



Alcohol Taxes and Incentives – The Spirit of the Law and What’s Hoppin’

2.01 Introduction

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Being born and raised in Kentucky, there are few things we know (or do) better than bourbon. Virtually from birth, you are ingrained with the most important facts of life, such as knowing the difference between bourbon and whiskey,^[1] that bourbon gets its name and originates from Bourbon County, Kentucky,^[2] and that Kentucky bourbon is the best spirit due to its natural abundance of iron-free, limestone water traditionally used to filter and distill the bourbon. Coal, horses and bourbon are the economic lifeblood of the Bluegrass State, with the latter category representing a \$3 billion industry which generates over 15,000 local jobs, and produces 95 percent of the world’s bourbon.^[3]

On a national scale, the production, distribution and sale of all types of liquor, wine and beer have always been big business, and according to one 2010 study, the alcohol industry is responsible for over \$400 billion in total U.S. economic activity, generating nearly \$90 billion in wages and millions of American jobs^[4] – and these numbers have only grown over the years since. Over the past few years, certain alcoholic beverages have reached unprecedented heights of popularity and demand, including bourbon, and the relatively new craft beer industry, resulting in hundreds of new bourbon distilleries and craft breweries popping up all over the country.

Almost as old as Americans imbibing on their favorite adult beverage is the government’s need to tax same as a significant revenue source. In fact, such tax revenue (or lack thereof) was a major factor in ending Prohibition. Prior to 1920, approximately 14 percent of Federal, state and local tax revenue came from taxing alcohol – a large source of funds that the government could no longer afford to lose after the Great Depression raged on.^[5] And it’s said, the more things change, the more they stay the same. As a result of the Great Recession in 2008, government at all levels began looking for new and additional sources of revenue and new

ways to tax longstanding products – naturally the recent bourbon and craft beer market are one of those opportunities. States have definitely taken notice of these booming industries as the tax dollars and local jobs continue to pour in, and have become increasingly active in providing new ways to incentivize these industries to stay, locate or expand in a respective jurisdiction, as well as finding new ways to tax and regulate same.

In order to fully appreciate the economic importance of alcohol in the United States, and the recent, innovative ways that jurisdictions are beginning to not only incentivize, but also tax, such industries, one must have at least a general working knowledge of how this special tax structure works, both at the Federal and state and local level. Accordingly, this article provides a primer on the ins-and-outs of how alcohol is taxed, as well as an in-depth look at how states are finding new ways to “tap into” the bourbon and craft beer boom through: (i) revamping decades-old tax structures and regulations, and (ii) providing business-friendly tax incentives and programs.

2.02 Basics of Federal Excise Tax on Alcohol

Federal taxation of alcohol generally follows the same tax structure and controls as is used with other commodities and products sold in the United States which are subject to excise tax (e.g., tobacco, gasoline, etc.). Accordingly, there are Federal Excise Taxes (“FET”) related to the production, importation and sale of alcohol, which includes three (3) primary categories: distilled spirits, beer and wine, [\[6\]](#) all of which is governed by Chapter 51 of Title 26 of the Internal Revenue Code of 1986, as amended (“Code” or “IRC”).[\[7\]](#) The Federal Alcohol Administration Act works in conjunction with the Code by providing the licensing and recordkeeping requirements for operating in such industries.[\[8\]](#)

There are also a number of Federal agencies which oversee Federal alcohol laws. Similar in structure with other FETs, the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) administers and enforces the imposition of FET on alcohol, while the Department of Justice’s

Bureau of Alcohol, Tobacco, Firearms and Explosives administers the criminal and regulatory provisions of Federal alcohol laws.^[9]

The FET reporting, payment and compliance statutes, regulations and rules related to the import, export, production, distribution and sale of alcohol are far too numerous and advanced to discuss at-length in this article,^[10] nonetheless it is important to understand the basics, such as knowing that either the producers, or the importers of alcohol are typically the persons responsible for filing all returns, paying all FET and complying with all related bonding, reporting, marketing and regulatory requirements arising from such operations.^[11] The FET rate for alcohol produced, imported or brought into the United States differentiates based on type of alcohol, and equates to: (i) \$13.50 per proof gallon for distilled spirits; (ii) \$18 per 31 gallon barrel generally or \$7 per barrel for small domestic beer producers on the first 60,000 barrels of production; and (iii) a variety of rates ranging from \$1.07 to \$3.40 per wine gallon based on the percentage of alcohol and ingredients contained in such products, with certain exceptions.^[12]

