

The Requirements for Becoming and Operating a Winery

Tom Zabadal, Paolo Sabbatini, Diane Miner and Joanne Davidhizar

Introduction - There are several steps required to establish a winery. They are all manageable and those who undertake this process ultimately succeed. However, the regulatory journey to establish a winery tends to be a unique travel experience for each effort. We asked people who had been through this procedure about their experiences. Their responses indicated a range of time required to complete the process from nine to twelve months and a cost ranging from \$1000 to \$5000. We have assembled information to help facilitate this process. This presentation is for educational purposes only. It is not a legal document. This material is copyrighted and may not be reproduced without permission. We welcome suggestions on additions and/or modifications to this information. They may be sent to zabadal@msu.edu.

Part 1 - Winery Establishment

I. TOWNSHIP ZONING APPROVAL

The process of establishing a winery begins at the township level. This is the most difficult step in the process for which to provide guidance. The reason for this is simple. There are 1245 townships in Michigan, and Michigan amended its constitution in 1963 to expand the power of "Home Rule" to these townships. This means that each township may create unique requirements with regard to the establishment and operation of a winery. And indeed many have done just that. When a township is not zoned, then a county will have jurisdiction. Most townships have zoning, and therefore, certain ordinances will apply to the establishment of a winery.

The example given below for a Special Use Permit (SUP) for Bainbridge Township illustrates some of the common components involved with township approval for a winery but many other factors may also be involved. A township may stipulate many aspects of the winery operation such as road signage, times of retail sales operation, guidelines for holding special events at the winery, what kinds of items may be sold at the winery, etc.

EXPLANATION:

Check with your local township for zoning and other requirements.

EXAMPLE: Bainbridge Township in Berrien County, Michigan

Bainbridge Township requires a Special Land Use Permit to start a winery. The process for obtaining this permit includes:

- \$75 filing fee
- Special Land Use Permit Application
- Site Plan
- Name & address of owners within 300 feet
- Copy of current paid tax bill, deed or other proof of ownership
- Statement of Compliance
- Request for Public Hearing

If the Special Land Use Permit is approved, other applications may be necessary such as a Building Permit Application and other requirements relating to particular special uses.

II. LOCAL AND COUNTY AGENCIES

Depending upon the local requirements, several other local and/or county agencies may be involved in the establishment of a winery. Examples include (a) fire department with regard to access to the premises, required sprinkler systems, etc.; (b) the road commission; (c) the County Health Department.

III. CHECKING AVAILABILITY FOR NAME OF BUSINESS

EXPLANATION:

This is a screening process only. The final determination of whether a name is available for use is made during the review process when the appropriate business structure document is submitted for filing.

STEPS INCLUDE:

Go to the web site indicated and then links from that web site to check the name availability of your chosen winery name.

CONTACT INFORMATION:

Michigan Department of Energy, Labor & Economic Growth (DELEG)
www.michigan.gov/corporations
Quick links from this site for name availability

IV. REGISTERING A BUSINESS STRUCTURE

EXPLANATION:

Depending upon the business structure of your winery, you need to register that business either at the county or state level.

(1) Sole Proprietorship or General Partnership

STEPS INCLUDE:

- (a) Contact the county clerk's office to get forms
- (b) \$10 filing fee-renewed every 5 years along with submitting one of these forms:

Sole proprietorship-form BC-CCLK-32
Certificate of Assumed Name (DBA)
General partnership-form BC-CCLK-41
Certificate of Co-partnership

CONTACT INFORMATION:

County Clerk's Office

Example: Berrien County, Michigan

Berrien County Clerk's Office
701 Main Street
St. Joseph, MI 49085
269 983-7111 x 8233
www.berriencounty.org
online forms

(2) Limited Partnership, Limited Liability Company or Corporation

STEPS INCLUDE:

- (a) Contact the Michigan Dept. of Energy, Labor and Economic Growth
- (b) File one of these forms:

Corporation (domestic, profit, formed in Michigan)
Articles of Incorporation - form BCS/CD-500

Limited partnership (domestic)
Certificate of Limited Partnership - form BCS/CD-800
Limited liability company
Articles of Organization - form BCS/CD-700 LLC

- (c) After applicable form is filed, the original document will be returned signifying the document was filed and indexed under the name you selected.

