



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Owning the Brewery: Part III – So, Now I’m a Stockholder in a Brewery

BY TERRENCE J. BRIGGS • JULY 13, 2016

Becoming a Stockholder

Congratulations! Your favorite brewery has offered you the opportunity to purchase stock and become a partial owner of the company. You gladly accept. But what happens when you buy the stock?

Because a share of stock is property, if your brewery gives you shares or lets you buy them for less than someone else would pay, you will owe income taxes in the year when you own the shares. The amount of tax you owe will be the fair market value of the shares less whatever you paid for them. If the shares are non-voting shares, if the company has controlling shareholders, or if there is no market for the shares, the fair market value can be discounted below the value that you would calculate by dividing the value of the whole business by the total number of shares. So fair market value of your could be substantially less than the purely economic value.

Furthermore, if your brewery gives you shares now but requires that you remain working at the brewery for three years before you actually own them—that’s called the vesting date—you won’t owe taxes on their value until the vesting date. But, on that date you will owe taxes on whatever the value of the brewery is on the vesting date. That could be a lot more than it was worth when you were promised the shares. If you are confident that the brewery will succeed or if the value when you got the promise is very low because there’ve been no profits or, even better, because it was just after founding, you can pay the income taxes before the vesting date at the (you hope) lower value.

If you get shares as an employee, the shares will have certain restrictions on your right to sell or dispose of them in order to assure that outsiders don’t become owners. You will probably be required to sell back to the brewery when you go somewhere else to work or if someone else gets a right to your shares because, for example, you become bankrupt or get divorced.

A typical restriction might say that if you quit before the shares vest, you get only what you paid for the shares (if

anything). If you quit after they vest, you should get the undiscounted fair market value, but it might be paid over time and the brewery might have a period of time before they had to repurchase.

Stay tuned for the next installment of “[Owning the Brewery](#),” where I will look into the reasons why a brewery owner would want to sell pieces of his or her ownership to employees in the first place.