The FET is determined when such products are “withdrawn” from bond, and is payable once “removed” from a bonded facility for sale or consumption.^[13] Note certain exemptions to the FET on alcohol are available for personal and family use of beer and wine (but not distilled spirits),^[14] for exports of alcohol, and various other circumstances in which such products may be withdrawn or removed tax-free.^[15] The applicable returns are generally due on the 14th day after the close of a semimonthly period; however, to relieve administrative burdens on smaller businesses (*i.e.*, taxpayers with alcohol FET of \$50,000 or less the prior calendar year), quarterly filing and payment is permitted for small distillers, brewers and winemakers.^[16]

2.03 Insight into State and Local Taxation of Alcohol

As is the case with all state and local tax issues, it is vital for a business to be aware that most state and local jurisdictions have

multiple types of taxes on the production, distribution and sale of alcohol, generally including excise tax, sales tax, property tax, and other related taxes.

For example, there are typically two (2) primary types of taxes imposed by state and local jurisdictions on the sale and distribution of beer: a gallonage tax imposed on a volumetric basis (similar in nature to the FET discussed, *supra*), and either a general sales tax, or a special retail tax in lieu of same, on the retail sale of such products.^[17] Such a tax structure is not unique to beer, however, as states typically impose similar taxes on distilled spirits and wine. States vary in the rate of taxation of such products, but as a general rule, wine and beer are more lightly taxed than liquor,^[18] which is typical of products that are viewed by society as being “worse” or stronger than their counterparts (e.g., higher taxes on cigarettes than other tobacco products).

According to the Distilled Spirits Counsel, a national trade association representing the leading producers and marketers of distilled spirits in the United States, the FET rate on liquor “is almost three times the rate on table wine and two times the rate on beer,” and at the state level, liquor is “taxed nearly two times higher than table wine and nearly three times higher than beer.”^[19] As a result, “distilled spirits are one of the most heavily taxed consumer products in the United States. More than half of the price that consumers spend on a typical bottle of distilled spirits goes towards a tax of some kind.”^[20] But, taxation of beer is not that far behind, as a 2005 detailed economic analysis reported that all taxes on the production, distribution and sale of beer combine to represent more than forty percent (40%) of the retail price of such products.^[21] These taxes on all alcohol types equate to a significant chunk of a state and local government’s revenue, amounting to over \$21 billion directly to state and local governments annually, and when including all indirect taxes (e.g., corporate, personal income, property and other taxes), this all-in number grows to over \$41 billion going to the state and local jurisdictions in 2010.^[22] And yet, over the past five (5) years, governments have been continuing to find more ways to tap into this market, and get their taste.

In addition to these taxes, because alcohol, like tobacco, is a highly-regulated industry at both the Federal and state level, there are a laundry list of licenses and related fees that an alcohol-related business must be aware of/comply with, whether it be as an importer, wholesaler, distributor, or retailer. Although the tax, licensing and reporting requirements differ from jurisdiction to jurisdiction, multiple organizations provide annual fifty state reports for the alcohol industry which may be used to help relieve some of the administrative burden of complying with same, especially for smaller businesses operating in multiple states, or even in multiple cities within the same state.[\[23\]](#)

2.04 Pouring It Strong: Rise in Alcohol Taxes and Incentives for Booming Industries

Within the first few years post-downturn of 2008, several states began enacting legislation or amending laws already on the books to find new ways to tax the alcohol industry, with at least a dozen states initially choosing to raise the tax on such products – and there is no sign of this changing any time soon.[\[24\]](#)

These legislative changes include straight-forward increases in tax rates on alcohol, as well as changes to the entire alcohol distribution chain structure. For example, although many states have traditionally restricted alcohol sales to liquor stores and gas stations only, and prohibited such sales by groceries and convenience-type stores, after many years of fighting, some states have begun allowing certain alcohol sales in these other outlets, and states like Pennsylvania have not only proposed legislation to allow non-liquor alcohol sales in grocery stores, but also to privatize its traditionally state-run liquor stores – all with the goal of boosting sales, and most importantly, tax revenue resulting therefrom.[\[25\]](#)

