

2009 HOUSE FINANCE AND TAXATION

HB 1249

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1249**

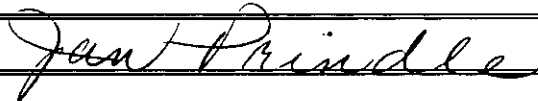
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: **19 January 2009**

Recorder Job Number: 7181

Committee Clerk Signature



Minutes:

**Chairman Belter opened the hearing on HB 1249.**

**Representative Ruby** introduced the bill. As you remember a few sessions ago we had discussion about putting some provisions in our law dealing with wineries. It was pointed out to me this year that we have language that deals with microbreweries and wineries but we having nothing in our laws that deal with distilleries. The product used in distilleries is a product that we grow the most of in this state. All of those could be manufactured under manufacturer's licenses which basically have been set up whereby you manufacture a product and sell through the wholesaler. Wineries have the ability to sell direct from their premises, they also use wholesalers to distribute their product around the state. This bill allows for the establishment of a distillery on your premises. As you read this and have concerns about locations and different aspects of an entity that will be manufacturing alcoholic products, keep in mind that the federal law is the first license that must be applied for and those requirements met before our state law and license takes effect or would have any jurisdiction. Federal guidelines are much more stringent. There will be some discussion about that. I know that the tax office has brought a few concerns, but they can all be addressed. I have someone here that can get into much more detail about the federal process details than I know about so

everything can be addressed. It's a pretty simple process if you are familiar with the issues of wineries. When the farm winery law was first introduced in the '01 session and then in '03 I introduced some language that made changed it to domestic winery and raised the volume limits. Since then wineries have taken off. Now there are a lot of grapes being grown in the state. I'm sure we would like to see a lot more and we certainly have the potential for a lot more. It has opened up a value added crop option for growers, helped with some tourism and also economic develop. This bill does not have the majority project requirement that we had in the winery issue mainly because it's not needed. If you need grain where else are you going to get it from—you are not going to truck it in long distances. We can provide all the product that is necessary. Certainly we are not promoting overuse or urging people who don't want to to use a product. It's not an endorsement for alcohol. This is a bill that allows people who so choose to develop and run a small business that would have distilled products. They would have a niche in their sales and could sell from the premises or retail outlets.

**Representative Weiler:** The language on page 1, line 15 down through the rest of the page—is that area similar to the wine and microbreweries.

**Representative Ruby:** It is pretty close. There are a few changes dealing with sales on Sunday that is not in the prior laws. It's patterned pretty closely.

**Representative Grande:** You talked about the percentage of product use in Section I it does say 51%. What is the wine requirement.

**Representative Ruby:** I don't think that's going to be a major issue. It's not 51% of each bottle. Some of it could be 100% out of state in the case of wine. For instance, if you could make rhubarb wine, you would buy it here where it's closer. There is language that if it is determined that the crop is a failure they could be allowed an exemption. I don't see that as being an issue with distilled products when we grow so much of it here.

**Representative Drovdal:** Currently we allow cities and counties to monitor off and on sales.

Is this \$100 fee in lieu of or above what cities and counties charge? I think the reason we allow cities to monitor this is because of the liability. As you know alcohol is a major problem in ND as far as accidents go and contributing to deaths on the highways. If we allow a farmer to start giving free samples and on and off sales, that farmer, not knowing it, may get in to a liability issue if there an accident. Are we going to have them have liability insurance such as bars and lounges currently have?

**Representative Ruby:** I believe this supersedes city licenses. There are requirements that they have to meet on the federal level that will have to be met. As far as liability issues, I will pass that on to the next presenter.

**Representative Froseth:** What is the significance of referring to this as a farm distillery license when it says located on a farm premises or any other premises. It seems that is pretty broad—so what is the significance of a farm distillery.

**Representative Ruby:** The use of term “farm distillery” was basically for the image of being similar to the farm winery license that we have initially passed. The intention of the words “any other premises” is to not limit it to property that is defined as a farm. It couldn’t be close to a school and this is where city jurisdiction would apply. All of this is again defined in federal requirements. There is an amendment proposed by the tax department regarding the taxes and how that applies to this. That was missed. It wasn’t intentional. I support that amendment.

