

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3358/3dn
PEN:kmg:mrc

December 1, 1999

Representative Underheim,

Because 26 USC 1563 (referenced in LRB-3358/2) excludes certain franchised corporations from consideration as a "component member of a controlled group of corporations", this draft also specifically counts the beer produced by the brewer's franchisor and by all franchises related to the brewer.

Because 26 USC 1563 contains an 80% ownership requirement to be considered "under common ownership", I substituted a reference to 26 USC 5051 (a) (2) (B), which reduces the minimum ownership requirement to "more than 50%" (a controlling ownership). 26 USC 5051 (a) (2) (B) is used to determine whether a brewer manufactures less than 2,000,000 barrels of beer (and so is entitled to a reduced rate of federal occupational tax).

For purposes of determining whether a brewer is a "small brewer" (and eligible for an unlimited number of Class "B" licenses for qualified restaurants), that brewer's production is considered along with the production of all of the following:

1. All corporations connected to the brewer through stock ownership with a common parent corporation, or owned by the same 5 or fewer owners. Corporations in which the parent corporation, or other owners, owns at least 50% of the voting stock are considered connected to the brewer. See 26 USC 5051 (a) (2) (B).

2. All partnerships and sole proprietorships that are at least 50% owned by an owner common to the brewer. See 27 CFR 25.111b (b).

3. All franchises granted by the brewer. Note that the definition of "franchise", taken from Wisconsin's Franchise Investment Law, is very broad. See s. 553.22 for franchises that are excluded from the Franchise Investment Law but which are considered franchises under this draft.

4. The franchisor of the brewer.

5. All franchises granted by the franchisor of the brewer.

Finally, note that this draft inverts LRB-3358/2. That draft limited the 2-license limitation to larger brewers. Instead, this LRB-3358/3 allows additional Class "B" licenses to be issued to a "small brewer" for qualifying restaurants.

Please read this draft very closely to ensure that it meets your needs.

Paul E. Nilsen
Legislative Attorney
Phone: (608) 261-6926