Another recent trend has been states permitting the traditionally banned Sunday alcohol sales. Many states continue to ban all, or at least some types of, alcohol sales on Sundays[\[26\]](#), while others states have gladly opened their arms to residents and those from neighboring states to come purchase alcohol in their respective

jurisdiction on the traditional day of “rest.”^[27] Such legislation, however can come at a price as seen in Texas, for example, which has been in the news lately after a lawsuit by Wal-Mart challenging Texas’ allowance of certain alcohol sales by grocery stores and restaurants/bars on Sundays, but prohibition of such sales from liquor stores, as well as its prohibition against liquor licenses being granted to publically traded companies, as Wal-Mart begins to expand its operation of liquor stores across the country.^[28]

States are also continuing to be on the look-out for new alcohol products to not only regulate, but include in existing laws taxing alcohol – one recent example is “powdered” alcohol which has become a hot commodity among younger adults that Federal and states have begun overseeing and taxing, while other states have banned entirely.^[29]

At the other end of the spectrum you have a state such as Wyoming, with one of the lowest state tax rates on alcohol in the country at two (2) cents a gallon, which recently proposed two bills: one to increase the tax rate, and the other to repeal the tax all together – surprisingly, the tax increase bill quickly died, while the repeal bill swiftly moved through the House.^[30] This approach is clearly in the minority, but is seen as a yet another way to attract companies in the alcohol industry to set-up shop, or expand an existing presence, in the state.

The final, and perhaps most popular approach and trend in the taxation of the alcohol industry is the many states which have recognized that rather than over taxing and regulating the industry, it should instead adjust policy and laws to incentivize and foster growth of same, and particularly in the bourbon and craft beer market, to increase sales, jobs and tourism, all of which will lead to greater tax revenue for the states and localities.

Kentucky is one of those states as bourbon has historically been and remains a signature industry representing billions of dollars in gross state product to Kentucky with such production more than doubling over the past decade.^[31] In 2013 alone, Kentucky exported almost \$383 million worth of bourbon, which represents over twenty-percent (20%) of total domestic export of the spirit.^[32] Nevertheless, for the last few decades, Kentucky has not

provided the bourbon industry much tax relief or incentive to keep its distilleries in Kentucky as the product has not only been subject to multiple (state and local) sales and excise taxes, but also a property/inventory tax on the distilling process, commonly known as the “barrel tax.” The annual barrel tax amounts to around \$13 million a year paid by Kentucky distillers alone.[\[33\]](#)

As background, bourbon, unlike other distilled spirits such as vodka, must be aged for (often times several) years.[\[34\]](#) and thus, in states like Kentucky the imposition of such an inventory tax has resulted in substantial annual property taxes associated with such operations. This aging process puts Kentucky bourbon distillers at a distinct economic and competitive disadvantage not only from a state and local tax perspective, but also at the Federal tax level, as the Code does not allow distillers to deduct inventory expenses until the final product is sold, which takes multiple years to achieve for bourbon distillers, while non-bourbon spirit distillers are able to deduct those expenses right away.[\[35\]](#)

Such disparity has led to recent legislation being proposed in Congress, H.R. 867, appropriately named the Aged Distilled Spirits Competitiveness Act of 2015, and introduced in the Senate by Majority Leader Mitch McConnell and Representative Andrew Barr in order to get bourbon production exempted from the final product requirement so bourbon distillers can exclude the aging process time period from its determination of the production period to more quickly expense, rather than capitalize, interest costs paid or incurred during the production period. [\[36\]](#)

Likewise, in 2014, Kentucky finally saw the error in its ways, by passing legislation providing bourbon distillers with a corporate income tax credit for ad valorem/barrel tax paid.[\[37\]](#) Given that local school systems have been funded by this barrel tax for years, politically the legislature could not simply repeal the tax— instead Kentucky distillers now get a dollar for dollar tax credit at the state level, phased in over five years, which must be used for reinvestment in its Kentucky existing facilities or for the expansion of same, in order to “strengthen [the] industry create jobs, and compete on an international scale.”[\[38\]](#) Kentucky likewise made additional legislative amendments to further attract and incent craft

bourbon, and beer, distillers.^[39] Moreover, Kentucky has begun liberally approving various state and local tax incentives to help build and expand bourbon distilleries throughout the state.^[40] As a result, Kentucky's tourism (and revenues resulting from same), particularly from the Kentucky Bourbon Trail, has skyrocketed.^[41] Similarly, Kentucky also recently reduced the tax outright on the wholesale of beer, wine and distilled spirits.^[42]

