

2009 TTB Expo Presentation

Wine Law: Navigating the Simple and Not-so-Simple Statutory Provisions

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Curious about all Those Statutes ...

But It's too Much to Handle all at Once?

Introduction

- As a member of a regulated industry, proprietors of bonded wineries must be aware of the laws that govern the operations:
 - Industry compliance
 - Operate productively and successfully within the confines of the law
 - Pay correct rate of Federal excise tax in the correct manner, at the correct time

Introduction (Continued)

- TTB regulates the wine industry on multiple levels:
 - Production
 - Shipment
 - Trade Practices
 - Labeling
 - Import/Export
 - Tax
 - Qualification
 - Advertisement
- There are many Federal statutes that govern these activities
- Federal regulations are issued to provide guidance and instruction on the various statutes

Overview

- Primary Federal Statutes Related to Wine
- Specific Federal Regulations Related to Those Statutes
- How to Locate Applicable Provisions
- Interplay of the Federal Statutes
- Obscure but Important Issues in the Laws Related to Bonded Winery Operations

Entering the Business: Becoming
Qualified;
Obtaining TTB Approval

Qualification

- Two statutory provisions; two necessary approvals:
 - FAA Act provides that it is unlawful, except pursuant to a basic permit, to produce wine (27 U.S.C. § 203(b)(1)).
 - Internal Revenue Code provides that, before commencing operations, shall make an application to the Secretary, file a bond, and receive permission to operate (26 U.S.C. § 5351).

Qualification (Continued)

- Permit must be approved prior to commencing operations
- Approval required on certain applications submitted as a result of changes after qualification
 - W7 Changes After Qualification session provides extra insight on this area
- Legal ramifications of unlawful production

Commencement of Operations Prior to TTB Approval

- Immediate imposition of Federal excise tax at the full applicable rate:
 - 26 U.S.C. § 5041(f) — Illegally produced wine -
Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.
- Federal excise tax is due immediately at the time of production

Commencement of Operations Prior to TTB Approval (Continued)

- Loss of small producer tax credit:
 - 26 U.S.C. § 5041(c)(1) — Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States.

Commencement of Operations Prior to TTB Approval (Continued)

- If I am in this situation, can I keep my wine for personal use?
- If I am in this situation, can I still get my permit application approved?
- If I find myself in this situation, what do I do?

Commencement of Operations Prior to TTB Approval (Continued)

- Family use exemption:
 - 26 U.S.C. § 5042(a)(2)(a) — Wine for personal or family use. Subject to regulations prescribed by the Secretary...Any adult may, without payment of tax, produce wine for personal or family use and not for sale.
 - Was the wine intended for family use when produced without TTB approval, or was wine production commenced without the basic application and qualification having been approved?

Commencement of Operations Prior to TTB Approval (Continued)

- Property used in violation of internal revenue laws
26 U.S.C. § 7302:
 - It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

TTB's Voluntary Disclosure Program

- Consider TTB's voluntary disclosure program
- Outlined in Industry Circular 2004-5
 - Available online at www.TTB.gov
 - "A-Z index"
 - Industry Circulars
- Program allows for written or oral disclosure of matter

Commencement of Operations Prior to TTB Approval (Continued)

- Will I still be able to get my permit issued?
 - 27 U.S.C. § 204(a)(2)(B) — The following persons shall, on application therefor, be entitled to a basic permit... (2) Any other person unless the Secretary of the Treasury finds... (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely...to maintain such operations in conformity with Federal law ...

Commencement of Operations Prior to TTB Approval (Continued)

- Commencement of operations without TTB approval indicates past business experience and past violations of the laws related to alcohol.
- The FAA Act allows for this wine production activity to be taken into consideration for eligibility of a basic permit which authorizes one to conduct the same type of activity lawfully.
- Bottom line — WAIT BEFORE YOU PRODUCE.

Primary Federal Statutes Governing Wine

Primary Federal Statutes

- Four primary Federal statutes governing wine:
 - Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 201 *et seq.*
 - Internal Revenue Code (IRC), 26 U.S.C, Chapter 51
 - Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. § 211 *et seq.*
 - Webb-Kenyon Act, 27 U.S.C. § 22 *et seq.*

FAA Act

- Requires that a basic permit be obtained for:
 - Production
 - Import
 - Resale at wholesale
- Addresses:
 - Eligibility for basic permit
 - Refusal of permit and hearing on such refusal
 - Conditions of basic permit
 - Revocation, annulment, suspension

FAA Act (Continued)

- Unfair Competition and Unlawful Practices:
 - Tied house
 - Commercial bribery
 - Consignment sales
 - Exclusive outlet
- Labeling
- Advertising
- Bulk Sales and Bottling
- Penalties, Jurisdiction; Compromise of Liability

