Common Compliance Issues

NORTH CAROLINA WINE GROWER’S ASSOCIATION CONFERENCE
JANUARY 28, 2021
ASHLEY KIRSCH – INVESTIGATOR - SOUTHEAST TRADE INVESTIGATION DIVISION
TTB Disclaimer

• This information is being presented to help the public to understand and comply with the laws and regulations that the Alcohol and Tobacco Tax and Trade Bureau (TTB) administers.
• It is not intended to establish any new, or change any existing, definitions, interpretations, standards, or procedures regarding those laws and regulations.
• In addition, this presentation may be made obsolete by changes in laws and regulations.
• Please consult the applicable laws and regulations for the most current requirements.
We are a bureau within the Department of the Treasury
We currently have about 480 employees
Our headquarters are in Washington, DC
The Office of Permitting and Taxation is in Cincinnati, Ohio
We have field districts located across the country
We have 4 laboratories located in Maryland and California
TTB’s Primary Responsibilities

• Qualification of producers/importers/distributors of alcohol and tobacco products through issuance of required permits

• Collection of excise taxes related to alcohol, tobacco, firearms, and ammunition

• Ensure compliance with laws and regulations through:
  o Revenue investigations and audits (protect the revenue)
  o Product integrity investigations (protect the consumer)
  o Trade practice investigations
Primary Federal Laws

Internal Revenue Code
(Protect the revenue)

- Tax payment
- Premises which protect the revenue
- Production
- Formulas (for some wines)

Federal Alcohol Administration Act
(Protect the consumer)

- Basic permits
- Labeling
- Viticultural areas
- Health Warning Statement
- Trade practices
Primary Federal Wine Regulations

Internal Revenue Code
(Protect the revenue)

- 27 CFR part 24 - Wine

Federal Alcohol Administration Act
(Protect the consumer)

- 27 CFR part 1 - Basic permit
- 27 CFR part 4 - Wine labeling
- 27 CFR part 9 – American Viticultural Areas
Basic Records - IRC

- Records must be generated for most every winery operation
- Records support tax payment
- Records support label claims
- Records flow to the TTB report filed by every plant
- 27 CFR part 24 - Subpart O - Records and Reports
- Most pitfalls can be avoided with good records
- May be a compilation of source documents or a summary
Recordkeeping

Records document what it is, and what you did with it

• Materials received and used e.g., grapes, apples, pears, treatment materials
• Acid and chemical records
• Wine produced
• Wine received or transferred in bond
• Wine bottled/kegged, or removed
Records - General

• Record operations as they occur
• Get and retain source documents
• Accurately identify alcohol content, quantities
• Keep the “pedigree” of the product clear
• Retain for 3 years from last required entry
• All records are subject to inspection by TTB
TTB’s GOAL

By examining your records, TTB should be able to verify if:

- Wine product is properly labeled
- All label claims are fully supported
- Only authorized materials were used
- Advertising, POS materials are appropriate
- Formula wines were made in compliance with an approved formula
What Do We Look For?

Product integrity (consumer protection)

• Required records
• Supporting documentation for label claims
• Standards of identity
What Do We Look For?

Revenue (tax compliance)

• Required records
• Supporting documentation for excise tax return information and payments
• Timely filing of reports and returns
• Security of premises
• Bond coverage
Taxable Removals

• Federal tax attaches when wine is produced
• Tax is determined when wine is removed from bonded premises for consumption or sale
• Tax is paid at a later date (deferred)
• Tax rate is based on alcohol content, materials used, and/or production method
CBMA Wine Tax Credits Made Permanent

• Starting in 2018, domestic wineries and importers could take advantage of temporary wine tax credits under the Craft Beverage Modernization Act (CBMA) provisions of the Internal Revenue Code if eligibility requirements were met
• These tax credits were made permanent at the end of 2020
• Also made permanent:
  ◦ Adjusted alcohol content for certain still wine tax classes from 14% to 16% alcohol by volume
  ◦ Ability to transfer CBMA tax credits to other wineries or bonded wine cellars
## Tax on Wine Removed 2018 - Present