While among all states the bourbon incentive push has been most prevalent in Kentucky given its dominance in the product, but Kentucky is not alone in these type of strategies in the alcohol industry. Many states have used similar approaches with the craft beer market which, although it lacks the storied past, perhaps aura, of bourbon, has been just as booming of a market across the country.^[43] This demand has resulted in nearly eleven million barrels of craft beer being produced in the first six months of 2014 – close to five million more than the same time period in 2010^[44] – which has in turn led to more and more entrepreneurs and beer enthusiasts getting into the game, and starting new craft beer enterprises.

Accordingly, there has been an astronomical increase in craft beer permits sought and granted over the past twenty-five years, from 500 in 1991 to around 3,700 licensed breweries in 2013.^[45] Further, as the craft breweries continue to expand and the demand for such products increase, related support industries, such as the farming of hops, are also now in high demand and expanding to states across the country, resulting in a twenty-six percent (26%) increase in production of the commodity over the last decade.^[46]

But alas, not everyone is happy with, or agrees on, the Federal, state and local government's trending infatuation with and promotion of the craft distillery and brewery industry, as a war is being waged between the large and small beer companies at the Federal and state level. For example, a recent "brewhaha" has begun in Congress over two similar, but competing, pieces of legislation, the "Small BREW Act"^[47] and the "Fair BEER Act."^[48] The former reduces the FET for small and independent breweries from \$7 per barrel to \$3.50 per barrel with a new rate of \$16.00 per barrel from 60,000 barrels up to 2 million barrels for such companies; the latter

is viewed as being more pro-large, multinational brewing companies by proposing that all brewers and beer importers pay a rising scale of FET based on the amount of barrels produced.[\[49\]](#) Similar conflicts are occurring at the state level as well.[\[50\]](#)

Notwithstanding such internal industry disputes, overall states have continued to see the benefit of promoting local craft businesses, through increased jobs, tourism, and of course, tax revenue. New York provides one example of state's working hard to incentivize local craft brewers through the enactment of several items of legislation in late 2014, including the Craft Beverage Industry Tourism Promotion Grant, to be awarded to craft breweries for market-based tourism projects to create and retain jobs and increase tourism for this industry, as well as the 2014 Craft Act, a revenue neutral bill which, among several other beneficial provisions to the industry, would exempt small breweries from certain fees, and burdensome tax filing requirements – all with the hope of more business, jobs, tourism, etc., which ultimately leads to more state and local tax revenue.[\[51\]](#)

Note that such tax incentives don't only occur at the state level either, as local jurisdictions are often part of a larger state tax incentives package. They may even provide packages of their own, such as recent multi-million dollar tax credit deals by cities in California and North Carolina to both land, and retain, craft beer breweries in their respective cities.[\[52\]](#) These are but a few of the examples of incentives-based deals popping up all over the country, and this trend does not appear to be running dry any time soon.

As is the common criticism of all state and local tax incentive packages given to attract and retain companies, it still remains to be seen whether these lucrative incentives deals, and significant changes in states laws to capture more tax revenue from these industries, will be successful for the jurisdiction overall. But, one thing is for sure, there does not appear to be any sort of "Last Call" in sight for those in the bourbon and craft beer industry, or for state and local jurisdictions relying heavily on same for revenue. So, sit back, relax and drink it all in.

