

PROPER RECORD KEEPING IS MORE THAN A GOOD IDEA - IT'S THE LAW

By: Michael J Brown/August 2001

Record keeping is not fun. Many bar and restaurant owners would agree it is the part of the job they dislike the most. Even in this computerized age, proper record keeping takes time and is a big hassle. Contracting the work out is expensive, and even then you still have to know what is going on in your business.

For liquor license holders, however, keeping proper records is not just a good idea -- or even just a business necessity -- but is required by law. The Michigan Liquor Control Code authorizes the MLCC to adopt rules regarding the maintenance of records by liquor license holders. MLCC Rule 7, R 436.1007 states that "A licensee SHALL maintain accurate records of alcoholic liquor purchases and sales. A licensee SHALL maintain records sufficient to determine ownership of the licensed business and to whom the profits or losses of the business accrue. The records required by this rule SHALL be maintained for a four-year period of time."

The MLCC rules do not specify how any licensee shall keep those records, nor does the rule specify what records must be maintained. Thus, a licensee may choose to keep only paper records of all of its purchases and sales, or may choose to utilize a more sophisticated computerized record keeping system. Either way, the records must be complete and they must be accurate. The records must also be understandable to an MLCC investigator.

Section 217 of the Liquor Control Code authorizes the MLCC to make investigations that it considers proper to the administration of the Code and the rules promulgated under the Code concerning alcoholic liquor or the collection of taxes on alcoholic liquor. Section 217 also requires a licensee to make the licensed premises available for inspection and search by a Commission investigator or law enforcement officer during regular business hours or whenever the licensed premises are occupied by the licensee or its agents or servants. Failure or refusal to allow the investigation can itself result in a violation complaint being issued against the licensee.

Likewise, if the licensee's records are incomprehensible to the investigator, incomplete, or fail to explain the issue under investigation, the MLCC may issue a complaint or subpoena to the licensee to supply any missing records or information. Thus, the records required to be kept under Rule 7 should be readily available, either at the licensed premises, or easily retrievable by the licensee whether those records exist in paper form, on computer disk, or are maintained by an accountant or some other agent of the licensee.

Carlin, Edwards, Brown & Howe, PLLC

Attorneys & Counselors at Law
www.ceblaw.com

John B. Carlin, Jr.+
Scott D. Edwards+
Michael J. Brown*
J. Patrick Howe+

Central Michigan*
6017 West St. Joe Hwy., Suite 202
Lansing, Michigan 48917
P. (517) 321-4616/F. (517) 321-4642

Southeast Michigan+
2855 Coolidge Hwy., Suite 203
Troy, Michigan 48084
P. (248) 816-5000/F. (248) 816-5115

Northern Michigan
213 East Main St., 2nd Floor
Gaylord, Michigan 49735
P. (989) 688-5946/F. (989) 688-5901

Licensees are encouraged to maintain complete records of all alcohol purchased, including the source of purchase and how payment was made for the alcohol purchased. Similarly, sales receipts for alcohol and other categories of sales (such as soft drinks, food, games, etc.) are necessary not just to meet the MLCC requirements, but also for proper tax accountability. Cash register tapes, bank deposit slips, receipt books, invoices, credit card sales slips and other petty cash records are all important to both the MLCC and the IRS. Records of routine business expenses should also be kept, and detailed expense records should be maintained for particular types of expenses such as travel, entertainment, and business gifts which have more strict proof requirements under the law.

Other records pertaining to the ownership and management of the business should also be maintained. These records include the original purchase agreement documents, incorporation papers, minutes of corporate meetings, stockholder certificates, changes in officers or directors of the corporation (or members of a limited liability company or general partners in a partnership) and any other documents that might provide a historical roadmap for the business.

If you are unsure as to whether your current record keeping practices are sufficient for either the MLCC or for tax purposes, you may wish to engage the services of a qualified accountant or lawyer to review your current practices. Once you have the right record keeping system in place, barring any significant change in the nature of your business, you should be able to utilize that same system for as long as you own the business. Thus, taking the time now to review your record keeping practices should save you the trouble of having to do it at some future time or under the pressure of an MLCC investigation or IRS audit. Plus, once the MLCC or IRS sees that you are keeping complete and accurate records, you are less likely to have another investigation or audit in the future.