### Tax Class

<table>
<thead>
<tr>
<th>Tax Class</th>
<th>Wines Gallons Per Calendar Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First 30,000</td>
</tr>
<tr>
<td>Still Wine</td>
<td></td>
</tr>
<tr>
<td>16% and under alcohol by volume (0.392g CO₂/100mL or less)</td>
<td>$0.07</td>
</tr>
<tr>
<td>Over 16 - 21% alcohol by volume (0.392g CO₂/100mL or less)</td>
<td>$0.57</td>
</tr>
<tr>
<td>Over 21 - 24% alcohol by volume (0.392g CO₂/100mL or less)</td>
<td>$2.15</td>
</tr>
<tr>
<td>Mead</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>$0.07</td>
</tr>
<tr>
<td>Low alcohol by volume wine</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>$0.07</td>
</tr>
</tbody>
</table>
## Tax on Wine Removed 2018 - Present

<table>
<thead>
<tr>
<th>Tax Class</th>
<th>Wines Gallons Per Calendar Year</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First 30,000</td>
<td>Over 30,000 up to 130,000</td>
</tr>
<tr>
<td>Artificially Carbonated Wine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 0.392g CO$_2$/100mL - injected or otherwise added</td>
<td>$2.30</td>
<td>$2.40</td>
</tr>
<tr>
<td>Sparkling Wine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 0.392g CO$_2$/100mL - naturally occurring</td>
<td>$2.40</td>
<td>$2.50</td>
</tr>
<tr>
<td>Hard Cider</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No more than 0.64g CO$_2$/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</td>
<td>$0.164</td>
<td>$0.17</td>
</tr>
</tbody>
</table>
What Do We Look For?

Trade practice

• Influence over industry members through:
  ◦ Tied-house
  ◦ Exclusive outlet
  ◦ Commercial bribery
  ◦ Consignment sales
Red Flags

• Late filed or non-filed reports and returns
• Insufficient bond coverage
• Shortage of bottled goods not taxpaid
• Removals shown on tax returns do not match reports of operation
• Excessive bulk losses reported with no claim filed
• Reports and returns signed by someone without signature authority
Common Violations Disclosed

• Lack of, or insufficient, required records
• Late filing or non-filing of reports and returns
• Failure to conduct required inventories
• Failure to maintain current permit file
• Insufficient supporting documentation for label claims
• Insufficient bond coverage
How to Avoid Violations

• Ensure complete and accurate daily record entry of operations conducted

• Maintain source documents to support entries into operations records

• Review bond coverage, operations conducted, and permit file periodically
How to Avoid Violations (Cont.)

• Maintain summary records as required and verify that reports and tax returns match

• Consult www.TTB.gov on a regular basis for updated information

• Evaluate internal controls periodically

• Ensure that all computerized records are backed up frequently and regularly
On TTB.gov

Common Compliance Issues in a TTB Bonded Wine Premises Audit

- https://www.ttb.gov/wine/wine-common-audit-issues

Maintaining Compliance in a TTB-Regulated Industry

- https://www.ttb.gov/business-central/industry-members-responsibilities
Reporting Violations: TTB

• Violations disclosed during an audit/investigation will be discussed with you, as well as proposed corrective actions
• Violations will be included in the investigation/audit report
• TTB may send you a notice of violations or a letter of findings
• Violations may result in TTB taking administrative action against your permit
  ◦ From a warning letter, up to and including, suspension or revocation
• Findings are made part of your official TTB file
  ◦ Additional administrative actions may be taken if violations are later found to be continuing
Voluntary disclosure of non-compliance

- TTB encourages industry members to voluntarily disclose violations upon discovery and take appropriate corrective action.
- These disclosures may mitigate actions taken by TTB, if any, in response to violations.
- See TTB Industry Circular 2004-5 for details:
- Submit your voluntary disclosure here:
  - [https://www.ttb.gov/contact-nrc](https://www.ttb.gov/contact-nrc)
Resources on TTB.gov

Wine FAQs
• https://www.ttb.gov/wine/wine-faqs

Subscribe to Automatically Receive the Weekly TTB Newsletter (via Email)
• https://public.govdelivery.com/accounts/USTTB/subscriber/new

Secure Email Communication with TTB
• https://www.ttb.gov/about-ttb/email-security
2022 Schedule of Semi-Monthly Tax Due Dates
• https://www.ttb.gov/tax-audit/2022-semi-monthly-due-dates

