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

In response to several inquiries from the public and licensees, the Alcoholic Beverages Control Commission provides the following guidance for those interested in engaging in alternating proprietorships and/or contract brewing in the Commonwealth of Massachusetts.

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, 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 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.

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.

Massachusetts Requirements

To engage in an alternating proprietorship in Massachusetts, the host brewer and tenant brewer must obtain TTB approval for their alternating proprietorship arrangement. If the host brewer plans to have multiple tenant brewers, TTB approval for each alternating proprietorship arrangement must be obtained. This approval must be obtained PRIOR to applying for an alternating proprietorship with the ABCC.

Once the host brewer and tenant brewer(s) obtain TTB approval, in order for the alternating proprietorship arrangement to be approved in Massachusetts the host brewer must submit an Application to the ABCC for an “Alteration of Licensed Premises,” and with the application, submit:

- (1) a letter signed by an authorized representative explaining that the Manufacturer seeks to alter its licensed premises to that of a host brewery;
- (2) a copy of the TTB’s approval(s) for all alternating proprietorship arrangements at the host brewery;

- (3) a copy of the host brewer's and the tenant brewer(s)' Manufacturer's Licenses under M.G.L. c. 138, § 19;¹
- (4) a copy of the contract or agreement between the host brewer and each tenant brewer that expressly details the terms of the alternating proprietorship;
- (5) a schedule detailing the identity of the tenant brewer(s) and dates of manufacture for each tenant brewer.

Only once the ABCC has approved the Alteration of Licensed Premises may an alternating proprietorship commence at the host brewery.

Quarterly, on or before the 20th of each January, March, June, and September, the host brewery is required to provide directly to the Chief Investigator of the Commission a current schedule detailing the identity of all tenant brewers and dates of manufacture for each tenant brewer. The host brewer is also required to provide further updates to the schedule as they occur.

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. Questions concerning this Advisory can be directed to Ralph Sacramone, Executive Director of the Massachusetts Alcoholic Beverages Control Commission at (617) 727-3040 x 731.

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¹ The tenant brewer's Manufacturer's License must list as its premises the host brewer's premises.