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Department of Revenue

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Nick Jordan, Secretary
Debbi Beavers, Interim Director

Sam Brownback, Governor

MEMORANDUM

TO: Representative Janice Pauls, Chairman, House Committee on Federal and State Affairs

FROM: Debbi Beavers, Interim Director of Kansas Alcoholic Beverage Control

DATE: 21 January 2016, Revised 1 February 2016

SUBJECT: House Bill 2467, Response from the TTB

Madam Chair and members of the committee.

Below I am providing information from an email exchange with Susan Evans, Executive Liaison for Industry and State Matters for the TTB. She will be working with their Regs and Rulings Division to obtain this response on official letterhead. She anticipates this can be sent to us next week. I will forward the official response once I receive it.

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RE: FW: [EXTERNAL]KS ABC Request for Information - cider and mead made at a microbrewery

Evans, Susan B. 'Debbi.Beavers@kdor.ks.gov'

01/21/2016 01.10 PM

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This message has been replied to.

The confusion comes in because TTB has jurisdiction under two laws, the Internal Revenue Code, which defines wine as between 0.5% and 24% alcohol by volume, and the Federal Alcohol Administration Act which defines wine as between 7% and 24% alcohol by volume. Both laws require permits, but only for making wine as defined by that law. If you make cider over 7% you need both permits; if you only make cider under 7% you only get the IRC permit.

That is described on this page http://www.ttb.gov/faqs/alcohol_faqs.shtml?Cider#Cider under FAQ CID30:

CID30: Do I need to obtain a permit from TTB to produce apple wine (cider) for commercial purposes?

Yes. If you are producing wine (including cider) that is at least 0.5 percent alcohol by volume for commercial purposes, you must first establish winery premises, obtain a bond, and receive permission from TTB to operate. (See 27 CFR part 24, subpart D.) In addition, the FAA Act requires that anyone wishing to engage in the business of producing or blending wine (including cider) that contains not less than 7 percent alcohol by volume must first obtain a basic permit from TTB. (See 27 CFR part 1.) A basic permit under the FAA Act is not required for producers who only make wine that is less than 7 percent alcohol by volume. For more information on qualification requirements, see http://www.ttb.gov/wine/federal_app.shtml.

If you produce only tax-exempt cider that satisfies all of the requirements of 26 U.S.C. 5042(a)(1), and 27 CFR 24.76 you are not required to qualify as a bonded wine premises. (See CID25 for more information about these requirements.)

Susan Evans
Executive Liaison for Industry and State Matters
Alcohol and Tobacco Tax and Trade Bureau
202.453.2142

-----Original Message-----
From: Debbi.Beavers@kdor.ks.gov [mailto:Debbi.Beavers@kdor.ks.gov]
Sent: Thursday, January 21, 2016 1:53 PM
To: Evans, Susan B. <Susan.Evans@ttb.gov>
Subject: Re: FW: [EXTERNAL]KS ABC Request for Information - cider and mead made at a microbrewery

Susan:

One of our legislators showed information to me on the TTB website that if the hard cider is under 7%ABV, it does not have to be manufactured on a bonded wine premise? I have searched on the website and cannot find it.
Is that correct?

They also want me to send over my email exchange, so I will be sending the below email over and wanted to let you know that.

Thank you.

Debbi Beavers, Interim Director
Kansas Alcoholic Beverage Control
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Email: debbi.beavers@kdor.ks.gov
www.ksrevenue.org/abc.html

From: "Evans, Susan B." <Susan.Evans@ttb.gov>
To: "'debbi.beavers@kdor.ks.gov'" <debbi.beavers@kdor.ks.gov>,
Date: 01/15/2016 02:23 PM
Subject: FW: {EXTERNAL}KS ABC Request for Information - cider and mead made at a microbrewery

Hi Debbie, hope all is well with you. The recent changes to the Internal Revenue Code do not affect permit or qualification requirements--therefore cider must still be made at a winery under TTB regulations and we still allow alternation between a brewery and winery if someone wants to make both beer and wine/cider at the same facility. The change in the law regarding the hard cider broadened the criteria for a cider to be eligible for the reduced hard cider tax rate. Here is a recap of the changes:

Section 335 of the PATH Act modifies the definition of wine that is eligible for the "hard cider" tax rate by increasing the allowable alcohol content from less than 7 percent to less than 8.5 percent alcohol by volume; increasing the allowable carbonation level from 0.392 to 0.64 gram of carbon dioxide per hundred milliliters of wine; and authorizing the use of pears, pear juice concentrate and pear products and flavorings. These changes apply to hard cider removed after December 31, 2016.

Also, FAA requirements are unchanged, so ciders containing 7% or more alcohol by volume still require label approval.

Hope this helps—let me know if you have any more questions.

Susan Evans
Executive Liaison for Industry and State Matters Alcohol and Tobacco Tax and Trade Bureau
202.453.2142

-----Original Message-----
From: Debbi.Beavers@kdor.ks.gov [mailto:Debbi.Beavers@kdor.ks.gov]
Sent: Thursday, January 14, 2016 4:25 PM
To: Evans, Susan B. <Susan.Evans@ttb.gov>
Cc: Berry, Jennifer <Jennifer.Berry@ttb.gov>; Flores, Kaori < Kaori.Flores@ttb.gov>; Fontaine, Kara T <Kara.Fontaine@ttb.gov>; Hupp, Ramona <Ramona.Hupp@ttb.gov>
Subject: RE: [EXTERNAL]KS ABC Request for Information - cider and mead made at a microbrewery

Hi Susan:

We've had legislation proposed again to allow our micro-breweries to also make hard cider. There was a statement by the lobbyist that there had been changes at the TTB level. Could you verify if there is any new information on this subject?

Legislation proposed would also define hard cider as up to 8.5%. I understand that the TTB does not provide COLAs for wines under 7%. The TTB will still provide a COLA for products over 7%, correct?

Thank you,

Debbi Beavers
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