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ABC ADVISORY OPINION 2025-002
RESPONSE TO REQUEST FOR RECONSIDERATION

February 24, 2025

Question: “In accordance with its privileges under KRS 243.157, can a licensed Kentucky microbrewery sell from its licensed premises malt beverages it produced at an out-of-state microbrewery it owns without first selling and transferring these malt beverages to a licensed distributor?”

Requested by: Hon. M. Evan Buckley

Syllabus: No. KRS 243.157(3)(b) and (c) permit a properly licensed microbrewery to sell malt beverages it produced on its licensed premises for on- or off-premises purposes without first selling and physically transferring those malt beverages to a licensed distributor, but that authorization is limited by KRS 243.157(4) to only malt beverages produced at that same premises.

Statutes construed: KRS 243.157

Legal authority: KRS 241.060; 804 KAR 6:020

Opinion of the Department of Alcoholic Beverage Control

On November 20, 2025, the Department issued Advisory Opinion 2025-002 in response to a request from Hon. M. Evan Buckley (“Requester”). Requester wrote on behalf of his client, a licensed microbrewery, asking whether a licensed microbrewery may sell, at retail on its in-state premises, malt beverages that it produced at an out-of-state premises it owns without first selling and transferring these malt beverages to a licensed distributor. The Department determined that a microbrewery could not do so pursuant to KRS 243.157(4), which limits the authorization to sell

malt beverages on the licensed premises without first selling and physically transferring them to a licensed distributor to only those malt beverages “produced by the microbrewery at its licensed premises and ... [o]ffered for sale by the microbrewery at that same premises.” KRS 243.157(4)(a). “All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor in compliance with all other relevant provisions of KRS Chapters 241 to 244.” KRS 243.157(4).

In his request for reconsideration, Requester questioned the Department’s sole focus on KRS 243.157(4) and with it not considering what it means to “produce” a malt beverage. Requester drew particular attention to KRS 243.157(1)(a), which permits a microbrewery licensee to “[e]ngage in the business of a brewer under the terms and conditions of KRS 243.150.” Requester interprets this provision to incorporate all the authorizations in KRS 243.150 into KRS 243.157 and argues that since KRS 243.150(2)(d) permits a brewer to sell malt beverages “produced under its license” to consumers for consumption by the drink on its licensed premises, the legislature intended that microbreweries should also be able to do so.

However, Requester’s interpretation is incorrect. The way the legislature intended that microbreweries should sell their malt beverage products at retail is outlined in KRS 243.157’s authorizations, many of which are incongruent with KRS 243.150. For instance, Requester’s example, KRS 243.150(2)(d), permits a brewer to sell any malt beverage “produced under its license” to customers on its licensed premises by the drink in wet territory without needing additional licenses; however, KRS 243.157(3)(b) requires the microbrewery licensee hold an additional retail drink license to sell malt beverages by the drink for consumption on its licensed premises, and limits what malt beverages may be sold in this way to those “malt beverages that are produced by the microbrewery at its licensed premises and ... [o]ffered for sale by the

microbrewery at that same premises under the microbrewery's retail drink or package license.” At the same time, a brewery license only permits package sales of malt beverages produced under its license for off-premises consumption by using a growler, while a microbrewery license permits the package sale of malt beverages produced on the premises of the microbrewery with an additional retail package license. *Compare* KRS 243.150(2)(d) and KRS 243.157(3)(c).

When two statutory provisions conflict, the Department must take care to “harmonize any conflicting provisions and give effect to both sections if possible.” *Reisinger v. Grayhawk Corp.*, 860 S.W.2d 788, 790 (Ky. App. 1993). Under KRS 243.150(1), a brewery license permits the licensee to “engage in the business of a brewer,” and a microbrewery license permits the licensee to “engage in the business of a brewer under the terms and conditions of KRS 243.150.” Neither statute defines “engage in the business of a brewer,” but the easiest way to harmonize the conflicts between KRS 243.150 and KRS 243.157 is to interpret “engage in the business of a brewer” as a catchall phrase describing the manufacture or production of malt beverages—purchasing, milling, and storing grain, brewing malt beverages from the grain, bottling and storing malt beverages after production, etc.—not the retail sale of malt beverages. This is especially true in a three-tier system, where manufacturers and retailers exist on different tiers and are generally unable to cross over. See e.g. 804 KAR 4:015 (prohibiting substantial interlocking interests between the tiers). Separating “the business of a brewer” from the retail authorizations of a brewery license obviates the conflict between the brewery and microbrewery retail authorizations.

Even if the “business of a brewer” was intended to include retail sale of malt beverages, microbreweries would not benefit from the retail authorizations in KRS 243.150, as the conflicts between brewery and microbrewery retail authorizations would remain. In such circumstances, “the more specific [statute] controls the more general one.” *Reisinger*, 860 S.W.2d at 790.

Microbreweries, as a subset of breweries, have specific permissions and restrictions not shared with breweries generally. Those permissions and restrictions apply only to microbreweries and would control over the brewery permissions and restrictions that conflict with them.

Therefore, regardless of the provisions of KRS 243.150(2), a microbrewery may not sell from its licensed premises malt beverages it produced at an out-of-state microbrewery it owns without first selling and transferring these malt beverages to a licensed distributor as required by KRS 243.157(4).



Scotty Tracy
Commissioner

Department of Alcoholic Beverage Control