[1] For those wondering, bourbon whiskey differs from other whiskeys as it is statutorily required to be: (i) made from a grain mash with a minimum 51.0% corn content (with the remainder of the mash consisting of wheat, rye, and/or malted barley), (ii) distilled at no more than 160 proof, (iii) aged in new charred-oak barrels at no more than 125 proof, and (iv) produced in the United States. See 27 CFR § 5.22. The differences in these products is seen by many as being so profound, and important, that the Hon. Judge Boyce Martin of the Sixth Circuit Court of Appeal felt it necessary in a very colorful bourbon-industry opinion to detail the history of bourbon, the process of bourbon distilling and emphasize that “[a]ll bourbon is whiskey, but not all whiskey is bourbon.” *Maker’s Mark Distillery, Inc. v. Diageo North America, Inc.*, 679 F3d 410, 414 (6th Cir 2012) (also noting that “Even the spelling of the word ‘whiskey’ has engendered impassioned debate. See, e.g., Nick Fox, *For Whiskey, Everything in its Place*, N.Y. Times Diner’s J. (Feb. 9, 2009, 6:16 PM), <http://dinersjournal.blogs.nytimes.com/2009/02/09/for-whiskey-everythingin-its-place>; Eric Asimov, *Whiskey Versus Whisky*, N.Y. Times Diner’s J. (Dec. 4, 2008, 1:56 PM), <http://dinersjournal.blogs.nytimes.com/2008/12/04/whiskey-versus-whisky>. ‘Whiskey’ is the typical spelling in the United States, but in Scotland and Canada, ‘whisky’ is the preferred spelling. *Id.*”).

[2] However, this statement is not without its own controversy, as it has been said that “As many counties of Kentucky claim the first production of Bourbon as Greek cities quarrel over the birthplace of Homer.” H.F. WILLKIE, *BEVERAGE SPIRITS IN AMERICA—A BRIEF HISTORY* 19 (3d ed. 1949).

[3] See Kentucky Distillers Association, “Bourbon Facts,” *available at* http://kybourbon.com/bourbon_culture/key_bourbon_facts/ (last visited Apr. 2, 2015); Barry Kornstein and Jay Luckett, “The Economic and Fiscal Impacts of the Distilling Industry in Kentucky,” *Urban Studies Institute, University of Louisville* (2014), *available at* http://kybourbon.com/wp-content/uploads/2014/08/economic_impact_2014.pdf.

[4] Distilled Spirits Council of the United States, “Economic Contributions of the Distilled Spirits Industry,” *available at* <http://www.discus.org/economics/> (last visited Mar. 31, 2015).

[5] See Billy Hamilton, “State Liquor Taxes: Still Crazy After All These Years”, *State Tax Notes: State Tax Merry-Go-Round*, 519 (Mar. 2, 2015).

[6] See 27 CFR §1.10; 27 USCA § 211(5) (“The term ‘distilled spirits’ means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use”), 27 U.S.C.A. § 211(6) (“The term ‘wine’ means (1) wine as defined in sections 610 and 617 of the Revenue Act of 1918 as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but 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 saké; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use”), IRC § 5052 (“‘beer’ means beer, ale, porter, stout, and other similar fermented beverages (including saké or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor”).

[7] See IRC §§ 5001, 5041 & 5051 (providing imposition, rate and attachment of FET on distilled spirits, wines and beer, respectively).

[8] 27 USC §201, et seq.

[9] See Homeland Security Act of 2002, P.L. 107-296, sec. 1111(d); Treasury Order 120-01 (Dec. 10, 2013). More information on the TTB’s role in the administration of FET on alcohol, as well as helpful information for complying with same can be found at www.ttb.gov.

[10] See generally, IRC §§ 203 & 204 (providing various license and permit requirements prior to production, import or sale of alcohol products); IRC §§ 5551 & 5173 (providing various bonding, reporting and regulatory requirements).

[11] See e.g., IRC §§ 5001, 5005, 5351, 5551 & 5173; 27 U.S.C. § 203 & 204, 213-219a; 27 CFR §§ 1.20, 19.223(a), 25.61-62.

[12] IRC §§ 5001(a)(1), 5051(a)(1) & (2), 5041(b)(1)–(b)(6). See also, TTB Tax and Fee Rates, *available at* http://www.ttb.gov/tax_audit/atftaxes.shtml (last visited Apr. 2, 2015).

[13] IRC §§ 5006(a), 5213, 5054; 27 CFR §§ 19.227 & 24.270.

[14] See e.g., IRC §§ 5053(a) & (e), 5042(a)(2), 5362(c) & (d); Rev Rul 94–81, 1994–2 CB 412.

[15] See IRC §§ 5003 & 5214 (including use by federal or state agencies, use by non-profit organizations and institutions, as well as use of distilled spirits for other purposes, such as to produce vinegar, mix fruit flavor, denaturing spirits, supplies for certain vessel and aircraft, and research and development).