**Jeff Peterson, owner of Pointe of View Winery** spoke in favor of the bill. **(Testimony #1 Attached.)**

**Representative Headland:** I do support this bill and creating business opportunities across the state. What are your thoughts on the language that allows for samples? These products have greater alcohol content and I see the potential for possible problems.

**Jeff Peterson:** I'll use wineries as an example. We are a small operation and monies are very tight. The sample is enough for a taste, but not too much. It's costly and there is a liability. As far as tourism, people come from all over the county and when they come the sampling is important because no one leaves with a product they don't like. That's important to the tourism business. As far as spirits—there is even more cost involved. There is a cost of \$13 per gallon just for taxes alone so you can see the need to manage yourself. You also need to be aware of the liability. This can be fashioned to not condone excess consumption.

**Representative Pinkerton:** I'm from Minot and your business is very well thought of in town. We have been to the Napa Valley and it's certainly a big industry there—it does have a lot potential and I applaud you.

**Jeff Peterson:** Thank you I appreciate that and we do hope to expand.

**Representative Schmidt:** Are you familiar with the winery in my district. He told me he had 1400 visitors in the month of July. It's just a trail getting there. Do you have a lot of visitors?

**Jeff Peterson:** There has been a lot interest across the nation in wineries and people want to make it a destination and go visit. They want that experience.

**Representative Schmidt:** Free samples wouldn't be a problem in ND because you are miles apart. When I go to WA we take a designated driver because there are wineries on every block. Mr. Chairman, perhaps we should have a field trip.

**Patrick Ward, representing the ND Wholesale Liquor Dealers,** spoke in opposition to HB 1248. (Testimony #2, Attached)

**Dan Rouse, legal counsel for the ND Office State Commissioner,** testified neutral on HB 1249. One of the things skipped in drafting the bill was the imposition of taxes section. He presented a proposed amendment (**Testimony 3, Attached**). It adds farm distilleries Section 5-03-07. The production that would be sold by farm distilleries would be subject to the alcohol tax.

There being no further testimony, the hearing on HB1249 was closed.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1249**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: **January 19, 2009**

Recorder Job Number: 7242

Committee Clerk Signature



Minutes:

**Chairman Belter** asked the Committee's wishes on **HB 1249**. Should we put these amendments on?

**Representative Grande:** I move we accept the amendments proposed by the Tax Department.

**Representative Froseth:** I second.

**Unknown:** I have some serious issues from when Pat Ward, ND Wholesale Liquor Dealers, they had all kinds of issues with this.

**Representative Grande:** I withdraw my motion to accept the amendments.

**Chairman Belter:** Does anyone want to follow up on this?

**Representative Pinkerton:** Being the people (Dan) are from my district, I can follow up on this. Maybe we can get some input from some other states and see if we can make this work.

**Representative Grande:** I can assist with this.

**Chairman Belter** closed the discussion of **HB 1249**.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1249

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7777

Committee Clerk Signature

Minutes:

**Chairman Belter:** Let's look at HB 1249. We have the two amendments. Personally I am going to support the Tax Department's amendments and that's it.

**Representative Brandenburg:** I move the proposed amendments.

**Representative Grande:** Second.

**Chairman Belter:** Is there any discussion?

**Representative Pinkerton:** We are going from 25,000 gallons per year down to 2.3 gallons per month. Is that how the amendment reads?

**Chairman Belter:** No, I don't think it changes the gallonage.

**Vice Chairman Drovdal:** It just changes the amount of tax per gallon or per liter.

**Representative Pinkerton:** I understand. That is probably individual consumption.

**Chairman Belter:** All those in favor of the proposed amendment signify by saying aye.

The vote was unanimous. The motion carries.

**Representative Weiler:** We were also handed a set of amendments by Pat Ward. His aim on those amendments was to make this basically mirror the rule that the wine distilleries follow. I was wondering what everybody's thoughts were on that.



