Advisory Opinion Request Form
November 2019

ALCOHOLIC BEVERAGE CONTROL
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
500 Mero Street 2NE33
Frankfort, KY 40601
502-564-4850 phone
502-564-1442 fax
http://abc.ky.gov

Date received

AOR NO.: _____

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ADVISORY OPINION REQUEST FORM

Attach additional pages as necessary and any documentation, research, or other evidence that you request the Department to consider.

Name of Requestor (individual or business entity): M. Evan Buckley, Dinsmore & Shohl LLP

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City: Lexington State: Kentucky County: Fayette

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Email: Evan.Buckley@Dinsmore.com

The above individual or business entity requests an: ☒ Advisory opinion ☐ Reconsideration request

If this is a reconsideration request or comment, the application Advisory opinion number: _____

Question or issue to be addressed: Please see attached.

Applicable statutes, regulations, ordinances, or other authority: Please see attached.

Proposed response, comment, or basis for reconsideration request: Please see attached.

To your knowledge, is the question for which you request an advisory opinion or reconsideration pending before, under investigation by, or recently decided by a court or government entity? ☐ Yes ☒ No

If yes, please identify the court or government agency, any case or proceeding number, and filing dates of the proceeding or investigation _____.

Signature of Requestor or Requestor's Agent _____ Date 07/23/2025

Signer's Name and title if requestor is a business entity _____ Date _____

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July 23, 2025

Allyson Taylor, Commissioner
Department of Alcoholic Beverage Control
1003 Twilight Trail
Frankfort, KY 40601
Abc.advisory@ky.gov

RE: *Request for Advisory Opinion*

Dear Commissioner Taylor:

I have served and currently serve as counsel for multiple craft breweries in the Commonwealth and elsewhere, particularly in connection with licensing and related regulatory matters. A question has arisen as to the appropriate interpretation and application of relevant law describing with the privileges afforded microbreweries, particularly in connection with malt beverages transferred between locations.

For purposes of this request, there exists a properly licensed microbrewery with production and retail facilities in Kentucky (referred to herein as "Microbrewery A"). Microbrewery A generally produces malt beverages at its facilities located in Kentucky, removes the product from bond and pays tax consistent with law, and then sells its products to retail customers under KRS 243.157. From time to time, Microbrewery A seeks to supplement or complement its production at Microbrewery A with product transferred in bond from a sister facility (referred to herein as Microbrewery B); this may be the case if, for example, certain components of a specialty small-batch malt beverage are only available at Microbrewery B, or if Microbrewery A seeks additional volume in connection with an event. Microbrewery B is also a properly licensed production facility under the same ownership as Microbrewery A, but Microbrewery B is in Ohio.

As you are obviously aware, the primary statute governing privileges of microbreweries is KRS 243.157. This statute authorizes microbreweries to, among other things, sell their products to distributors, to retail customers by the drink and by the package, and to retail license holders. Certain of these provisions, but not all, refer to the sale of malt beverages "produced on the premises of the microbrewery."[1] Other subsections of the relevant statute permitting sales

[1] See, e.g., KRS 243.157(1)(c) (regarding sale of malt beverages produced on the premises of the microbrewery to licensed distributors); KRS 243.157(1)(d) (regarding sale of malt beverages produced on the premises of the microbrewery for on- and off-premises purposes); KRS 243.157(1)(e) (regarding sale of malt beverages produced on the premises of the microbrewer to consumers at fairs, festivals, and other similar types of events); but see KRS 243.157(1)(f) (regarding self-distribution but not referencing place of production).

without distributor involvement also include this phrase.[2] The primary question posed concerns the interpretation of this phrase, which does not appear to be defined or otherwise elucidated within Kentucky law or prior advisory opinion.

Based on my review of the relevant law, it appears a microbrewery with multiple production facilities is permitted to transfer product between its locations. The ability of a microbrewery to move product between its locations is established under KRS 243.157(1)(a). This subsection authorizes a microbrewery to engage in the business of a brewer under the terms and conditions of KRS 243.150, and KRS 243.150(1) authorizes a licensee "…to transport for itself only any malt beverage which the licensee is authorized by its license to manufacture or sell." Additionally, KRS 243.250(3) permits a licensee to "buy malt beverages from another licensed brewer in this state or nonresident brewer authorized by the law of the state of its residence…" in order to make permitted sales. Application of these provisions to the matter at hand strongly supports that Microbrewery A may supplement production with product originating at Microbrewery B.

Additionally, relevant federal law further supports the conclusion that a brewer's internal transfer of product between its production facilities in no way changes the character or treatment of the product for regulatory purposes.[3] At the federal level, "[a]ll beer, brewed or produced, and removed for consumption or sale, is subject to [federal excise] tax…." 27 CFR 25.151. The rate of tax applicable to the beer is lower for smaller breweries; 26 U.S.C. 5051(a)(2) provides a reduced rate of tax on the first 60,000 barrels of beer produced and removed for consumption or sale by a brewer during a calendar year, assuming certain conditions are met. *See also* 27 CFR 25.152. Importantly, product moved in-bond between locations of the same brewer remains eligible for the lower tax rates, so long as the brewer's total production across its breweries does not exceed the 60,000 barrel limit.[4] Thus, in connection with its implementation of the Craft Beer Modernization Act ("CBMA"), the federal Alcohol and Tobacco Tax and Trade Bureau ("TTB") embraces the ability of small brewers to move product internally without jeopardizing privileges afforded by law.

Finally, treating a microbrewery's multiple locations as compatible with each other and, at least in certain respects, unified under a single "umbrella," simply makes sense. For instance, while the statutory provision is not explicit, it would appear the 50,000 barrel annual limit prescribed in KRS 243.157(1)(a) is not on a "per location" basis, but rather takes into account all microbrewery licenses held by the same entity. Permitting a microbrewery the ability to transfer product between its premises does not run counter to the three-tier system or the intentions of relevant law. Under the relevant facts and law, malt beverages transferred in bond from

[2] See, e.g., KRS 243.157(3(b) & (c); KRS 243.157(4).
[3] 27 CFR 25.181 provides authority for a brewer to transfer beer "in bond" (i.e., without payment of tax) from one brewery location to another brewery location.
[4] See TTB CMBA Q&A, TR-B1, available at https://www.ttb.gov/regulated-commodities/beverage-alcohol/cbma/tax-reform-cbma#:~:text=A%20brewer%20who%20receives%20beer,by%20that%20distiller%20or%20processor.

Microbrewery "B" should be considered "produced on the premises of the microbrewery" for purposes of KRS 243.157.

Thank you for your review and consideration of this request for an advisory opinion. Should you have any questions or wish to schedule an informal meeting to present information and discuss questions raised under Section 4 of 804 KAR 6:020, please do not hesitate to reach out to me directly. If feasible, an expedited response is requested, ideally within thirty (30) days.

Respectfully,



M. Evan Buckley

MEB/anh

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