



# AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

## Proposed Tax Legislation To Help Craft Brewers, Some More Than Others

BY AIVI NGUYEN • JULY 20, 2015

Whether a beer brewer is labeled as a “craft brewer” is determined by parameters set by the Brewers Association, a non-profit trade group that represents small and independent craft brewers. The Association looks at things like barrels of production (less than 6 million per year), the percentage of the brewery that is owned by a non-craft brewer (less than 25%) and whether the majority of a brewer’s total alcohol volume in beers is derived from “traditional or innovative brewing ingredients and their fermentation.”

However, the criteria set forth by the Association can be pretty malleable. In 2010 the Association changed its barrel production limit from 2 million to 6 million (to accommodate Boston Beer Co. aka Samuel Adams). Last year when the Association changed the definition of “traditional” to allow inclusion of pre-prohibition brewers like D.G. Yuengling & Son and August Schell who used maize, which was once deemed non-traditional.

Despite fitting the Association’s criteria, do we consider Yuengling and Samuel Adams to be craft brewers?

Well, new legislative proposals may have the effect of differentiating among craft brewers, ultimately separating the “true” craft breweries from their more commercial counterparts. What is the purpose of the government getting involved, you ask. For tax purposes, of course!

As of right now, a brewer that produces more than 2 million barrels a year is charged an \$18 federal excise tax per barrel. A brewer that produces less than 2 million barrels per year pays an excise tax of \$7 on the first 60,000 barrels and \$18 for every barrel after 60,000. In other words, you only get a small tax break if you produce less than 2 million barrels a year.

Two proposed legislative measures both called “Craft Beverage Modernization and Tax Reform Act” have been introduced in the House and Senate. The Acts mirror one another and cut the federal excise taxes imposed on

brewers. However, depending on a brewer's annual barrel-production number, the new taxes will affect breweries differently. The actual text of the Acts have not been released yet, but they are reported to have the following effects:

The federal beer excise tax will be reduced to \$3.50 per barrel on the first 60,000 barrels produced by domestic brewers who only produce less than 2 million barrels annually.

The tax will be reduced to \$16 per barrel on the first 6 million barrels for all other brewers and all beer importers.

The tax maintains the current \$18 per barrel tax on any barrels over 6 million.

The Acts essentially put brewers into three categories. Arguably, any brewer producing more than 6 million barrels per year probably will not be considered a "craft brewer" if the Acts pass. Creating this hard line at 6 million barrels could tie the Brewers Association's hands in increasing the barrel-production number again, like it did in 2010.

Regardless of where a brewer will fall in the classification scale, its undeniable that all brewers will receive more favorable tax treatment if the Acts are passed.

Stay tuned.