**Vice Chairman Drovdal:** One of the things that bothered me about the original bill is on page 1, line 22, where they can hold tastings both inside and outside the premises, which means anywhere in ND, they could, without provision in lieu of any city ordinances or city permits or licenses or anything else hold tastings. That bothers me about the bill. This does remove that sentence. This puts in some guidelines which reflect what we have in our wine laws.

**Representative Grande:** Going along with what Representative Droval just said, starting on line 21 through line 23, we just killed that on the floor on the wine so why would we allow the alcohol distilleries to do that when we just killed the wine deal? You are saying outside the premises. You are absolutely right. I agree with you. Why are we allowing it here when we just got done saying on the floor that we aren't going to let wineries do it, but we are going to let the distillers do it?

**Representative Weiler:** Are you talking about holding events in and outside premises?

**Representative Grande:** That is addressed in the amendments here.

**Chairman Belter:** I think these amendments which passed really tighten this thing up beyond where the wine industry is, hasn't it? We will just hold on this bill. We adopted those amendments, but....

**Representative Froseth:** Just for conversation, I think we should probably consider on page 1, line 23 that the State Tax Commissioner will issue special events permits. Is that the same language as the wine laws also?

**Chairman Belter:** Dee, is this your expertise?

**Donnita Wald, Tax Department:** I have not seen Pat Ward's amendment, but I do know the language you just read is in the farm winery laws right now for event permits.

**Representative Froseth:** For free samples and so forth. But I think his amendments to tighten up direct sales within the state are limited to 2.38 gallons or less per month. That isn't

much. You don't set up a distillery and try to make it operational and pay. That doesn't sound like enough to make it worthwhile even going into the business. Maybe the 25,000 gallons or whatever the original bill said is a little bit too lenient too.

**Vice Chairman Drovdal:** I think it should be a mixture with the wineries. The correspondence I have gotten from the proponents of this bill indicate they would like to mirror the wineries bill so I would support that.

**Chairman Belter:** I would like to clarify this with Representative Ruby as to where we are at here.

**Representative Weiler:** Mr. Chairman, I can check with Pat Ward.

**Vice Chairman Drovdal:** I will check with Representative Ruby. I think Pat Ward's amendment would allow sampling, but we'll double check that.

**Chairman Belter:** Here's my concern. Currently wineries can give you samples on the premises.

**Donnita Wald:** Downtowners Street Fair or Pride of Dakota Show so that is what the special events would address.

**Chairman Belter:** Do the Ward amendments allow samples on premises?

**Donnita Wald:** The bill itself does if you look at it. I have not seen the amendments.

**Chairman Belter:** Dave, could let Dee see your Ward amendments there?

**Donnita Wald:** What they do on line 19 is add the sentence and right after that it says, a licensee may dispense free samples of spirits offered for sale. That is where they would be able to do the sampling on premises. All this does is add another sentence in there before that.

**Donnita Wald:** On the bill page 1, line 19. This does nothing. What it does is insert one sentence right here. So Pat Ward's amendments do not change that.

**Chairman Belter:** So the Ward amendments should make this very comparable to existing winery laws

**Representative Grande:** We really need to check the amount though.

**Chairman Belter:** We will let Dave and Dave check that out and see if there is a conflict between the Ward amendments and the Tax Department amendments.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1249

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8378

Committee Clerk Signature

Minutes:

**Chairman Belter:** You have some amendments for us on HB 1249.

**Representative Ruby:** What you have before you is what Pat Ward and I discussed last week and I had drafted so they would be available to be adopted if you so choose. We addressed some of the concerns. First of all, there was a concern about it being a farm distillery and the word "farm" was changed the same as the wine bill so instead of a farm winery, we will have a domestic distillery. Going down to the amendment where it says page 1, line 19, this is language that was provided at the request of Pat Ward. It talks about direct sales for personal use. Basically sales within the state are limited to 2 3/8 hundred gallons, which is nine liters, or less per month for personal use and not for resale. Labeling requirements must be met. The distillery could only send this much to each person per month. This is limiting and is not language the wineries are under, but it is acceptable. Some indicated that might be the same requirements as federal. That is per month so they can order that much again the next month. The only confusion was the 25,000 gallons per year. As long as that isn't used to say we can only send 9 liters per year. The largest confusion was over special permits. The concern was that there were going to be wide-open events. That was not the intent we had when drafting. What this meant was if they were going to have an