FAA Act and Interplay with other Federal Statutes

- Is the keystone statute for bonded winery operations and wine production
- Aimed primarily at regulating activities in and effecting interstate and foreign commerce
- Basic permit is conditioned upon compliance with all other Federal laws related to wine, including taxes
- 27 U.S.C. § 204(d) — A basic permit shall be conditioned upon compliance with the requirements of section 205 of this title (relating to unfair competition and unlawful practices) and of section 206 of this title (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.
- A violation of any of the following statutes could jeopardize status of FAA Act basic permit

FAA Act Regulations

- FAA ACT regulations located in Title 27, Code of Federal Regulations (CFR):
 - Part 4 – Labeling and Advertising
 - Part 8 – Exclusive Outlets
 - Part 9 – American Viticultural Areas
 - Part 10 – Consignment Sales
 - Part 13 – Label Proceedings
 - Part 24 – Wine
 - Part 27 – Imported Wine
 - Part 28 – Export
 - Part 70 – Procedure and Practice
 - Part 71 – Rules and Practice in Permit Proceedings

COLA Revocation

- Part 13 addresses label proceedings
- Part 13 deals with issuance, denial, revocation of Certificate of Label of Approval (COLA) and COLA exemptions:
 - 27 C.F.R. § 13.41 — [COLAs], certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on TTB Form 5100.31, may be revoked by the appropriate TTB officer upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations
- W9 Domestic Labeling presentation
- ALFD Booth

Internal Revenue Code

- 26 U.S.C. Chapter 51:
 - Subchapter A – Gallonage, Occupational Tax
 - Subchapter F – Bonded and Taxpaid Wine Premises
 - Part I – Establishment
 - Part II – Operations
 - Part III – Cellar Treatment and Classification of Wine
 - Part IV – General (tax on spirits in wine production, definitions)
 - Subchapter J – Penalties, Seizure and Forfeiture Relating to Liquors

IRC Regulations

- IRC regulations at 27 C.F.R. Part 24:
 - Subpart A – Scope
 - Subpart B – Definitions
 - Subpart C – Administrative and Miscellaneous Provisions
 - Subpart D – Establishment and Operations
 - Subpart E – Construction and Equipment
 - Subpart F – Production of Wine

IRC Regulations (Continued)

- Subpart G – Production of Effervescent Wine
- Subpart H – Production of Special Natural Wine
- Subpart I – Production of Agricultural Wine
- Subpart J – Production of Other Than Standard Wine
- Subpart K – Spirits
- Subpart L – Storage, Treatment and Finishing of Wine
- Subpart M – Losses of Wine
- Subpart N – Removal, Return, and Receipt of Wine
- Subpart O – Records and Reports

Interplay between FAA Act and IRC

- FAA Act and IRC are two primary statutes governing winery operations
- Both overlap in various ways and are similar in guidance
- Some differences do exist

FAA Act Definition of Wine

- Beverages made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake;
- Only if containing not less than 7 percent and not more than 24 percent of alcohol by volume;
- For nonindustrial use.

FAA Act Classes and Types of Wine

Class	Type
1. Grape	Table, Dessert
2. Sparkling Grape	Champagne, Crackling, Cremant
3. Carbonated Grape Wine	
4. Citrus	Orange, Grapefruit
5. Fruit	Apple, Plum
6. Other Agricultural Products	Honey, Raisin, Sake
7. Aperitif	Vermouth
8. Imitation, Substandard or Other than Standard	Rhubarb
9. Retsina	

IRC Definition of Wine

- Every kind of product...
 - Produced on bonded wine premises...
 - From grapes, other fruit (including berries), or other suitable agricultural products...
 - Containing not more than 24% alc. by vol
- Not taxable as wine if it contains less than $\frac{1}{2}$ of one percent alcohol by volume when removed

IRC Classes of Wine

- Standard Wine:
 - Natural wine
 - Special natural wine
 - Agricultural wine
- Other Than Standard Wine:
 - High fermentation wine
 - Heavy bodied blending wine
 - Spanish type blending sherry
 - Wine products not for beverage use
 - Distilling material
 - Vinegar stock
 - Other wine

26 U.S.C. §§ 5381 – 5387

Relabeling of Wine

- FAA Act makes it unlawful to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on wine held for sale in interstate or foreign commerce (27 C.F.R. § 4.30).
- FAA ACT regulations allow, upon written application and approval, for additional labeling in order to comply with State law.
 - W9 Domestic Labeling presentation
 - ALFD Booth

Wine Label Alterations

- 26 U.S.C. § 5662 – Any person who, without the permission of the Secretary, so alters as to materially change the meaning of any mark, brand, or label required to appear upon any wine upon its removal from premises subject to the provisions of subchapter F, or from customs custody, or who, after such removal, represents any wine, whether in its original containers or otherwise, to be of an identity or origin other than its proper identity or origin as shown by such stamp, mark, brand, or label, or who, directly or indirectly, and whether by manner of packaging or advertising or any other form of representation, represents any still wine to be an effervescent wine or a substitute for an effervescent wine, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, for each such offense.
- Criminal misdemeanor, in addition to violation of basic condition of FAA Act basic permit.