CONTACT INFORMATION:

Michigan Department of Energy, Labor & Economic Growth
Bureau of Commercial Services
PO Box 30054
Lansing, MI 48909
www.michigan.gov/dleg
Commercial Services & Corporations
Business Services
Forms, Publications & Statutes

V. EMPLOYER IDENTIFICATION NUMBER (EIN)

EXPLANATION:

The Employer Identification Number (EIN) is a 9 digit number assigned and required for tax filing and reporting.

STEPS INCLUDE:

- (a) Submit Form SS-4 - Application for Employer Identification Number - apply on-line, by phone, fax or mail depending on how soon you need your number.

CONTACT INFORMATION:

Internal Revenue Service
Department of the Treasury
800 829-4933
Instructions - <http://www.irs.gov/pub/irs-pdf/iss4.pdf>

VI. FEDERAL LICENSING OF THE WINERY

EXPLANATION:

A winery must be licensed at the federal level.

STEPS INCLUDE:

- (a) All applicants file these forms:
 - TTB F 5120.25 Application to Establish and Operate Wine Premises
 - TTB F 5100.24 Application for Basic Permit
 - TTB F 5120.36 Wine Bond
 - TTB F 5000.29 Environmental Information
 - TTB F 5000.30 Supplemental Information on Water Quality Considerations
 - Diagram of premises
- (b) There are several other forms that may apply to you depending on your business structure. See Appendix A for the Checklist of Forms.

CONTACT INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)
TTB National Revenue Center
Federal Office Building
550 Main Street, Suite 8002
Cincinnati, OH 45202-5215
513 684-3334
877 882-3277 (toll free)
ttbwine@ttb.gov (email address for general questions)
www.ttb.gov/wine
quick link for wine forms & instructions

Useful information:

www.ttb.gov/wine - quick link - wine online seminar

www.ttb.gov/pdf/compliance.seminar.pdf- 2008 Compliance Seminar Handbook

www.ttb.gov/applications/winery_checklist.pdf - New Wine Premises Checklist

VII. STATE OF MICHIGAN WINERY LICENSING

EXPLANATION:

A winery must also be licensed at the state level.

STEPS INCLUDE:

- (a) All applicants file Form LC-687 Application for New Licenses, or Application of Buyers for Transfer of Ownership or Interest in License.

(b) Additional requirements based on business structure as indicated below:

Corporation submit:

1. Copy of current, filed Article of Incorporation
2. Current "Certificate of Good Standing"
3. "Report of Corporate Officers, Directors & Board of Directors" (form LC-52)
4. "Individual Stockholder/Corporate Stockholder Questionnaire" (form LC-621) completed by each stockholder holding 10% or more stock interest
5. "Limited Partners, Stockholders & Members Statement " (form LC-38) completed by each stockholder holding less than 10% stock interest

Limited Liability Companies submit:

1. Copy of Articles of Organization and copies of any amendments
2. Copy of Certificate of Authority to do business in Michigan, if the LLC is a non-Michigan LLC
3. Copy of Operating Agreement entered into by members
4. Copy of most recent annual statement filed with Michigan Department of Consumer & Industry Services, Corporations and Securities Bureau. Newly organized LLC's will not have filed document yet
5. "Report of Limited Liability Company Members, Managements and Assignees" (form LC52A0)
6. "Individual Stockholder or Corporate Stockholder Questionnaire" (form LC-621) completed by each member holding 10% or more of the total interest in LLC. Also, LC-621 should be completed for an assignee of a membership interest or a manager with a percentage distribution of 10% or more in the LLC.
7. "Limited Partners, Stockholders or Members Statement" (form LC-38) completed by member holding less than 10% of the total interest in the LLC. Also, LC-38 should be completed for an assignee of a membership interest or a manager with a percentage distribution of less than 10% in the LLC.

Partnerships submit:

1. Partnership Agreement (required for limited partnerships)
2. "Application for New Licenses or Application of Buyers for Transfer of Ownership or Interest in License" (form LC-687) completed by each general partner.
3. "Limited Partners, Stockholders or Members Statement" (form LC-38) completed by each limited partner. In the case where the limited partner is a corporation or a limited liability company, an "Individual Stockholder or

Corporate Stockholder Questionnaire" (form LC-621) should be completed by each of the limited partners.

