

2009 TTB Expo Presentation

Breweries — An Introduction to Federal Laws and Regulations

Presented by

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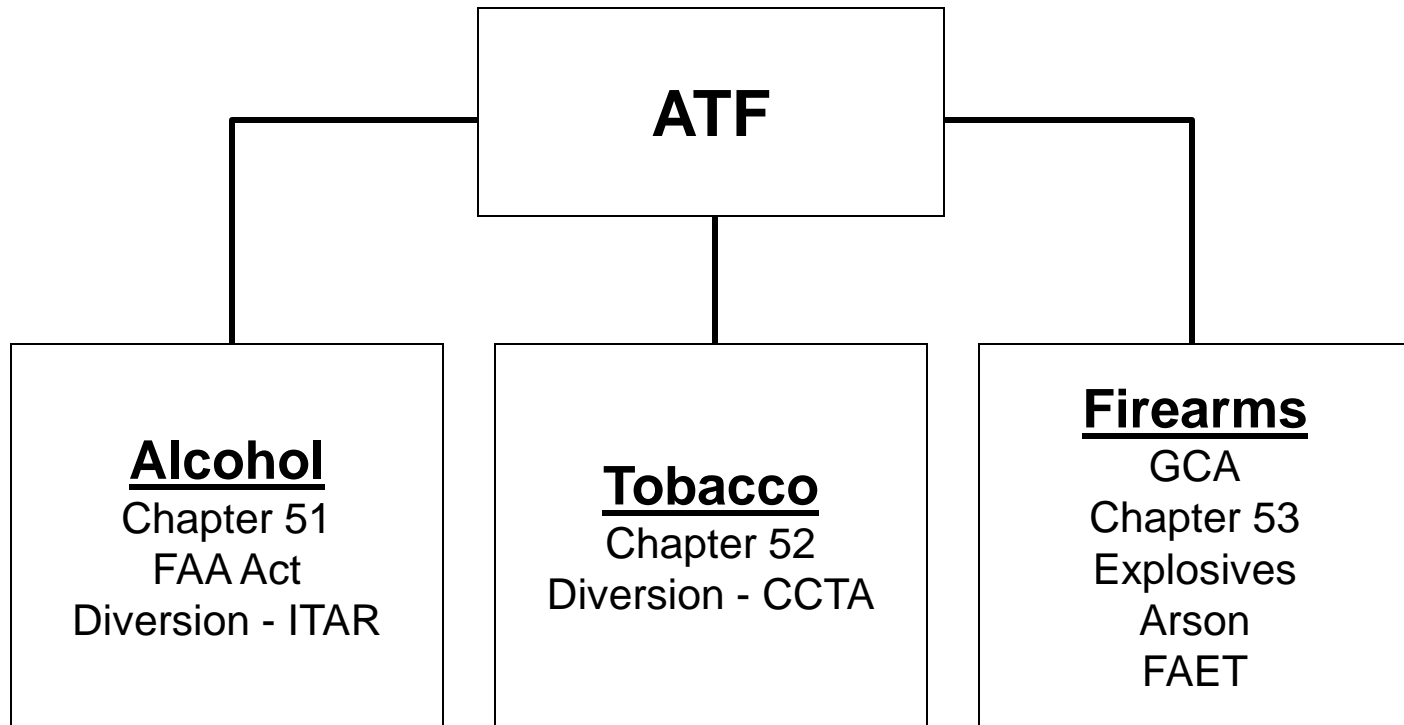
Overview

- Quick look at recent history
- Federal Alcohol Administration Act
(27 U.S.C. 201, *et seq.*)
- Internal Revenue Code — Subtitle E:
 - Chapter 51 — Taxation, Qualification, And Operations Provisions For Breweries

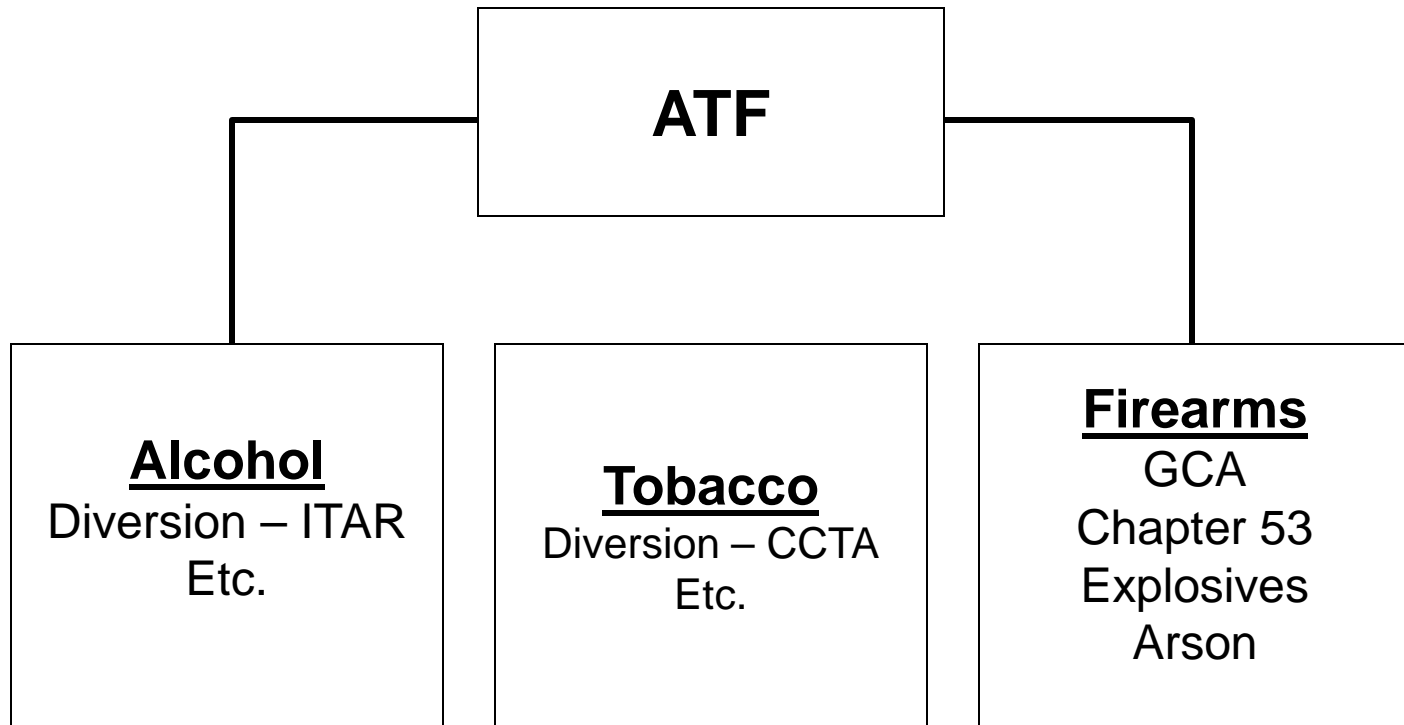
Recent History

- Before 2003 — ATF and TTB were one Agency
- In 2003 — ATF goes to the Department of Justice
- TTB keeps jurisdiction over alcohol (FAA Act and Chapter 51 of IRC) and tobacco

