



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Owning the Brewery: Part II – What is “Owning the Brewery?”

BY TERRENCE J. BRIGGS • JUNE 8, 2016

The next three posts in our “[Owning the Brewery](#)” series will focus on the ownership of breweries organized as corporations. A later post will address unique concerns arising from holding an interest in a brewery organized as a limited liability company. The right to ownership in a corporation is represented by a share of stock. Most everybody knows that. A share of stock is property.

Why Would an Employee Want to Own Stock in the Brewery?

In order to have a voice in its business direction and in order to share returns when the brewery profits or gets sold.

If you own a share of stock you probably have a right to cast a vote for the things that shareholders get to vote on (usually not that much, but still important), and you get money if the corporation has profits. Maybe.

Not all shares of stock carry the right to vote. Non-voting shares, for example, do not. Shareholders holding voting shares generally get to vote in electing the members of the company’s board of directors, on offers to buy the business, and sometimes other things as well. Shareholders do not, by virtue of owning shares, get to directly control the business. That is done by the board of directors (which sets policy) and management.

Tax Implications

Some corporations pay income taxes, some do not. Corporations that pay income taxes do not have to distribute the profits out to shareholders (when they do distribute money to shareholders, these are the dividends we hear about – the shareholders also pay taxes on the money). These taxable corporations are called “C corporations” because they are governed by rules in Subchapter C of the Internal Revenue Code.

No income taxes are paid by “S corporations.” Instead, any taxable profits are passed through to the shareholders (on a per share basis). The profits, however, may not all be passed through because the brewery may need them to keep in

business and to grow. Typically, an S corporation will distribute to its shareholders enough of the profit to pay the income taxes associated with their ownership interests.

So, if you are an employee and you have non-voting stock in your brewery and it's not making a profit, what have you got?

You have a chance and the right to share in profits if and when they get distributed and, the big payday, if your brewery is bought out, you get your share of the proceeds. In the next installment of "Owning the Brewery," we will take a look at actually purchasing shares of a brewery. As you might have guessed, it's not quite as simple as buying something at the grocery store.