- (c) The Commission's Licensing Division will authorize an investigation and forward the file to Commission's Enforcement Division.
- (d) The MLCC's Enforcement Division contacts the applicant advising them of all documentation necessary for review and schedules an appointment to conduct the investigation. This investigation covers a variety of areas including but not limited to:
 - 1. ownership structure
 - 2. background of individuals
 - 3. projected cost of the project
 - 4. source of finances - including source of any money lender's finances
 - 5. present owner verification
 - 6. physical inspection of the facility if built and available for inspection
- (e) Upon completion of the investigation, the MLCC investigator submits a report to the MLCC.
- (f) The MLCC investigator will also release forms and fingerprint cards to the local law enforcement agency and a resolution form to the local governing body. The local law enforcement agency's investigation is independent of the Commission's investigation. It is the responsibility of the applicant to follow-up with the local law enforcement agency and the local governing body to ensure that their recommendations are forwarded to the Commission.
- (g) The MLCC will issue a formal order approving, denying, or holding the application for additional information. The applicant will be advised of the Commission's decision and provided with a copy of the Commission Order.
- (h) The applicant will be provided with a check sheet listing any additional requirements or documentation necessary to be submitted to the Commission prior to issuance of the license and a contract for signatures.
- (i) If the application is denied, the applicant will have the opportunity to appeal the denial.
- (j) Forms mailed to applicant after license approval:

Bond Application- Surety Bond - Form MW-816 executed by Michigan Authorized insurance company in the amount of \$1,000 for the initial license .

Proof of Financial Responsibility - Form LC-95 required providing security for liability of not less than \$50,000.

CONTACT INFORMATION:

Michigan Liquor Control Commission (MLCC)
Department of Energy, Labor & Economic Growth (DELEG)
7150 Harris Drive
P.O. Box 30005
Lansing, MI 48909-7505

Principal contact person
Teresa Whitehead
517 322-1415
whitehead@michigan.gov
www.michigan.gov/lcc - forms - licensing

Useful information:
www.michigan.gov/documents/cis_lcc_winedetail_57152_7.pdf

Part 2 - Winery Operation

I. REGISTRATION FOR PAYMENT OF MICHIGAN TAXES (other than wine excise tax)

EXPLANATION:

New businesses must register for paying sales tax, use tax, income tax withholding, business tax and/or unemployment insurance tax. Submit application at least 6 weeks but not more than 6 months before intending to start your business.

STEPS INCLUDE:

- (a) Obtain, fill out and submit Form 518.
- (b) Instructions will be provided for making payments after approval of the application.

CONTACT INFORMATION:

Michigan Department of Treasury
PO Box 30778
Lansing, MI 48909-8278

www.michigan.gov/documents/518_3620_7.pdf - form and instructions

Other useful site:

www.michigan.gov/businessstaxes - New Business Webinar Presentation

II. PAYMENT OF MICHIGAN EXCISE TAX ON WINE

Explanation: Michigan wineries must pay a State excise tax on wine sold. For wines with 15% alcohol or less, this is \$0.135/liter or about \$0.51/gallon.

Steps include:

- (1) File form LC-890
- (2) File monthly reports by the 15th of each month.

CONTACT INFORMATION:

Michigan Department of Labor & Economic Growth
Michigan Liquor Control Commission (MLC)
7150 Harris Drive
P.O. Box 30005
Lansing, MI 48909-7505

III. PAYMENT OF FEDERAL EXCISE TAX ON WINE

EXPLANATION:

Federal Excise Tax is due semi-monthly, quarterly or annually, depending upon the amount of tax due and the size of the company's operations. Amount of tax that must be paid is determined when the wine is removed from the bonded premises for consumption or sale.

STEPS INCLUDE:

- (a) Obtain, fill out and submit Form TTB F 5000.24
- (b) Pay taxes according to the appropriate schedule for your winery.

CONTACT INFORMATION:

TTB
Excise Tax
PO Box 790353
St. Louis, MO 63179-0353
ttbwine@ttb.gov
513 684-7151

TTB Form TTB F 5000.24 www.ttb.gov/forms/f500024.pdf - Excise Tax
Return & Instructions

Useful information:

2008 TTB Compliance Seminar for Bonded Wine Premises, page 45-78.
www.ttb.gov/pdf/compliance-seminar.pdf

Federal Wine Excise Tax Table

<u>Wine</u>	<u>Wine Gallon</u>	<u>750 ml bottle</u>
14% Alcohol or less	\$1.07 ¹	\$0.21
Over 14 to 21%	\$1.57 ¹	\$0.31
Over 21 to 24%	\$3.15 ¹	\$0.62
Naturally sparkling	\$3.40	\$0.67
Artificially carbonated	\$3.30 ¹	\$0.65

¹ However, there is a credit of \$0.90/gallon for the first 100,000 gallons of wine for producers of less than 150,000 gallons of wine, and lesser credits for up to 250,000 gallons of wine.

