

October 2018 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

TTB Issues Reduced Excise Tax Rate Guidance

The Tax and Trade Bureau issued [Industry Circular 2018-5](#) addressing certain scenarios where two or more domestic industry members would be treated as a "single taxpayer" and how this affects their eligibility to claim the tax credits or reduced tax rates available under the Craft Beverage Modernization and Tax Reform Act provisions.

B. THE COURTS

U.S. Supreme Court to Review State Residency Requirements

The U.S. Supreme Court has [granted a petition](#) filed by the Tennessee Wine and Spirits Retailers Association to review conflicting lower court decisions, the most recent of which invalidated Tennessee's two-year residency requirement for retail license applicants. The resolution of the issue that has split lower courts on the narrow residency matter, whether the non-discrimination principle of the "dormant" Commerce Clause applies not only to producers and products but to state laws regulating the wholesale- and retail-tiers of the industry, could have more far-reaching consequences including as to whether an out-of-state retailer has a right to ship direct to consumers within a state that allows that ability for in-state retailers.

U.S. Court Rules on Direct Shipping

A U.S. District Court for the Eastern District of Michigan [decision](#) has authorized out-of-state retailers to sell and ship wine directly to Michigan consumers, granting those retailers the same direct-to-consumer privileges extended to in-state retailers in 2016 Michigan legislation. Like the case above concerning residency, the final disposition of this case, pending a possible appeal, will have significant consequences for the direct-to-consumer alcohol beverage market.

C. THE STATES

Sales, Distribution and Franchise:

California

Signed by the Governor, [Senate Bill 1283](#) would revise the definition of brewpub-restaurant license to require that the licensed premises have a minimum 7-barrel commercial brewing system located permanently onsite, that is capable of producing at least seven barrels of beer per brewing cycle; increase the minimum amount to be manufactured by the licensee to 200 barrels; require that beer produced on the premises be offered for sale to consumers for consumption on or off the premises; authorize a brewpub-restaurant licensee to label, bottle, package, or refill any container with beer produced on the licensed premises; to sell beer produced by the licensee for consumption off the premises; and to donate or sell beer manufactured by the licensee to

specified nonprofit organizations. The bill would except donated beer from inclusion in the calculation of minimum amounts of beer production required to be manufactured and sold for purposes of the brewpub-restaurant license.

New Jersey

The state Division of Alcoholic Beverage Control (ABC) issued a [ruling](#) intended to clarify certain abilities of limited brewery licensees (up to 300,000 barrels annual production) and attempted to strike a balance between the interests of full retail license holders, such as restaurants and bars, and the craft brewing industry. The ruling restricted limited breweries to holding up to 25 on-site events per year and up to 12 off-site events per year, subject to authorization by the ABC. It also limited to an annual maximum of 52 the number of private parties occurring on the premises of a limited brewery. While allowing certain snack food items to be available in a brewery tasting room, the ruling prohibits food trucks and the provision of local restaurant menus for order-in purposes. Patrons would, however, be able to bring their own food into the brewery's tasting room. Following strong and vocal opposition from a number of brewers, consumers and legislators, enforcement of the ruling was suspended and stakeholders will reconvene for further discussions.

Taxation:

Pennsylvania

The Pennsylvania Department of Revenue has extended the effective date of its [Sales and Use Tax Bulletin 2018-02](#) concerning taxation on the sale of malt or brewed beverages by manufacturers until July 1, 2019. Direct sales tax to customers at breweries and tap rooms will remain sales tax exempt until the effective date. The delay will allow the Department and those affected by the provisions additional time to evaluate an appropriate sales tax collection method and rate, and to properly update the Tax Reform Code.

Trade Practice & Other:

California

Signed by the Governor, [A.B. 2452](#) revises various advertising prohibitions for alcohol licensees when conducting instructional events at a retailer's location, to, among other things, allow for pictures, illustrations, and depictions of the retailer's premises and for the name, address, telephone number, email address, Internet Web site address, and any other electronic media of the licensee upon whose licensed premises the event will be held.

Signed into law, [A.B. 2914](#) prohibits an alcoholic beverage licensee from selling, offering, or providing cannabis or cannabis products, including the sale of an alcoholic beverage that contains cannabis, and clarifies existing law banning alcoholic beverages containing tetrahydrocannabinol or cannabinoids, regardless of source.

District of Columbia

Approved by the Council and the Mayor, the [Omnibus Alcoholic Beverage Regulation Amendment Act of 2018](#), among many provisions, allows manufacturers who make beer, wine or spirits to create collaboration products with other manufacturers of the same class. Only one manufacturer is required to have its premises in the District and containers of the collaboration product need to display the names of both manufacturers. Collaboration products not manufactured on the licensed premises are permitted to be sold for on-premises consumption. Only collaboration beers in growlers are permitted to be sold for off-premises consumption. The bill also authorizes manufacturers to participate in extended hours programs available to other licensees, allows manufacturers to sell and deliver alcohol produced at their licensed establishment directly to consumers and to file for a one-day substantial change permit up to 12 times per calendar year, allowing for the on-premises consumption of alcoholic beverages for a specific event.

Michigan

Sent to the Governor for action, [House Bill 4668](#) seeks to prohibit the use, possession, and sale of marijuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits.