

DOR on Tap

An Alcohol Industry Update

August 17, 2021 | AIU 009

Welcome Agent Schleis

In the February 2021 edition of DOR On Tap, we announced that Special Agent Henry Morel retired in January. In this edition, I am excited to announce that DOR filled that vacancy with the hiring of Special Agent (SA) Derrick Schleis.

SA Schleis comes to us from the Whitewater Police Department, where he served as a detective for the previous six years and a patrol officer prior to that. After his training period, SA Schleis will assume enforcement duties in the counties previously assigned to SA Morel. These include Adams, Columbia, Crawford, Iowa, Grant, Green Lake, Juneau, La Crosse, Marquette, Monroe, Richland, Sauk, and Vernon Counties. We look forward to a successful and enjoyable career for Derrick at DOR!

Thank you to our staff

With another retail licensing renewal period behind us, June was an especially busy time for our unit, and I want to offer special thanks to all members of the unit for your work during this busy time.

Our website is always available

We are always happy to help you with any questions that may arise related to alcohol beverages, but I also want to take the opportunity to remind you of the many resources we have on our [alcohol beverage landing page](#) on our - website. Here, you will find answers to common questions, forms and applications, publications, fact sheets, all DOR On Tap newsletters, question and complaint submission forms, and so much more!

Everything you wanted to know about beer

In this issue of DOR On Tap, the content is focused on beer. Each article is related to a different topic related to beer and fermented malt beverages. We hope you find these articles interesting and informative.

Cheers,

Tyler Quam

Resources & News

[Wisconsin Department of Revenue Website](#)

[Wisconsin Department of Revenue Alcohol Beverage Landing Page](#)

[Operator's \(Bartender's\) License – Training](#)

[Federal TTB \(Alcohol and Tobacco Tax and Trade Bureau\)](#)

[Wisconsin Department of Agriculture, Trade and Consumer Protection](#)

[Wisconsin Department of Health Services](#)

[Wisconsin Department of Justice](#)

[League of Wisconsin Municipalities](#)

Legislative Update

New Laws:

On May 21, 2021, [2021 Wisconsin Act 39](#) was enacted into law. This legislation creates a definition of a racetrack grounds and allows the Department of Revenue to issue permits for the retail sale of alcohol beverages for consumption on racetrack grounds, except for designated for camping. The legislation further allows caterers to sell alcohol beverages on the racetrack grounds, except for areas designated for camping.

Also on May 21, 2021, [2021 Wisconsin Act 43](#) was enacted into law. This legislation authorizes the State Fair Park Board, in place of the municipality, to issue and enforce Class "B" or "Class B" permits to allow the sale of alcohol beverages at State Fair Park.

Pending Legislation:

[2021 Assembly Bill 364](#) - This bill modifies the applicable penalty, under certain circumstances, when an alcohol beverage retailer purchases alcohol beverages from a source other than a wholesaler, in violation of current law. The bill also eliminates restrictions on the maximum period of credit that a wholesaler may extend to a retailer in connection with the purchase of alcohol beverages.

[2021 Senate Bill 285/2021 Assembly Bill 250](#) – This bill makes a number of changes related to laws enforced by the Department of Revenue, including:

- licenses to sell cigarettes or tobacco products
- forfeitures for alcohol beverage violations
- publishing a list of retail licenses
- criminal history search fees
- tax return information disclosure
- lottery provisions
- possession of alcohol vapor devices
- penalties for evading excise taxes and unlawful possession of cigarettes
- alcohol beverage permit reapplication
- possession of a still
- sales suppression devices and phantomware

[2021 Assembly Bill 71/2021 Senate Bill 57](#) - This bill allows most alcohol beverage retailers to sell alcohol beverages online and over the phone and deliver the alcohol beverages to the customer or to have the alcohol beverages delivered to the customer by an independent third-party delivery service.

Clerk's Corner: Stout and About

Question from a municipal clerk: A brewery would like to sell fermented malt beverages at an upcoming event in our municipality. What does the brewery need in order to do this?

Answer: A brewery permit uniquely authorizes the retail sale and free taste samples of fermented malt beverages manufactured by the brewery at an off-site retail outlet. The brewery does not need a retail license from the municipality to do this. In fact, a brewery is prohibited from holding any Class "B" license. If the event also holds a retail license to sell other alcohol beverages, the brewery may not sell on that licensed premises.

At least 14 days prior to the event, the brewery must contact the Wisconsin Department of Revenue (DOR) to provide details about the upcoming event. As part of its review, DOR will contact the municipality and verify the brewery will not be violating any ordinances by selling at the event. Breweries attending recurring events must advise DOR of each date they intend to sell fermented malt beverages at their off-site outlet.

Clerks with specific concerns can contact DOR using the information listed at the bottom of this newsletter.

Hold My Beer Recipe

In Wisconsin, a permitted brewery may manufacture fermented malt beverage recipes on behalf of other breweries. Commonly, this is called "contract brewing," but [sec. Tax 7.23\(1\), Wis. Adm. Code](#) labels the manufacturer as the "production-brewer" and the contractor as the "recipe-brewer."

Is a permit necessary?

Yes, both the production-brewer and the recipe-brewer must hold a brewer's permit issued by DOR for the location where the fermented malt beverages are manufactured. DOR may ask for a copy of the contract as part of the permit review process. Both entities will also register with the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) and follow their rules on label approval.

Who can contract brew?

Only a permitted brewer may enter into a contract brewing agreement. A brewpub permit holder is prohibited from serving as either the production-brewer or the recipe-brewer. Licensed fermented malt beverage retailers may not hold brewery permits, and, therefore, are also prohibited from acting as the recipe-brewer.

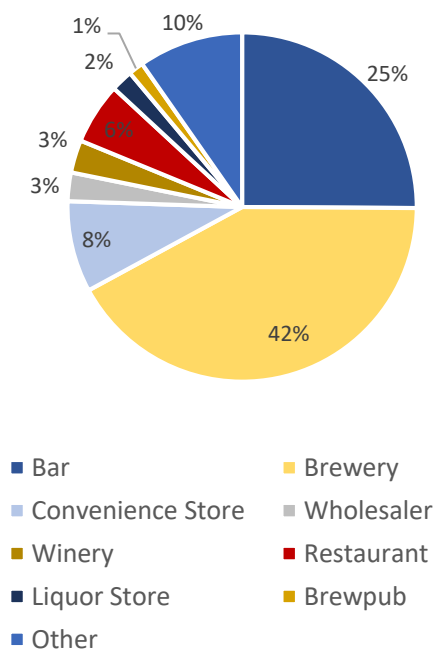
Who pays the excise tax?

The recipe-brewer is responsible for filing tax returns for fermented malt beverages production and sales and is also responsible for any associated excise taxes. A return is due by the 15th each month, even if the production-brewer did not manufacture anything in a specific period. For purposes of the eligible producer tax credit, the recipe-brewer is the producer.

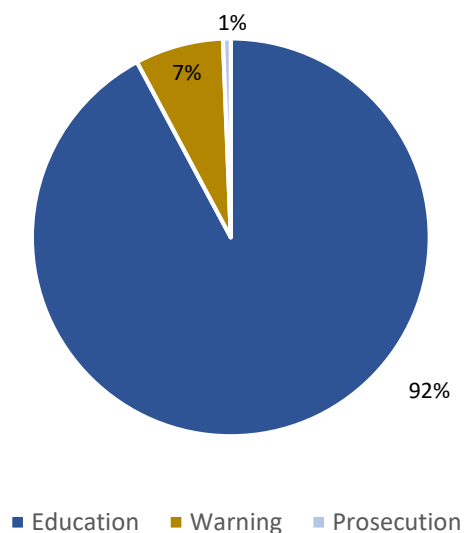
How can a recipe-brewer sell their fermented malt beverages?