IV. OBTAIN WINE LABEL APPROVAL

EXPLANATION:

Every wine label must be approved at both the federal and the state level. Federal (TTB) approval must be obtained first and then state (MLCC) approval.

STEPS INCLUDE: (These steps are for an electronic submission)

- (a) Submit Form 50132 to obtain the Federal user ID and password.
- (b) Use ID and password to submit COLA on-line label application.

Label Information required includes:

- Brand name
- Class (grape, sparkling, fruit etc.)
- Alcohol content
- Bottlers name & address
- Net content
- Sulfite declaration
- Alcohol beverage health warning statement

- (c) Michigan approval of label (after TTB approval above)

No form to fill out

Submit:

Copy of approved Certificate of Label Approval (COLA) from TTB
one set of loose labels (if available).

After approval, a copy of the COLA will be returned to you with the
Michigan registration number stamped on it.

After this registration number is received for your first label
approval, an on-line user name and password can be established
to register each additional product and label.

CONTACT INFORMATION:

Federal

TTB
Advertising, Labeling & Formulation Division
1310 G Street NW, 4th Floor, Suite 400
Washington, DC 20220
866 927-2533
alfd@ttb.gov

Paper form - TTB F 5100.31 - Application for the Certification/Exemption of
Label/Bottle Approval (COLA).

<http://ttb.gov/forms/f5100.31.pdf> - Form & instructions

Electronic Applications (preferred)

www.ttb.gov/forms/f50132.pdf - application & instructions for user ID and password

www.ttbonline.gov/colasonline - COLA'S Online Access Request -

Useful information:

2008 TTB Compliance Seminar for Bonded Wine Premises, p. 117-126
www.ttb.gov/pdf/compliance-seminar.pdf

State

Michigan Liquor Control Commission
Manufacturers & Wholesales Section
PO Box 30005
Lansing, MI 48909
517 322-1415

V. OFF-SITE TASTING ROOM LICENSE (optional)

EXPLANATION:

When a license is approved for a Wine Maker/Small Wine Maker (Form LC-687), this is a license to sell wine at the winery directly to a consumer for take out and allows you to offer free samples to consumers.

A Tasting Room License is a license issued by MLCC to a Wine Make/Small Wine Maker to operate an OFF-SITE winery tasting room located away from the winery premises.

VI. FOOD ESTABLISHMENT LICENSE

EXPLANATION:

A winery is considered a wholesale food processor and it requires a Food Establishment License.

STEPS INCLUDE:

- (1) First obtain township variance/zoning approvals as discussed above.
- (2) Contact the local MDA office to involve a local MDA inspector in the building/remodeling process.
- (3) Follow the guidance of the local MDA office to file Food Establishment License Application (Form FI-107) at the state office of MDA.

CONTACT INFORMATION:

Michigan Department of Agriculture (MDA)
P.O. Box 30746
Lansing, MI 48909
517 241-6666

For the nine counties in SW Michigan contact the local Region 5 MDA office at:

4032 M-139, Bldg 116
Saint Joseph, MI 49085
269-428-2575

VII. MICHIGAN DIRECT SHIPPER LICENSE (Optional)

EXPLANATION:

License required from Michigan Liquor Control Commission for in-state and out-of-state wineries to ship domestic wine directly to Michigan consumers. License does not allow direct shipment of imported wines.

STEPS INCLUDE:

- (a) Obtain, fill out and submit Form LC-MW102

CONTACT INFORMATION:

Michigan Department of Labor & Economic Growth
Michigan Liquor Control Commission (MLCC)
7150 Harris Drive
P.O. Box 30005
Lansing, MI 48909-7505

www.michigan.gov/documents/LC-MW102_154468_7.DirectShipperLicenseapp.pdf
Form & instructions

www.michigan.gov/documents/LC-MW102_154466_7.DirectShipperRequirements.pdf
Direct shipping requirements information sheet

OTHER SOURCES OF INFORMATION

Michigan Business One Stop - Michigan established a web site in 2009 as a comprehensive reference for those establishing businesses in Michigan. This web address is: <http://www.michigan.gov/business>