

# Transferring Winery Permits and Licenses

*Preparing for the inevitable*



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It's nearly impossible to page through any wine trade publication these days without encountering a story announcing a winery sale. Whether it's the latest in a long line of acquisitions by one of the mega-winery conglomerates, or the late blooming of a wine lover's lifelong dream, these outwardly different transactions trigger a similar set of esoteric regulatory requirements.

The compliance part of the story doesn't make the news, but it is important—perhaps more important to you—than a lot of what does make headlines. “Paperwork happens!” In fact, like death and taxes, winery transfers are virtually inevitable at least once in every winery's history. Your winery may not be for sale, but an unsolicited “offer you can't refuse” or an unplanned change in family circumstances may require you to become a sudden expert on the regulatory requirements of transferring your winery to new ownership. Or maybe you'll find yourself on the other side of the negotiation, when it's time to expand and you discover that it's easier to buy another production facility than it is to increase the use permit on your current one.

Even the use of common estate planning tools such as trusts or

## SHORT COURSE

- ▶ Prepare for the inevitable: know the basics of transferring permits and licenses.
- ▶ Advance planning and good compliance housekeeping can save stress, time, and taxes.
- ▶ How you handle the permits and licenses depends on the type of transaction.
- ▶ Report changes of ownership or control to TTB within 30 days for unbroken operations.
- ▶ Processes and timing differ from state to state so do your homework early.

little as 5% a year, will someday add up to a change in control, when the majority of ownership finally shifts. These types of entirely “internal” transactions, while not typical sales, frequently create technical transfers that need to be reported much like a sale to a third party.

## GOOD HOUSEKEEPING

Any realtor will tell you that tidying up your house is one of the most effective ways to make your property more appealing to a buyer. Well, good compliance housekeeping is also important when selling your winery. Potential buyers will often do their “due diligence” on your licenses

and family partnerships requires that you know the basics of winery transfers and changes of control. Changes of ownership or control can happen even though the winery stays in the family. The most common scenario of this type occurs when the stock of a corporate-owned winery is placed into a trust or gifted to the owner's children while implementing an estate plan. A change in control also occurs when some type of asset protection entity such as a family LLC or limited partnership is created to hold the stock of the winery entity. Even incremental stock transfers, as

and permits, either before making an offer or at least before closing the transaction, so it is prudent to check whether your ownership records are up-to-date with the regulatory agencies before putting your winery on the market. In a surprisingly high percentage of the winery transactions we handle, we find that past changes in key personnel or ownership interests of the selling winery had not been reported to the regulatory agencies. These types of unreported changes will probably add significant stress and delay your transaction because the regulatory agencies are likely to want the overlooked changes reported and approved before approving the transfer.

Another good housekeeping tip is to make sure all of your production reports and excise tax returns have been filed. Before issuing a new permit to your winery's buyer, TTB will want to close out and discontinue your permits. But first, TTB will review your records to make sure there are no deficiencies. While TTB has made great strides in catching up on its workload, you might be unpleasantly surprised to hear about a missing return or report that had not previously been noted or requested, although the error occurred several years ago.

If you are thinking of selling, you may wish to contact your winery's specialist at TTB's National Revenue Center to find out if they are up to date in reviewing your records, and if not, to specifically ask them to determine whether there are any outstanding items that you need to address. A tax deficiency is much easier to resolve without the pressures of a transaction creating an emergency situation.

## SMALL PRODUCER CREDIT ISSUES

Another kind of good housekeeping is essential for wineries in the "small producer" category. Your reduced tax rate is dependent upon producing at your winery each calendar year. If you sell your winery before crush—which is easy to do, since crush doesn't occur until the middle or end of the third quarter each year—you may end up not producing at your winery the last year you operate the winery. That can have serious tax consequences. In that case, TTB will be forced, under its own regulations, to retroactively recalculate your taxes for the entire calendar year, and assess you at the full tax rate, disallowing all the small producer credit claimed.

This risk exists for any type of change of ownership that eventually results in the issuance of a new permit, including changes in business structure for asset protection or estate planning purposes, as mentioned earlier. It can also happen through the

untimely death of a general partner or dissolution of a marriage—an event that may be impossible to predict. Fortunately, there is a routine form of "cheap insurance" that can perfectly protect your tax advantages under all conditions. We recommend to all wineries in the small producer category that you keep at least one tank or a few barrels undeclared each harvest, and declare them in January each year. That way, you start the year with production, and don't have to wait till the grapes ripen to ensure that you qualify for your small producer credit. It's so simple, there's no good excuse not to do it!