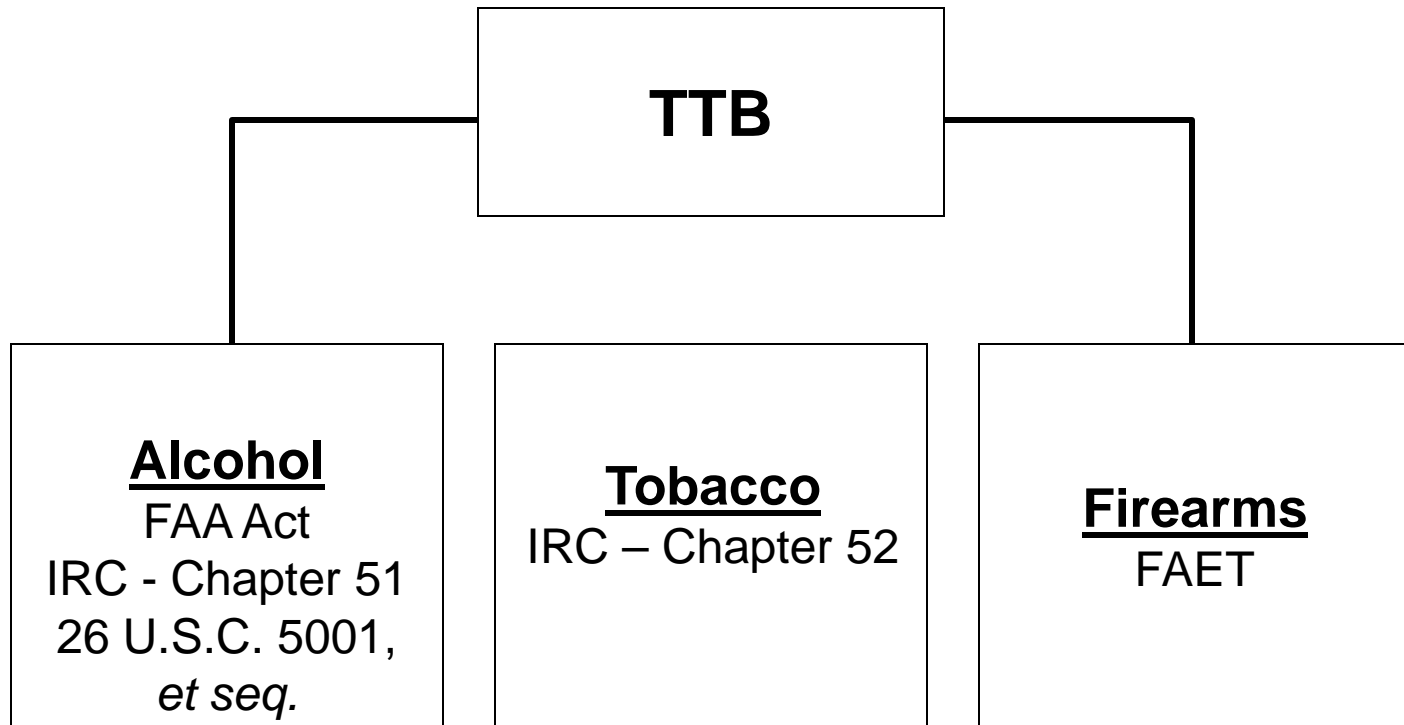
Prior to 2003



After January 2003



After
January 2003



Breweries and the IRC

- Subtitle E (Chapter 51)
 - Gallonage Taxes — 26 U.S.C. 5051, *et seq.*
 - Establishment and Operations (Qualification and Bonds) — 26 U.S.C. 5401, *et seq.*
 - Penalty Provisions Applicable To Beer and Brewing — 26 U.S.C. 5671, *et seq.*

How Does FAA Act Relate To Beer?

- FAA Act — 27 U.S.C. 201, *et seq.*
 - Bottlers and importers are generally required to obtain COLAs prior to shipment in interstate and foreign commerce, and otherwise comply with labeling requirements — 27 U.S.C. 205(e)
 - Important Trade Practice Provisions — 27 U.S.C. 205(a),(b),(c) and (d)

FAA Act Basic Permit

- Importers and wholesalers of all beverage alcohol products as well as producers of wine and distilled spirits — 27 U.S.C. 203
- Anybody missing?

Brewer's Notices and Bonds

- 26 U.S.C. 5401(a) — Brewer's notice must be filed and approved before operations commenced
 - TTB Form 5130.10
- 26 U.S.C. 5401(b) — Bond is also required (TTB Form 5130.22)

Brewer's Notices and Bonds

- 26 U.S.C. 5551(a) — Brewery cannot commence operations until bond is approved

Brewer's Notices and Bonds

- 26 U.S.C. 5401(b) — Brewer's bond is conditioned upon:
 - Payment of taxes on beer
 - Complying with law concerning production and sale of beer without fraud or evasion
 - New bond or continuation certificate needed every 4 years or whenever required by the Secretary

Brewer's Bond

- 27 CFR 25.95 — “ When a bond is found to be not acceptable by the appropriate TTB officer, the principal will be required immediately to obtain a new and satisfactory bond or discontinue business”

Excise Taxes on Beer

Gallonage Taxes

26 U.S.C. 5051, *et seq.*

Definitions – § 5052

- **Beer** — Beer, ale, porter, stout and other similar fermented beverages including Sake and similar products containing $\frac{1}{2}$ of 1 percent or more alcohol by volume brewed or produced from malt wholly or in part or from any substitute thereof

Definitions – § 5052

- **Removed for consumption or sale means:**
 - Sale and transfer of possession of beer for consumption at the brewery, or
 - Any beer removed from the brewery

Definitions – § 5052(d)

- **Brewer** — “Any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under § 5053(e)” (personal use exemption)
- See also definitions at 27 CFR 25.11

Gallonage Taxes

- Imposition and rate of tax:
 - § 5051(a) — “Tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the U.S. or imported into the U.S.”
 - Rate is \$18 per barrel – 31 gallons

