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Monroe Moxness Berg

From newly minted startups to well-established operations, **Monroe Moxness Berg** attorneys, using a practical, cost-effective approach, help brewing industry clients secure, grow and realize the full value of their ingenuity and craft, allowing them to stay focused on their strength - brewing beer!



Tax Tips on Tap

By Jon Fedder, CPA

Jon is a tax associate in the Edina, MN office of BDO USA, LLP a leading provider of tax, audit, and consulting services

There are many opportunities for breweries to reduce their tax liability. Below, I've summarized my five biggest tax tips.

1. Domestic Production Activities Deduction (DPAD)

DPAD is a tax deduction, primarily aimed at U.S. manufacturers, that is available to breweries due to the nature of the business. For the purposes of DPAD, brewing is a qualified production activity, because raw materials (water, grain, hops, etc.) are transformed by a manufacturing process

into finished goods. The deduction can amount to as much as 9% of net Qualified Production Activities Income (QPAI) and is subject to certain limitations. Not all activities in the brewery qualify. For example, merchandise sales do not qualify, because the brewery is simply reselling purchased products. A well-thought-out accounting system that tracks revenue and expenses of the various business activities can maximize the deduction, provide stronger support for the DPAD in the event of an IRS exam, and provide for more detailed managerial reports throughout the year. There is no carryforward to subsequent years of unused DPAD.

2. Research and Development Credit

Testing new beers, experimenting with recipes and improving the brewing process are examples of qualifying activities for breweries. Once the qualifying activities are identified, the next step is to quantify the R&D costs. The R&D credit has strict documentation requirements. It is best to develop a system that both documents why the activity or project should qualify for the R&D credit and tracks the allocation of expenses. That documentation will be used to compute the credit when preparing the tax return and provide necessary support in the event of an IRS exam. Without

business to get back the amount of FICA payroll taxes paid on tips in excess of minimum wage (Minimum wage is frozen at \$5.15/hr for this calculation even though the actual minimum has increased). The employer's portion of FICA payroll taxes is 7.65% (consisting of 6.2% Social Security and 1.45% Medicare). In Minnesota, the minimum wage for servers and bartenders is \$7.25/hr. as of August 1, 2015, so all tips qualify for the credit. Unlike DPAD and R&D credit, this credit is relatively simple to calculate, yet it is often overlooked. A year-end payroll report can provide all the necessary information. Many of the payroll service providers

is non-depreciable, and the cost allocated to the building is deducted as depreciation expense evenly over 39 years for tax purposes. Cost segregation studies provide an in-depth allocation of costs to all the components of the real estate. Many of those components, such as certain electrical, HVAC and plumbing components, land improvements and finish carpentry, can be depreciated over much shorter periods of 7 or 15 years. This can significantly reduce taxes in the early years, when cash flow management is most crucial.

5. Find Your CPA Early On

The old dictum, attributed to Benjamin Franklin, that an ounce of prevention is worth a pound of cure, is definitely true when it comes to taxes and tax planning. It is important to find your CPA early on in the startup process and begin planning. Some tax positions require information that might not be captured in a standard accounting system. Your CPA can help develop and implement an accounting system that records all necessary information. Tax professionals should work to minimize taxes while maintaining full compliance for clients. Forward-looking tax planning is the best way to minimize taxes, avoid surprises, and take advantage of all opportunities.

Contact Jon Fedder at jfedder@bdo.com or 952-656-2628 with any questions or to discuss these issues more in depth.

"It is important to find your CPA early on in the startup process and begin planning. Some tax positions require information that might not be captured in a standard accounting system."

the proper documentation the credit could be disallowed by the IRS. This credit can be significant for startups because of the experimental and developmental nature of the first years in business. Unlike DPAD, the R&D credit can be carried forward twenty years if not fully used in the year it was generated.

3. FICA Tip Credit

The FICA tip credit allows the

have a tip credit report prebuilt for this purpose. If the credit is generated in a year with no tax, it can be carried forward up to twenty years.

4. Cost Segregation Studies

When commercial real estate is purchased, the purchase price needs to be allocated between the building and the land to determine proper depreciation schedules. Land



Sunday Growler Ordinance-Drafting for Brewers

*By Blake DeRosier,
Monroe Moxness Berg*

Earlier this year, Governor Mark Dayton signed a bill into law allowing for Sunday growler sales. Now, under Minnesota Statute 340A.301, subdivision 7(b), brewers that possess the requisite authorization (namely, on-and-off-sale licenses) can distribute 64-ounce jugs of intoxicating liquor to go, seven days a week.