Government Warning Statement

- The Alcoholic Beverage Labeling Act (ABLA) requires that all alcoholic beverages bear the Government Warning statement regarding consumption of alcoholic beverages
- Not only dictates the content of the statement itself, but the placement and size of the statement as well

Government Warning Statement (Continued)

- ABLA – 27 U.S.C. § 211 *et seq.*
 - Definitions
 - Declaration of policy and purposes
 - Labeling requirement
 - Preemption of State law
 - Civil penalties
 - Injunction action to address violations
 - Authorization to compromise the violations

ABLA Regulations

- 27 C.F.R. Part 16:
 - Subpart A – Scope
 - Subpart B – Definitions
 - Subpart C – Health Warning Statement Requirements for Alcoholic Beverages
 - Subpart D – General Provisions
 - 27 C.F.R. §16.33 – Penalty Provisions: Civil penalty for ABLA violations adjusted for inflation. Current penalty for violations occurring after 10/23/96 is set at \$11,000 per penalty.

Interplay of FAA Act and ABLA Statutes

- ABLA violation can effect status of FAA Act basic permit.
- FAA Act basic permit is conditioned upon compliance with all Federal laws related to alcohol, including labeling provisions of ABLA.
- Additionally, TTB may take action against any person for ABLA violations by seeking civil penalties per violation under ABLA alone.
 - Any person can incur liability under ABLA.

Questions on ABLA

- What is the statute of limitations for an ABLA violation?
 - FAA Act provides for a 3-year limitation for violations (27 U.S.C. § 204(i)).
- Does 3-year time limit apply to ABLA as well?
- What if TTB takes action under both FAA Act and ABLA?



Statute of Limitations

- ABLA statute is silent on time limitations for seeking civil fines under the statute.
- Default provision of 28 U.S.C. § 2462 controls:
 - Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.
 - Civil penalties under ABLA alone – 5 year time limitation for imposition of civil penalties under ABLA.

More Questions on ABLA

- What if TTB were to take permit action for violations of ABLA?
- What if my product did not bear the Government Warning Statement at all or was not labeled in accordance with ABLA?
- Time limitation of the FAA Act would apply:
 - Three years from date of violation.

Webb-Kenyon Act: Shipment of Wine

- 27 U.S.C. §122:
 - “The shipment or transportation of any...vinous...or other intoxicating liquor of any kind, from one state...into any other state...or from any foreign country into any state....intended by any interested person therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any such law of such state...is prohibited.”

Webb-Kenyon Act: Shipment of Wine (Continued)

- Allows for a civil injunction action to be filed in Federal court to address the unlawful shipping activity.
- Is a Federal statute related to liquor.
- Condition of basic permit is based upon compliance with Webb-Kenyon Act.
- M23b – States presentation
- W11 – Direct Shipping Wine presentation
- <http://wineinstitute.org>

Addressing Violations

- A violation of one statute is a violation of the conditions of the FAA Act basic permit.
- Permit can be subject to revocation or suspension.
- The FAA Act, IRC, and ABLA allow for compromising the violations in lieu of administrative action against the basic permit or imposition of fines under the statute.

Addressing Violations (Continued)

- FAA Act at 27 U.S.C. § 207: The Secretary of the Treasury is authorized, with respect to any violation of this subchapter, to compromise the liability arising with respect to such violation.
- IRC at 26 U.S.C. § 7122: The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.
- ABLA at 27 U.S.C. § 219(b): The Secretary is authorized, with respect to any violation of this subchapter, to compromise the liability arising with respect to such violation upon payment of a sum for each offense, to be collected by the Secretary and to be paid into the Treasury ...

Locating the Provisions

- Where do I find all these wonderful statutes?
- FAA Act, ABLA, Webb-Kenyon Act, and Internal Revenue Code are available online at TTB Web site.
- www.ttb.gov
- <http://ecfr.gpoaccess.gov>

Other Ways to Obtain the Provisions

- Hard copy of law and regulations
 - Code of Federal Regulations available for purchase online from Government Printing Office
- <http://bookstore.gpo.gov/>

Useful Expo Sessions

- Important Expo sessions to consider:
 - Trade Practice Issues — M3a, M3b
 - Labeling Matters — W9
 - Application Matters:
 - Original and Changes after Qualification — W2, W7
 - Alternating Proprietors — W10
 - Shipment and Sales:
 - State Reps and TTB State Liaison — M23a, M23b
 - Export Assistance — M9

Useful Expo Sessions (Continued)

- Wine Production and Operations Issues:
 - Wine Treating Materials — W14
 - De-Alcoholization — W12
 - Lab Techniques — W13
 - Required Records — W4
 - Reports — W5
 - Taxes — W6
- TTB Audits and Investigations — M4b

Useful Expo Sessions (Continued)

- E-gov
 - Pay.gov
 - COLAs Online
- ALDF
- NRC
- Field Operations
 - Tax Audit Division
 - Trade Investigations Division

Contact Information

- **Perky Ramroth**
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- Please visit the Field Operations booth for applicable TID/TAD regional contacts