

# Carlin, Edwards, Brown & Howe, PLLC

Attorneys & Counselors at Law

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

2855 Coolidge Hwy., Suite 203  
Troy, Michigan 48084  
P. (248) 816-5000  
F. (248) 816-5115  
www.cebhlaw.com

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

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

## *Liquor Law Update*

### **MICHIGAN LEGISLATURE URGES LIQUOR LICENSE APPLICANTS TO CONSULT AN ATTORNEY TO INVESTIGATE POTENTIAL TAX LIABILITIES WHEN PURCHASING A LIQUOR LICENSE**

Not everyday does a small restaurant owner's hardship immediately stimulate legislation enacted to prevent other liquor license applicants from experiencing a similar ordeal. There are currently 1184 escrowed liquor licenses scattered throughout the state.<sup>1</sup> Purchasing and transferring one of these licenses is the most common way to obtain a liquor license in Michigan. However, despite how often these escrowed licenses change hands, there are a number of risks associated with purchasing an escrowed license.

Unlike new licenses issued directly by the Michigan Liquor Control Commission (MLCC), escrowed licenses may have state tax liens, federal tax liens, or security interests filed against them.<sup>2</sup> Unless such lien or security interest is discharged by the taxing authority or secured party that filed the lien, it will remain attached to the liquor license even after the license is transferred. In this case, the buyer will be obligated to satisfy the lien.<sup>3</sup>

In 2006, a Grand Rapids restaurateur testified before the House Committee on Regulatory Reform about her experience with an escrowed liquor license purchase, that turned out to be much more costly than she originally anticipated.<sup>4</sup> After obtaining transfer approval from the MLCC and opening for business, the restaurateur received a letter from the Michigan Department of Treasury seeking payment for tens of thousands of dollars of back taxes still owed by the seller, that were now a lien on the liquor license.<sup>5</sup> The unpaid taxes were from unpaid sales taxes, single business taxes (SBT), penalties and interest.<sup>6</sup> The restaurateur was shocked at her obligation to pay these back taxes incurred by the seller of the license. Although she consulted an attorney, both parties were focused on discharging the financial liabilities attached to the real estate being transferred in the purchase, and neither party thought to inquire as to whether any financial liabilities were attached to the liquor license.<sup>7</sup>

After hearing this story, State House Representative Jerry Kooiman took action, and proposed legislation requiring that the MLCC warn liquor license applicants of their potential tax liability when purchasing an escrowed liquor license. The Committee on Regulatory Reform approved House Bill 6449, and it was signed by Governor Granholm on December 29, 2006. The Bill requires the MLCC to provide the following language on its liquor license application:

When purchasing a license, a buyer can be held liable for tax debts incurred by the previous owner. Prior to committing to the purchase of any license or establishment, the buyer should request a tax clearance certificate from the seller that indicates that all taxes have been paid up to the date of issuance. Obtaining sound professional assistance from an attorney or accountant can be helpful to identify and avoid any pitfalls and hidden liabilities when buying even a portion of a business. Sellers can make a request for the tax clearance certificate through the Michigan Department of Treasury.

This legislation will help to prevent purchasers of escrowed licenses from experiencing the financial distress similar to that incurred by the Grand Rapids restaurateur, whose experience influenced this Bill. It will also assist our State's Treasury in collecting unpaid taxes.

If you are purchasing, selling, or assisting an entity in the purchase or sale of an escrowed liquor license, and would like assistance in determining what, if any, tax liabilities, or security interests are attached to the escrowed liquor license at issue, or would like assistance in obtaining a Tax Clearance Certificate from the Michigan Department of Treasury, please contact us. We represent more liquor licensees than any other firm in the State of Michigan, and we are committed to ensuring that your liquor license transfer is completed *without* any surprises.

*Carlín, Edwards, Brown & Howe, PLLC*

[www.cebhlaw.com](http://www.cebhlaw.com)

(248) 816-5000

(517) 321-4616

(989) 688-5946

---

<sup>1</sup> Figure obtained from the Michigan Liquor Control Commission, January 14, 2007.

<sup>2</sup> See MCL 436.1911.

<sup>3</sup> See MCL 440.9315(1)(a).

<sup>4</sup> Stutzky, Susan & Child, Richard, House Fiscal Agency Legislative Analysis, *Sale of Liquor License: Notification of Potential Tax Liability* (November 29, 2006).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.