2022 Schedule of Quarterly Tax Due Dates
• https://www.ttb.gov/tax-audit/2022-quarterly-due-date

Current Wine Tax Rates
• https://www.ttb.gov/tax-audit/tax-and-fee-rates#wine

Due Dates for Operational Reports
• https://www.ttb.gov/tax-audit/due-dates-for-operational-reports

Sign up for Email Reminders for Tax Return and Operational Report Due Dates
• https://www.ttb.gov/news/automated-reminders-for-filing
Resources on TTB.gov

Wine Labeling
• https://www.ttb.gov/wine/labeling

Allowable Revisions to Previously Approved Labels
• https://www.ttb.gov/labeling/allowable-revisions

COLAs Online Customer Page
• https://www.ttb.gov/labeling/cola

Current Processing Times for Label Applications
• https://www.ttb.gov/labeling/processing-times
Resources on TTB.gov

Permits Online Tutorial
• https://www.ttb.gov/ponl/ponl-launch

Permits Online Customer Page
◦ https://www.ttb.gov/ponl/customer-support

Average Permit Processing Times
◦ https://www.ttb.gov/nrc/statistics-original-applications-to-operate
Formula Basics

Not all wine products require formula approval

Whether or not you need formula approval is based on:
• Ingredients
• Manufacturing methods

Formula requirements are NOT connected to:
• Alcohol content
• Eligibility for Hard Cider tax rate
• Whether or not the product will require TTB label approval
Formula Basics

Formulas, when required, must be obtained:

• **Domestic**: before product is produced and before applying for label approval (if needed)
• **Imported***: before applying for label approval and before product is removed from customs custody

Formulas are submitted by:

• **Domestic**: the producer (BW proprietor)
• **Imported***: U.S. importer (holder of an Importer’s Basic Permit)

*Only imported cider/perry products with 7% or more alc. by vol. are subject to formula requirements*
Resources on TTB.gov

Alcohol Beverage Formula Approval Home Page
• https://www.ttb.gov/formulation

Which Alcohol Beverages Require Formula Approval?
• https://www.ttb.gov/formulation/which-alcohol-beverages-require-formula-approval

Formulas Online Customer Page
• https://www.ttb.gov/formulation/customer-support
Wines with less than 7% alcohol by volume must be labeled in compliance with FDA Food Labeling

• FDA does not pre-approve labels for food products

• Questions?
  ◦ Call FDA’s Food Labeling and Standards Staff at 240-402-2371
## TTB Contacts

### Office of Permitting and Taxation

<table>
<thead>
<tr>
<th>Email</th>
<th><a href="https://www.ttb.gov/contact-nrc">https://www.ttb.gov/contact-nrc</a></th>
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</thead>
<tbody>
<tr>
<td>Telephone</td>
<td>Toll-free at <a href="877-TTB-FAQS" title="877-882-3277">877-TTB-FAQS (877-882-3277)</a></td>
</tr>
<tr>
<td>Address</td>
<td>National Revenue Center</td>
</tr>
<tr>
<td></td>
<td>550 Main Street, Suite 8002</td>
</tr>
<tr>
<td></td>
<td>Cincinnati, Ohio 45202</td>
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### TTB Tip Line

Report suspected fraud, diversion, and other illegal activity:

- Toll-Free: 855-882-8477
- Email: [https://www.ttb.gov/contact-id](https://www.ttb.gov/contact-id)
## TTB Contacts

<table>
<thead>
<tr>
<th>Division</th>
<th>Telephone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Alcohol Labeling and Formulation Division</td>
<td>(202) 453-2250 or Toll-Free at (866) 927-ALFD (2533)</td>
<td><a href="https://www.ttb.gov/contact-alfd">https://www.ttb.gov/contact-alfd</a></td>
</tr>
<tr>
<td>Regulations and Rulings Division</td>
<td>(202) 453-2265</td>
<td><a href="https://www.ttb.gov/contact-rrd">https://www.ttb.gov/contact-rrd</a></td>
</tr>
<tr>
<td>Trade Investigations Southeast Field Office</td>
<td>(202) 453-3117</td>
<td><a href="https://www.ttb.gov/contact-alfd">https://www.ttb.gov/contact-alfd</a></td>
</tr>
<tr>
<td>Ashley Kirsch</td>
<td>(202) 923-1649</td>
<td><a href="mailto:ashley.kirsch@ttb.gov">ashley.kirsch@ttb.gov</a></td>
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