



I THINK
I WANT TO
OPEN A
BREWERY.

AWESOME! BUT
WHERE WOULD
YOU START?

I DON'T KNOW.
WHO DO I
TALK TO?

CAN
ANYONE
HELP ME?

AN ACCOUNTANT AND A LAWYER WALK INTO A BAR...



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Starting A Brewery: 5 Areas To Consider

- 1) Intellectual Property
- 2) Entity Choice
- 3) Players
- 4) Property
- 5) Regulatory and Tax Issues



Intellectual Property



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1) Intellectual Property

Intellectual property covers three main areas of law: copyright, trademark and patent. While copyright and patent may be relevant to a brewery at some point in its life cycle, for purposes of this discussion we are going to focus on trademark.



Trademark

- A trademark is a brand identifier (i.e. a name, design, logo, etc.); it identifies your beer to your customers.
- A trademark can also be a catchphrase or slogan
- Bottle designs also qualify* for trademark protection (very limited circumstances)
- Sounds and colors can also be trademarked



Trademark

- Rights in trademark are called a “springing” right; meaning when you start using the mark to identify your goods or service, your rights “spring” into existence.
- In order to use your mark at the exclusion of everyone else, you need to federally register it with the uspto (Uspto.gov)



Trademark

- A mark qualifies for trademark registration if you can satisfy the following equation:

Good/service + name/logo + use in commerce = ®



Trademark

- If you have identified a name or design you want to use to identify your beer, you are going to want to have an experienced trademark attorney conduct a search
- Beer is class 32
 - If you find another brewery using the same name in this class, you will not be able to use it
 - If you find another brewery using this name in a *similar* class (i.e. distilled spirits, brewpubs, restaurants, etc.), it could be denied registration



Trademark

- I encourage my clients to have brewery names, logo designs, slogans and flagship beers searched and registered. Seasonal and one-off beers should be searched to make sure you are not infringing on another brewery's mark but not necessarily registered.



Trademark

Why is this important to my accountant?

- Intangible Asset Accounting
- Cost of Switching



Entity Choice



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Entity Choice

Options

- Because breweries produce highly regulated controlled substances, it is imperative that you form a corporate entity through your State's Secretary of State.
- LLC
- S-Corp
- C-Corp



Entity Choice

LLC

- Most popular type of entity in the U.S.
 - Easy to set up and maintain
 - Hybrid entity: it provides all the liability protection of a corporation with the ease of setup and maintenance of sole proprietorships and partnerships



Entity Choice

LLC Tax Considerations

- Default classification
 - One Member- Sole Proprietor
 - Multi Member- Partnership
 - Pass Through Taxation
- Elections
 - S-Corp/C-Corp



Entity Choice

S-Corp

- A bit more complicated than an LLC
- Corporate formalities (board of directors, shareholders, meeting minutes, etc. are typically required)
- Restrictions: typically limited in the number of shareholders and also limited in what rights those shareholders will have



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Entity Choice

S-Corp Tax Considerations

- Eligibility
- Pass Through Taxation
- More Than 2% Owners
- Self Employment Tax Advantages
- Qualified Business Income Deduction



Entity Choice

C-Corp

- Most complex
- Not ideal from a tax perspective
- Tax considerations



Entity Choice

C-Corp Tax Considerations

- Complete Separation Between Business and Personal
- Taxes paid at C-Corp level
- NOL Carryforwards
- Changes with New Tax Law



Entity Choice-Players

Owners

- Most breweries are started with multiple owners
 - Could be a mix of investors (i.e. passive owners) and active owners
- A business partnership is basically marriage without the sex
 - Very high failure rate of business relationships, just like marriage



Entity Choice-Players

Owners

- Need to make sure certain steps are taken prior to brewing any beer:
 1. Know thy partners
 2. Have the difficult conversations on the front end
 3. Get a prenup
 4. Make sure you are constantly working on your relationship
 5. What to do if things get rocky



Entity Choice-Players

Investors

- Breweries cost A LOT of money to get started and not all owners are flush with the cash
- Investors are VERY interested in breweries these days given the explosive growth opportunities



Entity Choice-Players

Investors

- BUT, you want to be careful about who you “get into bed with”; very similar analysis as if they were active partners in the brewery
 1. Ask about past investing activity
 2. What are their goals for investment?
 3. Be sure capital is readily available and you know where it is coming from.