event outside their building in the same area, the event can only be on contiguous property under common ownership. This does give a number of events, like the wineries have. We didn't ask; but since they were offering it and we were giving up on the direct sales limit, we thought we would put this in place. Page 2, line 2, a domestic distillery may sell distilled spirits to a domestic winery if those spirits were produced from products provided to the domestic winery by the domestic winery. This is language taken from the South Dakota language. Basically a winery right now has the ability to purchase brandy to fortify port wines that need a higher alcohol content. What this would do if an ownership were shared between a winery and a distillery, the distillery could purchase some of the wine products to mix with its product for flavor. Those are the only significant changes. I talked to Pat today and his people are still looking at it. It sounds like they don't have any problems. I got an email from Forest Chapman

from the federal agency dealing with alcohol and taxes, who went down a list of issues. They said we could put language in to explain bonded area and separate tax paid areas. (11:44). They said original language on events was rather broad and ambiguous, which the wholesalers had a problem with, and could be construed as meaning another business on the DSP, which is the distilled spirits plant. Assuming this means the premises described in the application which comprises the DSP, then the applicant would have to apply for permission to conduct other business on the premises. They went through samples, retail sales, the dwelling or shed, etc. and events premises. The simplest recommendation would be to add a provision in state legislation that requires the applicant to first obtain his federal qualification as a distilled spirits plant as a condition to receiving approval from the state as a farm distillery, which we said you have to do in the first place. (He further explained email) (09:40). We suggest a new section be added to the end of the first paragraph of the bill that would state "The state tax commissioner will not issue the farm distillery license until the applicant has established that he

has applied for and obtained the necessary federal registration and permits as required under the Internal Revenue Code of 1986, 26 USC, chapter 51, Federal Alcohol Administration Act, 27 USC 203, operation of distilled spirits plant.

This basically will make clear what we said from the beginning, that you need to be compliant with the federal and state licenses; once that is in place, if you are okay on the federal level, you are okay on the state level—just like the wineries. I will give you this If you want to have that drafted.

**Chairman Belter:** Would committee members all like copies of this because I would like to vote on this bill today. Is everybody okay? We will have this drafted—the paragraph he just read plus the other amendment.

**Representative Ruby:** As far as I know and then if the wholesalers decide they object to something on the other side. We talked about the 25,000 gallons. South Dakota has 50,000; our wineries have 25,000. Will they ever sell that much from their own premises? No, but what is the right level? That isn't something they are going to bat against right now.

**Chairman Belter:** I have a motion to amend 1249 with 02.201 and the amendments that Representative Ruby read from **Representative Drovdal and a second from Representative Grande to approve 90455.0202 amendments plus the alcohol administration language presented by Representative Ruby.**

**Representative Ruby:** Mr. Chairman, they say this should be added to the end of the first paragraph of the bill, I guess wherever Legislative Council thinks that should be.

**Representative Winrich:** In this change on page 2, line 2 about the distillery selling products back to a winery. Let's suppose the winery purchases some of the brandy from a distillery

made from its own wine. Can the winery then, in turn, sell that as brandy or can it be used to fortify their wines?

**Representative Ruby:** They would not have to ability to sell that as a spirit. They only have the ability to sell wine so they would have to combine it because they wouldn't have the license for that. I don't believe the winery license gives them the ability to even get to sell the product. I guess the Tax Department would probably be more knowledgeable on how that works. There are some divisions they need to have unless there is a retail outlet perhaps. I am not sure quite how that works. They couldn't sell it to someone else; but once it is in the tax paid area, that is where any of the sales to the public occur. If it goes back and forth from distillery to winery, it has to go from bonded area to bonded area. If the winery bought it and tried to put it out in the tax paid area, they can't. Only the distillery could put it into their tax paid area.

**Representative Winrich:** But the winery has an area where they sell their wines, but they couldn't also have an area where they said this brandy was made from our wine?