[16] IRC § 5061; 27 CFR §§ 19.236 & 19.240.

[17] National Beer Wholesalers Association, “An analysis of the structure and administration of state and local taxes on the distribution and sale of beer,” *KPMG* (Apr. 2014), *available at* http://www.nbwa.org/sites/default/files/2014_KPMG_Tax_Report.pdf.

[18] Hamilton, *supra* note 5 at 520.

[19] Distilled Spirits Council of the United States, “Increasing Alcohol Taxes Punishes the Entire Hospitality Industry,” *available at* <http://www.discus.org/policy/taxes/> (last visited Mar. 31, 2015).

[20] Distilled Spirits Council of the United States, “Distilled Spirits Industry Primer,” *available at* <http://www.discus.org/about/industry/> (last visited Mar. 29, 2015).

[21] Beer Institute, “Beer Tax Facts: The Economic and Societal Impacts of State and Federal Taxes on Beer,” *report available at* http://www.beerinstitute.org/assets/uploads/Beer_Tax_Facts1.pdf (last visited Apr. 1, 2015) (citing to a detailed 2005 economic analysis conducted by the Global Insight/Parthenon Group).

[22] “Economic Contributions of the Distilled Spirits Industry,” *supra* note 4.

[23] See e.g., “State Tax Rates on Distilled Spirits,” *Federal Tax Administrators* (Jan. 1, 2015), *available at* <http://www.taxadmin.org/fta/rate/liquor.pdf>; “State alcohol excites

tax rates report 2015–2000,” *Tax Policy Center*, available at http://www.taxpolicycenter.org/taxfacts/Content/PDF/alcohol_rates.pdf.

[24] See Kim Severson, “States Putting Hopes in ‘Bottoms Up’ to Help the Bottom Line,” *New York Times* (Sep. 28, 2011), available at http://www.nytimes.com/2011/09/29/us/alcohol-laws-eased-to-raise-tax-money.html?_r=0.

[25] 2015 Pennsylvania House Bill No. 466 (introduced Feb. 13, 2015); Hamilton, *supra* note 5.

[26] Hamilton, *supra* note 5.

[27] See e.g., Texas S.B. Nos. 1652–3669 (introduced Mar. 13, 2015), S.B. No. 3368 (introduced Mar. 12, 2015), S.B. No. 2882 (introduced Mar. 11, 2015).

[28] *Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm’n*, Case 1:15–CV–00134 (W.D.Tx (Austin), filed Feb. 2, 2015).

[29] See e.g., “Colorado Bill to Regulate Powdered Alcohol Becomes Law,” *Gillette News Record* Mar. 31, 2015), available at http://www.gillettenewsrecord.com/ap/business/article_14e2dbd2-fe78-59ef-a9e8-9d867fcf5c6b.html; Mary Beth Quirk, “Federal Agency Approves Powdered Alcohol For Sale In U.S. — But Your State Might Still Ban It,” *The Consumerist* (Mar. 11, 2015), available at <http://consumerist.com/2015/03/11/federal-agency-approves-powdered-alcohol-for-sale-in-u-s-but-your-state-might-still-ban-it/>. See also, Washington Senate Bill 5292 (proposed to regulate the use, possession, purchase and sale of powdered alcohol as liquor — currently under consideration by the House).

[30] See 2015 Wyoming House Bill No. 141 & (introduced Jan. 19, 2015); Hamilton, *supra* note 5. But, in addition, Wyoming recent passed legislation to increase the amount of barrel production for a microbrewery and still be considered a small brewer (aka the “Barrel Cap Bill”). House Bill No. HB0082 (signed into law Feb. 2015).

[31] Kentucky Distillers Ass’n, *supra* note 3.

[32] “The Bardstown Bourbon Company to Open Distillery in Nelson County,” Governor Beshear Press Release (Jun. 26, 2014), available

at <http://migration.kentucky.gov/newsroom/governor/20140626bardstown.htm>.

[33] Barry Kornstein and Jay Lockett, *supra* note 3 at 38–53; “Bourbon Tax Credit Passed”, *Whiskey Advocate* (Apr. 4, 2014), available at <http://whiskeyadvocate.com/whisky/2014/04/04/bourbon-tax-credit-passed/>;

[34] 27 CFR § 5.22.

