

Alabama Alcoholic Beverage Control Board
2715 Gunter Park Drive West
Montgomery, Alabama 36109

August 9, 2016

Consideration for 20-X-8-.14: Requirements of Financial Responsibility by Manufacturers

To Whom It May Concern,

We appreciate the opportunity to provide input on the proposed action to adopt 20-X-8-.14 concerning requirements of financial responsibility by manufacturers with retail privileges.

1. Certification of manufacturers under the Responsible Vendor Program

This organization strongly supports the proposal to allow manufacturer licensees to participate in the Alabama Responsible Vendor Program as outlined under (a) of the proposal. Many of our members currently conduct staff training that would qualify them as responsible vendors.

2. Requirement for manufacturers to obtain a tax bond

The proposal would require manufacturers with retail privileges “to obtain a tax bond to the ABC board equal to the greater amount of \$1000 or their annual estimated tax liability.” Brewers are responsible for paying the tax assessed under 28-3-184 of the Alabama Code for retail sales at their location.

A. The tax bond requirement is unnecessary

The Board has broad audit and enforcement authority to examine the books and records to substantiate the proper payment of the beer excise tax. Ala. Code § 28-3-184(b). Substantial penalties, including license suspension or revocation, civil fines, imprisonment, and hard labor, may be imposed for each violation of Alabama’s alcohol control laws and ABC Board regulations. Ala. Code §§ 28-3-20 & 28-3-21. Breweries are subject to the direct jurisdiction of the Board and existing measures are adequate incentive for Alabama brewers to pay their excise taxes.

Alabama breweries and brewpubs already file monthly tax returns and copies of federal Alcohol and Tobacco Tax and Trade Bureau (TTB) reports of brewery operations with the Board under a policy established by the ABC Board. *See*, Alabama ABC Board Memoranda to Manufacturers and Brewpub Licensees, November 23, 2015. Those reporting requirements provide the Board with ongoing information about production and sales.

On a practical level, members of the Alabama Brewers Guild have invested millions of dollars and thousands of hours to create brick and mortar breweries to manufacture beer within the state. They are not likely to put those investments at risk by failing to pay excise taxes.

B. Tax bond regulations should be the same for distributors and manufacturers for 28-3-184 tax

Distributors normally pay the tax assessed under this section, but there does not appear to be an existing or proposed regulation that requires distributor licensees to obtain a tax bond. According to the most recent figures from the Beer Institute, more than 3,000,000 barrels of beer were shipped to Alabama distributors in the twelve-month period ending on June 30, 2016, and no bond requirement is required by rule. The Alabama Brewers Guild estimates that tap room sales under the current law will be 4,500 barrels annually. If the Guild's members' tax payments must be secured by a bond, we respectfully ask the Board to adopt regulations that treat classes of taxpayers equally by either withdrawing the proposed bonding requirement or imposing a proportionate bond requirement on taxpayers who receive beer shipped into Alabama from other states and nations.

This section of the proposal increases the unequal application of this tax between brewers and distributors. We respectfully ask the Board to withdraw this bond proposal so that the different classes of license have the same legal requirements under the 28-3-184 tax.

Thank you again for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Roberts", with a stylized flourish extending to the right.

Dan Roberts, Executive Director