

243.157 Business authorized by a microbrewery license -- Microbrewery permitted to sell malt beverages produced on the premises for on-premises or off-premises purposes without transferring physical possession to a distributor if the microbrewery meets reporting requirements and has both a retail drink license and a retail package license -- Microbrewery required to collect taxes due when selling malt beverages -- Sampling by employees.

- (1) A microbrewery license shall authorize the licensee to perform the following functions:
 - (a) Engage in the business of a brewer under the terms and conditions of KRS 243.150, provided that production of malt beverages at the microbrewery shall not exceed fifty thousand (50,000) barrels in one (1) year;
 - (b) Serve on the premises complimentary samples of malt beverages produced by the microbrewery in amounts not to exceed sixteen (16) ounces per patron, provided the microbrewery is located in wet territory;
 - (c) Sell malt beverages produced on the premises of the microbrewery to licensed distributors;
 - (d) Sell malt beverages produced on the premises of the microbrewery for on- and off-premises purposes in accordance with subsection (3)(b) and (c) of this section; and
 - (e) Sell malt beverages produced on the premises of the microbrewery to consumers at fairs, festivals, and other similar types of events located in wet territory, in accordance with subsection (3)(b)2. and 3. and subsection (3)(c)2. and 3. of this section. The cumulative amount of malt beverages purchased by a consumer by the drink and by the package from a microbrewery under this paragraph shall not exceed two hundred eighty-eight (288) ounces per day.
- (2) A microbrewery license shall not be deemed to be incompatible with any other license except for a distributor's license under the provisions of KRS 243.180.
- (3) In accordance with the provisions of this section, a microbrewery license holder may:
 - (a) Hold retail drink and package licenses both on and off the premises of the microbrewery. The holder of a microbrewery license is exempt from the provisions of KRS 244.570 and 244.590 as applied to any retail licenses held by the microbrewery license holder, and from any other sections which would restrict the co-ownership of the microbrewery license and any retail licenses described in this section;
 - (b) Sell malt beverages produced on the premises of the microbrewery for on-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided:
 1. The microbrewery possesses a retail drink license for those premises;
 2. The microbrewery has a written contract with a licensed distributor authorizing the distributor to purchase and distribute the microbrewery's malt beverages to any other retailer; and

3. The microbrewery provides to the distributor a monthly report of the quantity of malt beverages produced at the microbrewery and sold at retail at the microbrewery under the provisions of its retail drink license. The report required under this subparagraph shall:
 - a. Be provided to the distributor on or before the tenth day of the month next succeeding the month in which the malt beverages were produced and sold at the microbrewery; and
 - b. Be provided on a form promulgated by the board by administrative regulation. The information provided on the form shall be reported to the Department of Revenue at the time and in the manner required by that department in accordance with its powers under KRS 131.130(3) and any administrative regulation promulgated thereunder.

Nothing in this subparagraph shall require a distributor to verify the accuracy of the information provided by the microbrewery in its report; and

- (c) Sell malt beverages produced on the premises of the microbrewery for off-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided that:
 1. The microbrewery possesses a retail package license for those premises;
 2. The microbrewery has a written contract with a licensed distributor authorizing the distributor to purchase and distribute the microbrewery's malt beverages to any other retailer; and
 3. The microbrewery provides to the distributor a monthly report of the quantity of malt beverages produced at the microbrewery under the provisions of its retail package license. The report required under this subparagraph shall:
 - a. Be provided to the distributor on or before the tenth day of the month next succeeding the month in which the malt beverages were produced and sold at the microbrewery; and
 - b. Be provided on a form promulgated by the board by administrative regulation. The information provided on the form shall be reported to the Department of Revenue at the time and in the manner required by that department in accordance with its powers under KRS 131.130(3) and any administrative regulation promulgated thereunder.

Nothing in this subparagraph shall require a distributor to verify the accuracy of the information provided by the microbrewery in its report; and

4. The amount of malt beverages purchased by a customer during a visit to the microbrewery's premises does not exceed two hundred eighty-eight (288) ounces per customer per day.
- (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt beverages that are produced by the microbrewery at its licensed premises and:

- (a) Offered for sale by the microbrewery at that same premises under the microbrewery's retail drink or package license; or
- (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of event as authorized under subsection (1)(e) of this section.

All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor in compliance with all other relevant provisions of KRS Chapters 241 to 244, and a licensed microbrewery shall not otherwise affect sales of malt beverages directly to retail customers except as provided in subsection (3)(b) and (c) of this section.

- (5)
 - (a) A microbrewery selling malt beverages in accordance with subsection (3)(b) and (c) of this section shall collect and provide the licensed distributor all taxes due under KRS 243.884. The tax shall be computed at the rate of eleven percent (11%) of the wholesale value of the malt beverages sold by the microbrewery under the provisions of subsection (3)(b) and (c) of this section. For the purposes of this subsection "wholesale value" shall be determined in accordance with the contract required under subsection (3)(b)2. and (c)2. of this section, as applicable.
 - (b) The licensed distributor shall be responsible for remitting these amounts to the Commonwealth as provided in KRS 243.884(1). In accordance with KRS 243.886, the licensed distributor shall be allowed to deduct one percent (1%) of the tax remitted under this subsection, provided the amount due is not delinquent at the time of payment. Nothing in this subsection shall require the licensed distributor to verify the amount of taxes collected and provided by the microbrewery to be the true and accurate amount which is due according to KRS 243.884; nor shall the distributor be responsible for remittance of taxes due in the event the microbrewery fails to collect and provide the amounts owed under the provisions of this subsection.
 - (c) A microbrewery shall pay the excise tax on malt beverages in accordance with KRS 243.720(3) and 243.730 and shall be entitled to the credit set forth in KRS 243.720(3)(b).
- (6) A microbrewery shall not be located in dry or moist territory.
- (7) An employee of a microbrewery may sample the products produced by that microbrewery for purposes of education, quality control, and product development.
- (8) This section does not exempt the holder of a microbrewery license from the provisions of KRS Chapters 241 to 244, nor from any rules of the board as established by administrative regulations, nor from regulation by the board, except as expressly stated in this section. The provisions of this section shall not be deemed inconsistent with the provisions of KRS 244.602.
- (9) Nothing in this section shall be construed to vitiate the policy of this Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly three (3) tier system for the production and sale of malt beverages.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 62, sec. 55, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 80, sec. 16, effective July 15, 2016. -- Amended

2013 Ky. Acts ch. 121, sec. 104, effective June 25, 2013. -- Amended 1992 Ky. Acts ch. 25, sec. 1, effective July 14, 1992. -- Created 1984 Ky. Acts ch. 60, sec. 1, effective July 13, 1984.