Reduced Rate for Small Producers

- § 5051(b)(2) — In the case of a brewer who produces not more than 2 million barrels during the calendar year, the barrel rate shall be \$7 on the first 60,000 barrels removed for consumption or sale

Controlled Groups

- § 5051(a)(2)(B) — 2 million and 60,000 barrel thresholds apply to controlled groups
 - A controlled group is generally made up of business entities that are closely affiliated, related **AND UNDER COMMON CONTROL** so that for certain tax purposes they will be considered one entity
- Example — Two corporations with one being the parent and one being the subsidiary
- See also 27 CFR 25.152

Tax Determination

- § 5054(a)(1) — On beer produced in the U.S., tax is imposed by section 5051 and determined at the time it is “removed for consumption or sale and paid by the brewer thereof, in accordance with 5061”

Method For Collecting Tax

- § 5061(a) — Tax is collected on basis of a return (TTB Form 5000.24)
- § 5061(d) — Time for collecting taxes removed under deferral bond (semi-monthly)
- § 5061(d)(4) — Small producers can file quarterly (not more than \$50,000 in alcohol taxes)
- § 5061(e) — Large taxpayers must pay by EFT

What About Alternating Proprietorships?

- **CAUTION!** Alternating operations **MUST** be bona fide or host brewery will be liable for beer taxes
- See § 5054(a)(1) — “Tax shall be paid by the brewer thereof”
- See also — Industry Circular 2005-2

Caution!

- Flavored Malt Beverages (FMBs):
 - 27 CFR 25.15(b) — “Flavors and other non-beverage ingredients containing alcohol may contribute no more than 49 percent of the overall content of the finished beer.”
 - Products exceeding these limits are classified as distilled spirits and taxed at \$13.50 per proof gallon
- See also — Industry Circular 2008-3

Exemptions from Tax § 5053

- For export
- Removal of beer that is unfit for beverage use
- For laboratory analysis
- For research, development, and testing (other than consumer testing or other market analysis)
- Beer produced for personal or family use
- For destruction

Personal Use Exemption

- § 5053(e) — Any adult, may, without payment of tax, produce beer for personal or family use:
 - Not more than 200 gallons if 2 adults
 - Not more than 100 gallons if 1 adult
 - Adult is an individual that is 18 or older or State minimum age, whichever is greater
- See also — 27 CFR 25.205(c) and 25.207

Section 5054(b)

Returned Beer

- Returned beer is taxed again if removed again
- § 5054(b) — “Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter . . . including the tax imposed by § 5051”

Beer Returned to Bond or Destroyed

- § 5056(a) — Any tax paid may be refunded or credited without interest if beer is returned to brewery or destroyed under supervision as required by regulations
- 27 CFR 25.212 — Taxpaid beer returned to same brewery, then brewery shall take an offset or deduction

Limitations

- § 5056(d) — No claim under § 5056 for refund or credit is allowed unless filed within 6 months of date of the return, loss, destruction, etc.
- No claim allowed if the claimant is indemnified by insurance or otherwise

Occupational Taxes

- Old rule — Every brewer, wholesaler and retailer had to pay Occupational Taxes
- New rule — These taxes were suspended in 2004 and repealed effective July 2008

Establishment and Operations

- Subchapter G
- Establishment — qualification requirements, notices, and bonds
- Operational compliance

Operations

- Removal and labeling requirements:
 - 26 U.S.C. 5412 — Beer may be removed from brewery for consumption only in hogsheads, packages and containers that are marked and branded or labeled in conformity with the regulations

Operations

- Keeping records:
 - § 5415 — Every brewer shall keep records in such form and containing such information as the Secretary shall prescribe and shall be made available during business hours

Penalties

- Subchapter J
- 26 U.S.C. 5671 — Whoever evades beer taxes imposed by § 5051 or defrauds the U.S. by failing or refusing to keep or file accurate and true records as required by § 5415 and regulations, shall be subject to:
 - 5 year felony and \$5,000 fine
 - Beer is forfeitable

Penalties

- 26 U.S.C. 5673 — Flagrant and willful removal of beer without tax with intent to defraud, then:
 - The lands and buildings of brewery are forfeitable

Ask For Help

- Utilize the resources of TTB:
 - National Revenue Center
 - Advertising, Labeling and Formulation Division
 - Regulations and Rulings Division
 - Field Offices
 - Counsel

Contact Information

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