Entity Choice-Players

Investors

- If you have a partnership/S-Corp, investors will need to obtain a K-1 statement from the brewery (which comes from your tax return)
- Tax Distributions



Property



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Property

Lease vs. Own

- Many breweries-in-planning want to jump right to this part of the process, because it is fun looking at real estate and figuring out what part of your town or city you want to locate, but you need to do 1-3 before you find a location.



Property

Things to Look for in a Space

1. Location, location, location
2. Square footage (don't forget ceiling height!)
3. Possibility of expanding footprint



Property

Lease

- Can be particular to your state so hire a real estate attorney to assist

Own

- Can be particular to your state so hire a real estate attorney to assist
- Not a bad idea to put the land in a separate LLC from the brewery and have the brewery lease the building from the land LLC. This is for asset protection purposes.
- Tax Considerations



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Property

Tax Considerations for Ownership

- Leasing
 - Leasehold Improvements- Preferred Tax Treatment
 - Operating vs Capital Lease
- Ownership
 - Building Depreciation
 - Cost Segregation
 - Rental Income



Regulatory/Tax Issues



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Regulatory/Tax Issues

Permits

- Federal Requirements
 - TTB
 - COLA
- State
 - Varies WIDELY from state to state (hire an attorney who practices alcoholic beverage law!!!)



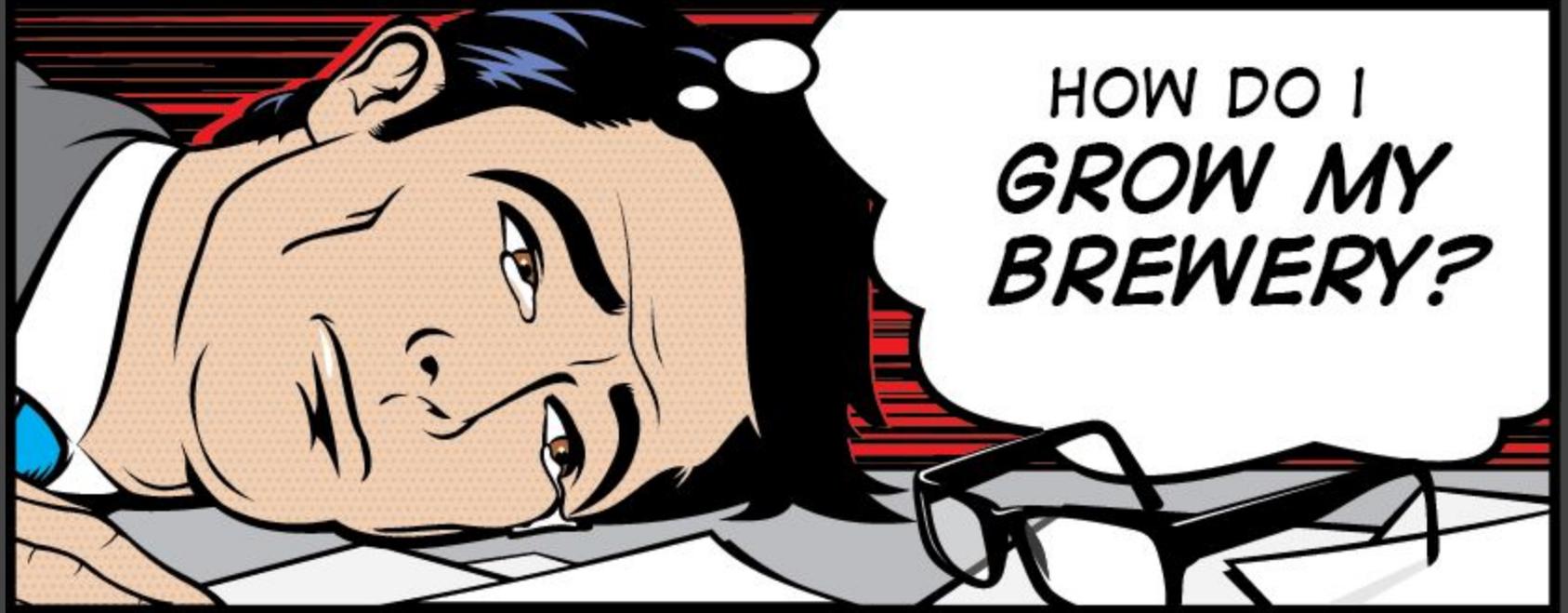
Regulatory/Tax Issues

Taxes (Beer and Liquor)

- Franchise/Income
- Excise
- Sales Tax
- Gross Receipts
- Watch for Local Taxes



Part 2: Grow and Scale Your Brewery



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