Montana Department of Revenue

Mike Kadas
Director

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Memorandum

To: Mike Kadas, Director
Montana Department of Revenue

From: Rose Bender, Tax Policy and Research
Montana Department of Revenue

Date: October 26, 2016

Subject: Small Business Impact of Suitability and Condition Requirements for Alcoholic Beverage Licenses MAR notice number 42-2-967

The proposed rulemaking actions in MAR notice number 42-2-967 include five new rules and a number of rules being amended, transferred, and repealed. The reason for these rule changes is that the department reviewed the suitability and condition requirements for alcoholic beverage licenses and found a need to update the rules for additional guidance to licensees.

Most sections of these rule changes would allow small businesses to continue operating as they have been. The following sections may require changes that impact the operations of some small businesses. These changes, and any others outlined in the rules changes, may increase compliance requirements and/or costs for small businesses. However, the changes are small and should be economically and technologically feasible, especially due to the fact that compliance with the new suitability requirements is not required until a change of location, alteration, or transfer of ownership interest in an existing license.

For on-premises consumption beer and all-beverage licenses; restaurant beer and wine licenses; off-premises beer and table wine licenses; and winery, brewery and distillery licenses

- The requirement that law enforcement is allowed access to effectively ensure public safety without a locked gate or other barrier preventing access may require license holders to change how they currently secure their facilities.
- The requirement that manufacturer, importer, wholesaler, or distributors' signs or other listed items are to be removed from the exterior may require some license holders to relocate some signs or other items.
- The requirement of physical safeguards that prevent the self-service of alcoholic beverages may require some license holders to put up additional physical safeguards.
- The requirement that the premises are located in one contiguous building and separated from other businesses by a permanent floor-to-ceiling wall, as well as other

changes to the physical premises, may require some license holders to alter their premises.

For alcoholic beverage manufacturers

- The allowance to utilize the licensed premises of another manufacturer, when approved, will allow alcoholic beverage manufacturers additional options for manufacturing the product. This is a positive effect for small businesses.
- The prohibition of patrons consuming alcoholic beverages on contiguous property owned by the licensee that is not part of the approved floor plan may require some facilities to limit locations where they currently allow patrons to consume alcohol.

The requirement to electronically file any alcoholic beverage tax returns is new for wineries, breweries, and wholesalers and distributors. All distilleries already operate under this requirement. This will require changes to current filing practices of some small businesses. Currently, 50/68 breweries, 10/19 wineries and 22/27 wholesalers and distributors file electronically.

For all-beverage licenses, beer licenses with wine amendments, and wineries, the allowance of selling wine in refillable growlers is new and allows more options for license holders.

For all-beverage licenses, the requirement that 95% of the off-premises sales are from alcoholic beverages is new and may require additional documentation and a change in sales for some small businesses.

For restaurant beer and wine licenses,

- The allowance to purchase fortified wine from an agency liquor store is new and allows the license holder additional options.
- The exclusion of non-alcoholic beverages from AGI when attempting to meet the 65% requirement of sales from food is new and may require some small businesses to sell more food to meet the requirement.

For on-premises consumption beer licenses with wine amendments, the purchase of fortified wine from an agency liquor store is newly allowed and allows more options for license holders.

The limit of earnest money paid to the seller of an alcoholic beverage license from the buyer of an alcoholic beverage license, set at 5% of the license purchase price, is new. This limit may negatively impact sellers of alcoholic beverage licenses in the short run, but could make new alcoholic beverage licenses easier for new, small businesses to purchase.

The number of licenses affected could be up to 1,574 all-beverage licenses; 138 beer licenses; 10 wine licenses; 1,276 beer and wine licenses; 240 restaurant beer and wine licenses, 40 wholesalers and distributors; and 1,237 manufacturers of beer, wine, and distilled spirits; as of the end of fiscal year 2015.