partnerships, corporations and financial institutions, including health care fraud, grand jury investigations, white collar defense, witness representations, corporate internal investigations and post conviction litigation and appeals. Prior to managing a private practice, he served as an Assistant State Attorney in the Office of the State Attorney in Miami, Florida. As prosecutor, he prosecuted a wide variety of criminal cases. Alex is a native Miamian who, aside from having years of experience in the legal field in Miami, has ties to the community that allow him to better serve his clients. Mr. Fox is a member of the Florida Bar, United States District Court for the Southern and Middle Districts of Florida, United States Court of Appeals, Eleventh Circuit and has appeared Pro Hac Vice in Federal and State courts throughout the United States.

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ATTORNEYS AT LAW

Our professionals have helped shape regulations and represent industry members for over 35 years across Florida.

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