[35] See IRC § 263A(f).

[36] H.R. 867, 114th Congr. (1st Sess., introduced Feb. 11, 2015).

[37] H.B. 445, 2014 c 102, § 16 (eff. Jul. 15, 2014) (now codified as KRS 141.389).

[38] Kentucky Distillers Ass’n, *supra* note 3; “Bourbon Tax Credit Passed,” *supra* note 33. See also, Henry Reske, “Lawmakers Approve Tax Credit for Bourbon Makers,” *State Tax Notes* at 18 (Apr. 7, 2014)

[39] SB 83, 2014 c 22 § 3 (eff. Jul. 15, 2014) (amending KRS 243.030 and adding new section to KRS Chapter 243) (creating a new craft distiller’s license for those businesses producing fewer than 50,000 gallons per year, with a reduced annual fee).

[40] See e.g., Kentucky Business & Finance Review, *Kentucky Bourbon Distilleries & Bourbon Production* (2015) (providing up-to date list of all current or planned Kentucky bourbon distilleries and tax incentives approved for same) available at <http://kyreview.com/bourbon.html> (last visited Mar. 30, 2015); David Mann, “Angel’s Share Project Would Create 40 Jobs, Louisville Business First (May 30, 2013), *Louisville Business First*, available at <http://www.bizjournals.com/louisville/news/2013/05/30/angels-share-project-would-create-40.html?page=all>; “Kentucky Approves Distillery Construction Tax Incentives” (May 30, 2013) (regarding tax incentives for expansion of Maker’s Mark facilities and Angel’s Envy distillery), available at <http://whiskycast.com/kentucky-approves-distillery-tax-incentives/>.

[41] See Kornstein and Lockett, *supra* note 3 at 54–60.

[42] H.B. 445, 2014 c 102, § 18 (eff. Jul. 15, 2014) (amending KRS 243.884); Reske, *supra* note 38 at 18.

[43] Jennifer Steinhauer, "Budget Problems? Kentucky and Elsewhere Find Answer in Bottle," *New York Times* (Nov. 28, 2014), available at <http://www.nytimes.com/2014/11/29/us/budget-problems-kentucky-and-elsewhere-find-answer-in-bottle.html>.

[44] *Id.* (citing to report from the Brewers Association).

[45] Kelsey Snell, "Craft beer: tastes great, fewer taxes," *Politico* (Aug. 13, 2014), available at <http://www.politico.com/story/2014/08/craft-beer-taxes-109984.html>.

[46] Steinhauer, *supra* note 43.

[47] H.R. 232, 114th Cong. (1st Sess. 2015) & S.375, 114th Cong. (1st Sess, 2015) the Small Brewer Reinvestment and Expanding Workforce Act (the "Small BREW Act).

[48] H.R. 767, 114th Cong. (1st Sess. 2015), the Fair Brewers Excise and Economic Relief Act of 2015 (the "Fair BEER Act"). See also, "Fair BEER Act Introduced: Seeks Broad Reform of Federal Beer Tax," Beer Institute (Feb. 5, 2015), available at <http://www.beerinstitute.org/bi/media-center/press-releases/fair-beer-act-introduced-seeks-broad-reform-of-federal-beer-tax>.

[49] Danielle Teagarden, "Examining the Two Craft Beer Tax Bills: What Brewers Need to Know About the Fair BEER Act and the Small BREW Act," *Brewery Law* (Feb. 8, 2015) (providing a detailed comparison of the two competing legislation), available at <http://brewerylaw.com/2015/02/beer-tax-bill-fair-beer-act-small-brew-act>.

[50] See eg, H.B. 168, 2015 c 26, the Kentucky "Beer Bill" (signed into law Mar. 20, 2015).

[51] 2014 Sess. Law News of N.Y. Ch. 431 (A. 10122) (eff. Dec. 13, 2014). See also, New York's Craft Beverage Grant Program enacted in 2014 to provide 42 million worth of matching grants for the marketing and promotion of craft beverages.

[52] See e.g., Snell, *supra* note 45 (discussing details of tax incentives packages for AleSmith and Ballast Post breweries in San Diego, California, and New Belgium brewery in Asheville, North Carolina).

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