## NOT ALL TRANSACTIONS ARE CREATED EQUAL

The buyer acquires the winery by buying the stock or ownership interests in the entity that owns the winery. Then the entity on the permit does not change, but the people behind it do. This is called a "stock purchase" or "change of control." If your winery permit is held by a corporation, the buyer would buy the shares of stock of the corporation. If your winery is owned by an LLC or a limited partnership, the buyer would buy the memberships of the LLC or partnership interests. By this method, the buyer automatically acquires the winery's assets, including the permits and licenses, and simply takes over leases, receivables, etc., in the absence of special provisions to the contrary.

There are numerous variations on these types of transactions, many of which may affect your licenses and permits. For example, let's assume your winery has outgrown its present facility and is building a new one. After moving into the new quarters, you plan to sell your existing facility. One way to orchestrate the transition is to apply well in advance for new permits and licenses at your new facility. This allows the regulatory authority to issue before you start to move, and gives you the greatest flexibility in the moving process. In this scenario, you can have inventory and even wine-making operations happening at both new and old locations simultaneously. This approach also has advantages to the buyer of your outgrown winery. Since it leaves your old licenses and permits in place at your existing winery, you can transfer them to the buyer at the time of sale. Then the buyer may be able to start up operations immediately using your permits and licenses,

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rather than wait for their new ones to issue (more about this below).

In most circumstances, the best option is to license the new facility with new permits and licenses before you are ready to move in. But sometimes moving existing licenses and permits to the new location is the better choice; for example, to protect small producer credit if you haven't implemented our "cheap insurance" advice (given above) and there are a lot of tax dollars at stake. However, there are geographic limits to transferring licenses, so consult with your compliance advisor before assuming you can transfer the permits and licenses. Also, the timing can be tricky in this situation. It is much easier to orchestrate with a non-producing type of license than with a winery.

(A discussion of all the types of winery transactions affecting your licenses and permits is beyond the scope of this column. For more information on the many types of changes to winery permits, and how to handle them, see the authors' article entitled Business Changes That Affect Your Winery License, available at [www.csa-compliance.com/html/Articles/BusinessChanges.html](http://www.csa-compliance.com/html/Articles/BusinessChanges.html)).

#### THE OPTION OF SELLING THE WINERY BUT KEEPING THE PERMIT AND LICENSES

Sometimes, the selling winery will need to keep its permits and licenses, because it will not immediately cease operations and has inventory it wants to continue to sell. In this situation, the purchase agreement should state that the selling winery will not transfer its permits and licenses to the buyer and the buyer must obtain its own permits and licenses. There are a couple of challenges involved in this unconventional approach. One drawback is the extra time required for the buyer to get its permits and licenses issued. Your winery's new owner will not want to close the sale until its regulatory approvals are issued. Additionally, the selling winery will need to find a new facility where it can continue its operations, and transfer its permits and licenses there. A very convenient solution for the seller is to have the buyer become a "host winery" in an alternating proprietor arrangement, and allow the selling winery to become a "tenant



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#### AN OPEN LETTER TO CALIFORNIA VINTNERS

Today's competitive wine market demands that we examine our business plans and maximize our resources. Brands are the way to the future, we are told. With an eye to your most important raw material, winegrapes, we suggest another look at Lodi.

The transformation that has taken place in Lodi in recent years is remarkable. It began with the launch of an intensive quality enhancement program. We educated growers on what great wines taste like, and how to make them from their fruit. We invested in research on crop loads, deficit irrigation and trellis systems. We replaced thousands of acres of vines with varieties more suited to our climate and today's market. At the same time we launched our Sustainable Viticulture Program, an industry leader.

As a result we've enjoyed great advances in quality. In our first year as a stand-alone region at the State Fair Wine Competition we garnered 22 gold medals, among them ties for "Best Syrah" and "Best Zinfandel" in California.

Today Lodi produces a consumer-pleasing style of New World wine perfect for the American palate – lush, fruit-forward, full-flavored, but soft. In response to the demand for these wines there are now 50 wineries in Lodi, compared to 8 when we started in 1991. Also, dozens of California wineries are creating Lodi appellation brands within their product lines, something we're pretty proud of.

Perhaps wine writer Dan Berger says it best – "One of the most difficult things to do in this world is change a reputation, but the Lodi wine grape region is doing just that."

The quality/price ratio of Lodi winegrapes is unmatched in the market today. Please call your broker or contact us directly for wine samples, tours of the region or meetings with prospective growers. Let's grow together.

Sincerely,

Mark Chandler  
For Lodi Winegrowers

(209) 367-4727  [www.lodiwine.com](http://www.lodiwine.com)