But there's a catch: "Sunday sales must be approved by the licensing jurisdiction." This means that Minnesota's new Sunday growler legislation needs to be adopted on a city-by-city basis. Luckily for brewers and consumers alike, around twenty

Minnesota cities and towns – including Minneapolis, St. Paul, Duluth, and Stillwater – have already passed ordinances adopting Sunday growler sales.

If your brewery is currently operating in a municipality that has not adopted subdivision 7(b), you may consider approaching your city council – or a city councilperson, individually – to propose adoption of such an ordinance. This process will be greatly facilitated if your suggestion is accompanied by a clean, well-drafted sample ordinance. Below are two examples taken from Minnesota cities that have already adopted Sunday growler ordinances. These cities have incorporated the Sunday-sale provision (in italics) directly into their preexisting brewery ordinances.

EXAMPLE A:

“Off-sale” malt liquor. **(a)** A brewer licensed under Minnesota Statute 340A.301 may be licensed for the “off-sale” of malt liquor produced and packaged on the licensed premises subject to the following conditions:

(1) *off-sale of malt liquor may only be made during the hours that “off-sale” of liquor may be made in [the City’s code], and from 8:00 AM to 10:00 PM on Sundays, excluding Thanksgiving Day, December 25th, and after 8:00 PM on December 24th.*

(2) The malt liquor shall be packaged in sixty-four-ounce containers commonly known as “growlers” or in seven hundred fifty (750) milliliter bottles;

(3) The malt liquor sold at “off-sale” must be removed from the licensed premise before the applicable closing time at exclusive liquor stores;

(4) The “growler” must be sealed in such a manner that the seal must be broken in order to open the container and the seal must bear the name and address of the brewer, and the legend “Not for Consumption in Public” must be prominently displayed on the seal.

(b) “Off-sale” malt liquor premises shall not be subject to the requirement that they be in excess of two thousand (2,000) feet from another “off-sale” liquor premise.

(c) The annual license fee shall be as listed in the License Fee Schedule.

EXAMPLE B:

[...]

(c) Except as provided herein, off-sale licenses authorize the licensee to sell intoxicating liquor

at retail in original packages only for consumption off the licensed premises. The following additional requirements apply to specific types of off sale licenses:

(1) *Brewery malt liquor licenses permit breweries holding on-sale licenses, or breweries that manufacture fewer than 3,500 barrels of malt liquor in a year, to sell malt liquor off sale in 64-ounce containers commonly known as growlers, subject to the restrictions in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor, and this Chapter. Sale of malt liquor off sale in 64-ounce containers, commonly known as growlers, may be conducted on Sundays. All Sunday sales are subject to the limitation on hours of sale provided in [another portion of the City’s code.]*

Note that while these two examples look rather different, both have correctly accounted for three important characteristics: (1) express incorporation of Minnesota Statute 340A.301; (2) allowing for Sunday growler sales; and (3) establishing permissible hours for Sunday sales within the city. As long as these three aspects are addressed, an ordinance will be sufficient for establishing Sunday growler sales. Even breweries operating in cities that have adopted such an ordinance should double-check their municipality’s language – to ensure, for instance, that their city does not require additional licensing or fees prior to Sunday growler sales.

While this new legislation does provide obvious benefits to eligible breweries – increased sales, exposure to new patrons, and a monopoly on Sunday sales in the state – many view this breakthrough as a smaller step towards a broader repeal of the Sunday sales ban. Whichever way you look at it, this is a nice hop forward for Minnesota’s craft breweries and their rapidly growing customer base.



Brew Pub v. Taproom: Which Business Model Is Right for You?

By Joshua Mason and John Remakel, Monroe Moxness Berg

The Minnesota craft brewery scene continues to grow, with new styles and colorfully-marketed brands filling local shelves and exciting new breweries cropping up throughout the greater metro and outstate areas. For those interested in making their entry into the industry, there are a number of considerations to take into account – some are legal in nature, while others involve more subjective questions concerning business philosophy and individual vision and preference.

In this article, we will consider a few of the factors that may help you determine the appropriate

business model for you and your beer. In particular, we will look at some of the key differences between the two business models most popular in Minnesota's craft brewery industry today: the brew pub and the production brewery with taproom.

Brew pubs

In 1987, Minnesota adopted legislation allowing restaurants to operate their own brewing facilities directly on-site. Previously, Minnesota's three-tier system – a regulatory scheme established in most states after Prohibition – required manufacturers (breweries) to only sell their beer to independent wholesale distributors, who then in turn could only sell

to independent retailers (liquor stores, restaurants and bars).

While the three-tier system still remains largely intact today, brew pubs (and later taprooms as described below) marked a return to the brewery-owned "saloons" that were prevalent in the United States before Prohibition and the chipping away at the strict legal barriers between retail and manufacturing/production.

