NEW FEDERAL LAW DEFINING AND TAXING HARD CIDER ON TRACK FOR IMPLEMENTATION IN 2017

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On December 18, 2015, President Obama signed into law the **Protecting Americans from Tax Hikes Act of 2015 Act**. The PATH Act included Congress' **Cider Investment and Development through Excise Tax Reduction Act** (commonly referred to as the "CIDER Act"), which updated federal tax law to make it easier for cider makers to put new, value-added products on the market. The new cider law goes into effect as of December 31, 2016.

In recent years the rising popularity of hard cider has led to significant growth in the industry. Production nationally more than tripled from 9.4 million gallons in 2011 to 32 million gallons in 2013 (the most current years for which annual data are available). Cider revenues in the U.S. have been just as impressive, tripling from $178 million in 2007 to $601 million in 2012.

The impact of cider at the state level can be just as dramatic. For example, Vermont's model of value-added agriculture has bolstered a vibrant cider industry, partnering local orchards and cider makers. Vermont is anxious to market its cider producing regions as "The Napa Valley of Cider."

However, antiquated federal laws currently impose high taxes on ciders with alcohol content above seven percent alcohol-by-volume (7% ABV) or carbonation levels that mirrored sparkling wines such as Champagne. Title 26, Section 5041(b)(6) of the United States Code defines "hard cider" as "*still wine derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of 1 percent and less than 7 percent alcohol by volume*." Section 5041(a) of that Code also imposes higher tax rates on hard ciders with carbonation in excess of 0.392 grams of carbon dioxide per 100 milliliters; hence the criticism that carbonated ciders are taxed like Champagne and other sparkling wines.

Equally onerous to many cider manufacturers, the current federal laws limit the definition of hard ciders to apple-based beverages. The current definition excludes products made from pears.

Beverages that meet the definition of hard cider are taxed at the rate of 22.6 cents per gallon. In contrast, non-qualifying fermented fruit beverages are subject under the current law to the $1.07 per gallon tax rate on still table wines, as well as the $3.40 per gallon tax rate on sparkling wines, and the $3.30 per gallon tax on artificially carbonated wines. These tax constrains explain in part why most cider makers water down their products (because the natural sugar content of apples typically results in higher alcohol levels) and used lower levels of carbonation.

Fortunately, the new CIDER Act will change things for the better. Specifically, when the new law goes into effect on December 31, 2016, it will expand the definition of "hard cider" to encompass all products that meet the following criteria:

- Alcohol beverages contains not more than 0.64 grams of carbon dioxide per 100 milliliters;
- Made from apples, pears, or concentrate of apples or pears and water;
- Containing no other fruit product or fruit flavoring other than apple or pear; and
- Containing at least 0.5% but no more than 8.5% ABV.

The new law also will lower the tax structure for cider, along with an improved label approval process that will allow cider makers to quickly put new products out to market. The benefits of the new law also extend to pear growers.

Proponents of the CIDER Act point to multiple benefits. Passage of this legislation makes small cider producers more competitive in the market by giving them increased flexibility in production and ingredients, and brings the US cider definition into line with international standards for alcohol by volume, carbonation, and allowable recipes. Moreover, while the new law initially will result in reduced tax collections, advocates argue that any lost tax revenue will be offset by numerous benefits.

For example, lower taxes are expected to enable more start-up cider producers. Lower taxes also will allow local cider manufacturers and related businesses that service those manufacturers to grow, and boost employment. A growing base of new cider companies ultimately will yield a larger tax base, which in turn ultimately could eclipse the initial drop in tax revenues caused by the new law's tax rate reduction.

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The promotion of a better environment for cider start-ups also contributes to greater consumer choice. The cider industry is very regional in nature. Different regions of the country grow different types of apples and pears, which yield different styles of cider. As more cider producers come online, consumers will see a growing diversity of styles, compositions, and choices for their palates.

For more information on the CIDER Act and its impact on hard cider producers, please contact GrayRobinson's Nationwide Alcohol Industry Team.