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**ALCOHOLIC BEVERAGES CONTROL COMMISSION (“ABCC”)**  
**UPDATED ADVISORY**  
**REGARDING ALTERNATING PROPRIETORSHIPS AND CONTRACT BREWING**

On July 1, 2016, Chapter 138 of the General Laws was amended to create a Tenant Brewer License under § 19G. The Commission issues this Advisory to provide guidance to licensees and the public regarding this new license type, in addition to reiterating the process for engaging in contract brewing in Massachusetts. This Advisory supersedes and replaces the ABCC September 10, 2015, “Advisory Regarding Alternating Proprietorships and Contract Brewing.”

**ALTERNATING PROPRIETORSHIPS**

An alternating proprietorship is an arrangement in which two or more people take turns using the physical premises of a licensed brewery. Generally, the proprietor of an existing brewery, the “host brewer,” agrees to rent space and equipment to a “tenant brewer.” An approved host brewery may engage in alternating proprietorships with multiple tenant brewers.

Both a host brewer and a tenant brewer must be qualified by the TTB as “brewers” under 26 USC § 5092. As a “brewer,” the tenant brewer must and does retain title to the ingredients used to make beer on the host brewer’s premises and at all stages of the brewing process. The tenant brewer is responsible for producing its beer, keeping appropriate brewery records, labeling the beer with its own name and address, obtaining necessary COLAs, and paying tax upon removal of its beer from the host brewery.

While a tenant brewer must be materially involved and must exercise oversight of brewery operations, the tenant brewer may engage the services of the host brewery’s staff for production and packaging. Whatever arrangement for compensation of the host brewer’s employees is agreed upon, it must be covered in the written alternating proprietorship agreement.

The TTB has issued “Industry Circular 2005-2” to provide federal guidance on alternating proprietorships, found here: [http://www.ttb.gov/industry\\_circulars/archives/2005/05-02.html](http://www.ttb.gov/industry_circulars/archives/2005/05-02.html).

**Massachusetts Requirements**

To engage in an alternating proprietorship in Massachusetts, a tenant brewer must obtain a Tenant Brewer License issued under M.G.L. c. 138, § 19G.

To be eligible for a Tenant Brewer License, the applicant shall:

- (1) Be licensed as one of the following:
  - a. manufacturer under M.G.L. c. 138, § 19; or
  - b. as a farmer-brewer under M.G.L. c. 138, § 19C; or

- c. Be a license holder outside of Massachusetts, whose license authorizes it to manufacture, export, and import malt beverages; and
- (2) Have an alternating proprietorship arrangement that has already been approved by the TTB that allows the applicant to use the facilities, equipment, and employees of a host brewery.

Once an applicant meets these two prerequisites the applicant must apply for a § 19G Tenant Brewer License with the Commission. As part of its application, the tenant brewer applicant will be required to submit the following:

- (1) a copy of the TTB's approval of the alternating proprietorship arrangement with the host brewery;
- (2) a copy of the host brewer's and the tenant brewer's licenses to manufacture (and if applicable, to import and export) alcoholic beverages;
- (3) a copy of the contract or agreement between the tenant brewer applicant and host brewer that expressly details the terms of the alternating proprietorship; and
- (4) a schedule detailing the dates of brewing and/or packaging by the tenant brewer applicant at the host brewery's premises.

Upon issuance of a Tenant Brewer License, the tenant brewer may import raw materials for the brewing and packaging of its malt beverages, including bulk malt beverages produced by the tenant brewer at its brewery of origin.<sup>1</sup>

Upon completion of production and/or packaging of the tenant brewer's malt beverages, the malt beverages must be removed from the host brewery's premises within ten (10) days and either (1) be returned to the tenant brewer's brewery of origin, (2) be transported and sold to a wholesaler licensed under M.G.L. c. 138, § 18, or (3) be shipped to a license holder outside of Massachusetts authorized to import malt beverages.

Please be aware that a § 19G Tenant Brewer License does not permit sale of malt beverages but instead is limited to permitting the "manufacture or package" of malt beverages by a tenant brewer at a host brewery's premises.<sup>2</sup> Accordingly, a tenant brewer must maintain its license that permits the manufacture of malt beverages concurrently with its Tenant Brewer License.

### **CONTRACT BREWING**

Contract brewing is a contractual relationship in which a business pays a brewer, the "contract brewer," to produce beer for it. The business may hire a contract brewer to do everything from recipe development to brewing and packaging. The business may also provide its own original recipe and contract the brewing and packaging to the contract brewer.

A contract brewer is a "brewer" under 26 USC § 5092, and therefore must have title to the ingredients being used to produce the beer, in addition to having title over the beer throughout manufacturing. This means that a contract brewery is entirely responsible for producing the beer,

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<sup>1</sup> A "brewery of origin" is "any brewery at which a tenant brewer is duly licensed to manufacture malt beverages other than at the host brewer's premises." M.G.L. c. 138, § 19G(d).

<sup>2</sup> See M.G.L. c. 138, § 19G(b) ¶ 2.

keeping appropriate brewery records, labeling the beer, obtaining necessary certificates of label approval (“COLAs”) from the Alcohol & Tobacco Tax & Trade Bureau (“TTB”), and paying tax at the appropriate rate upon removal of the beer from the brewery. Title to the beer passes to the business on whose behalf the beer is brewed only after production, tax payment, and removal from the brewery.

The business contracting with a contract brewer, on the other hand, does not need to be a “brewer” but instead must be a wholesaler, manufacturer, or farmer-brewery. The business has no responsibility to keep records of production or pay the federal tax on the beer.

#### Massachusetts Requirements

To be a contract brewer, the brewery must have a Manufacturer’s License issued under M.G.L. c. 138, § 19, or a Farmer-Brewery License under M.G.L. c. 138, § 19C. No additional or special license or notification to the ABCC is required of the contract brewer.

To contract with a contract brewery, a business will need the following licenses/permits:

- (1) either a Wholesalers License under M.G.L. c. 138, § 18; a Farmer-Brewery License under M.G.L. c. 138, § 19C; or a Manufacturer’s License under M.G.L. c. 138, § 19; and
- (2) a Transportation Permit under M.G.L. c. 138, § 22, in order to transport the alcoholic beverages from the contract brewer.

As a reminder, all licensees must ensure that they are in compliance with the Laws of the Commonwealth of Massachusetts and that the manufacture and sale of alcoholic beverages take place only as authorized by applicable law.

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