A permitted brewer may sell their products to a Wisconsin wholesaler or directly to a retailer if the brewer's total production in a calendar year does not exceed 300,000 barrels. All brewer's permit holders may also make retail sales at an off-site retail outlet. See the related article titled "Stout and About" in this newsletter for more information.

Actions by Business Type - FY 2021



Investigation Outcomes - FY 2021



Online Beer Q & A

Q: Is it legal to order beer online for shipment to my Wisconsin residence?

A: No. There is no provision in the Wisconsin Statutes that allows for the online sale and direct shipment of beer in Wisconsin. Retail sales of beer must be made in a face-to-face transaction at an authorized retail location.



Just Wait a Little Lager

In May 2021, DOR's Alcohol & Tobacco Enforcement Unit received a complaint that a newly established tavern in Waukesha County received deliveries of beer even though they were not yet issued a retail Class "B" fermented malt beverage license.

An agent with the unit followed up on this information and confirmed that, while the tavern did apply for a retail Class "B" fermented malt beverage license, such license had not yet been issued to the business. The agent further confirmed that the business did in fact make a purchase and receive a delivery of fermented malt beverages from a Wisconsin wholesaler.

The situation was ultimately addressed with both the retail establishment and the wholesaler. Both parties were educated on the law and the requirements they must abide by.

Wholesalers of alcohol beverages are generally only allowed to sell product to retail licensees/permittees and to other permitted wholesalers. Wholesalers have an obligation to ensure that every sale is made in accordance with Wisconsin laws. Wholesalers should be diligent in making sure that sales to retail establishments are made only to those that hold the proper retail licenses or permits. This is especially important when related to new businesses and immediately following the license renewal period.

Measure Names

- Production (WI S...
- Shipped into WI

Beer (Produced and Sold, Imported into Wisconsin)



What's Pub Got to Brew With It?

Brewpub Qualifications

A permit must be obtained from DOR in order to operate as a brewpub. In addition to the general qualifications that apply to most applicants for an alcohol beverage permit, brewpubs must:

- Limit production to a maximum of 10,000 barrels of fermented malt beverages in a calendar year for the brewpub group
- Confine the entire process for manufacturing fermented malt beverages to the brewpub premises
- Operate a restaurant on the premises
- Hold a Class "B" beer license at each restaurant on the brewpub premises (Brewpubs may also hold "Class B" liquor or "Class C" wine licenses for restaurants on brewpub premises)
- Sell fermented malt beverages manufactured by a brewer other than the brewpub group
- Hold not more than six brewpub permits by the brewpub or brewpub group.

Authorized Activities

A brewpub permit allows for the following activities on the brewpub premises:

- Manufacturing, bottling, and storing any fermented malt beverages produced on the premises
- Refilling containers larger than 24oz with fermented malt beverages manufactured on the premises
- Transporting fermented malt beverages made by the brewpub between brewpub group locations
- Selling, shipping, transporting, and delivering fermented malt beverages manufactured by the brewpub to wholesalers
- Selling, shipping, transporting, and delivering up to 1,000 barrels per year of fermented malt beverages manufactured by the brewpub to retailers

Interest Restrictions

Brewpubs may not have a direct or indirect ownership interest any of the following:

- Class "A" beer license
- Class "B" beer, "Class B" liquor, or "Class C" wine license or permit, except those issued to the brewpub premises
- Fermented malt beverage wholesaler's permit
- Brewer's permit
- Alcohol beverage warehouse permit

Contact Us

Phone: (608) 264-4573 | Email: DORAlcoholTobaccoEnforcement@wisconsin.gov | [Follow us on Twitter](#)

Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of August 17, 2021. Laws enacted and in effect after August 17, 2021, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to August 17, 2021 that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.