From a business perspective, the premise and focus of the brew pub model has remained similar over the last three decades -- offering an innovative cuisine carefully crafted to pair with distinctive beer set in a restaurant atmosphere. Especially with the

increasing popularity of food/beer pairings and chef-driven restaurant concepts, brew pubs offer a unique opportunity to combine the love of beer with a high-quality restaurant experience.

Legally speaking, brew pubs, like restaurants, may operate at mul-

their own beer for on-site consumption, but in 2003 the Minnesota legislature allowed brew pubs to obtain off-sale licenses and sell up to 500 barrels of their beer annually in 64-ounce sealed containers, also named “growlers”, to the public for off-site consumption.

beer on-site at their brewery or an adjacent site, in a so-called “taproom”. Prior to the taproom laws, production breweries could not sell their beer directly to consumers.

The business model for production breweries with taprooms varies significantly and often depends on the brewery’s size. With larger breweries, taprooms may only account for between 20%-30% of sales, but they offer an important profit center as margins in taprooms typically run 3-4 times more than the brewery’s sales to wholesalers and/or from their self-distribution efforts. On the other hand, for smaller breweries taprooms may represent all or a large majority (80%-100%) of their sales, which means they operate much like a brew pub, just without a kitchen. Finally, the largest brewers, Surly being the first in Minnesota, are opening “destination” breweries complete with European-inspired beer halls, beer gardens, restaurants, gift shops, music and event spaces – with their manufacturing and production occurring both on-site and at other off-site facilities.



iple locations, but the tradeoffs are that their production is restricted to a total of 3,500 barrels annually, and they cannot distribute their beer for sales off-site as production breweries can. One advantage though with brew pubs is that in addition to their own beers, they may also sell the beers, wines, liquor and spirits of other manufacturers, which creates a lot more options for patrons and revenue opportunities for the brew pub. Previously, brew pubs could only sell

Production Breweries with Taprooms

While brew pubs have certainly made inroads, the craft beer industry in Minnesota forever changed in 2011 when the taproom legislation (popularly referred to as the “Surly bill”) became state law. Under the taproom laws, production breweries producing less than 250,000 barrels annually could obtain an on-sale malt liquor license permitting them to sell their own

Despite significantly more capacity and the ability to distribute locally, regionally and nationwide, production breweries are limited to one taproom location in Minnesota and may only sell their own beer at their taproom – meaning that they cannot sell any beer, wine, liquor or spirits of other manufacturers. Originally, taprooms could not sell growlers for off-site consumption, but

in 2013 the Minnesota state legislature adopted laws allowing for off-sale licenses of growlers by production breweries with similar restrictions (e.g., may only sell 500 barrels off-sale annually) as are imposed on brew pubs. While Minnesota state law allows breweries to operate a restaurant, many municipal codes prohibit breweries from doing this. And even if permission is obtainable, most breweries – with the exception of large destination breweries – decide not to hold food licenses and instead arrange for food trucks on-site or allow restaurants and pizza establishments to make deliveries to patrons visiting their taprooms.

The Choice: Brew Pub or Taproom?

Brew pubs offer the chance to enjoy a holistic experience where craft beer brewed both on-site and elsewhere can be carefully paired with food offerings. While beer still remains the main focus, the success of a brew pub often depends on a combination of other factors, including the success of the pub's menu items and its ability to create an enticing atmosphere for casual diners and beer enthusiasts alike. To expand and grow, brew pubs need to open more locations and/or create alternative food and drink offerings beyond their beer.

Taprooms, on the other hand, face fewer restrictions with respect to capacity and range of distribution. The taproom model allows brewers to focus strictly on their beer while also establishing a relatively high-margin revenue stream from their taproom. Depending on the size of the brewery, profits from a taproom can be used to expand distribution, reinvest in the taproom and production spaces and/or provide financial returns for owners and investors.

For the consumer, the business and legal distinctions between brew pubs and production breweries with taprooms may not be of much concern – good, high-quality beers are produced under each model. However, the distinctions are crucial for brewers as each model has its own appeal and its own specific advantages and restrictions. The attorneys at Monroe Moxness Berg can help you understand those distinctions and navigate the complex federal, state and local laws and regulations governing each.



WE SALUTE YOU

But we don't raise our glasses

until we make sure that you have secured your financing, signed your lease and obtained your trademark protections.

And as your craft brewing business grows, we will advise you on expansion plans, shareholder matters, distribution and a host of other business issues.

Monroe Moxness Berg's practical, cost-effective legal counsel helps brewery industry clients stay focused on their strength - brewing more great beer for us to enjoy!

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