**Representative Ruby:** If they are both owned by the same, they are going to put it into their tax paid area from the winery and the distillery would put it in individually. They can't sell to the winery and have the winery direct ship unless it goes through the tax paid area. There are divisions that are still not 100% clear in my mind how they accomplish. If there is an ownership of the distillery and the winery, the bonded area is where they make it and then they bring it out to the tax paid area. They have to pay the wholesale taxes and the retail taxes. I am not an expert. If the two are owned together, one could purchase it for its mixture. That is mainly where the sale is. You wouldn't sell it to the winery so they could sell it retail because they would sell it to be mixed into their own wine. That is where this applies.

**Representative Headland:** Just so I am clear where we are amending the bill, section 3 that we added on the other day is still part of this bill?

**Chairman Belter:** Yes.

**Representative Weiler:** Just to make sure of legislative intent that the provisions of the direct sales are limited to 2 38/100 gallons or nine liters for personal use is per person or per sale basically. (inaudible).

**Chairman Belter:** Any other questions? If not, all those in favor of the proposed 201 amendments plus the federal language we are adding in signify by saying aye. **Motion carries. I have a “do pass as amended” from Representative Grande and a second from Representative Pinkerton. A roll call vote on a “do pass as amended on 1249” resulted in 13 ayes, 0 nays, 0 absent/not voting. Representative Pinkerton will carry the bill.**



**FISCAL NOTE**  
**Requested by Legislative Council**  
02/06/2009

Amendment to: HB 1249

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1249 provides for the licensing of domestic distilleries.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of Engrossed HB 1249 imposes a \$100 annual license fee for domestic distilleries. It is likely the revenue impact of this provision is less than \$5000 for the 2009-11 biennium. There may be additional wholesale liquor and alcohol gross receipts tax revenues associated with the provisions of the bill. Those amounts, if any, cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/07/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2009

Bill/Resolution No.: HB 1249

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	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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HB 1249 provides for the licensing of farm distilleries.

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<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/16/2009

Date: 19 Jan 09

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1249**

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number proposed by tax department

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Grande Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

90455.0201  
Title.

Prepared by the Legislative Council staff for  
Representative Ruby  
January 30, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1249

Page 1, line 2, replace "farm" with "domestic"

Page 1, line 8, replace "Farm" with "Domestic"

Page 1, line 9, replace "farm" with "domestic"

Page 1, line 10, remove "on a farm premises or any other premises"

Page 1, line 11, remove "primarily"

Page 1, line 12, replace "farm" with "domestic"

Page 1, line 15, replace "farm" with "domestic"

Page 1, line 19, after the underscored period insert "Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16."

Page 1, line 21, replace "farm" with "domestic"

Page 1, line 22, after "premises" insert ", but only on contiguous property under common ownership."

Page 1, line 23, after the underscored period insert "The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product by the glass or enclosed containers, at a designated trade show, convention, festival, or similar event approved by the state tax commissioner." and replace "farm" with "domestic"

Page 2, line 2, after the underscored period insert "However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery."

Page 2, line 6, replace the first "farm" with "domestic" and replace the second "farm" with "domestic"

Page 2, line 8, replace the first "farm" with "domestic" and replace the second "farm" with "domestic"

Page 2, line 10, replace "farm" with "domestic"

Page 2, line 22, replace "farm" with "domestic"

Page 2, line 24, replace "farm" with "domestic"

Page 2, line 29, replace "farm" with "domestic"

Page 3, line 13, replace "farm" with "domestic"

Page 3, line 15, replace "farm" with "domestic"

Page 3, line 20, replace "farm" with "domestic"

Re-number accordingly

February 2, 2009

VR  
2/3/09  
182

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1249

Page 1, line 2, replace "farm" with "domestic", replace "section" with "sections", and after "5-03-06" insert "and 5-03-07"

Page 1, line 4, after "commissioner" insert "and the imposition of tax on alcoholic beverages sold in this state"

Page 1, line 8, replace "Farm" with "Domestic"

Page 1, line 9, replace "farm" with "domestic"

Page 1, line 10, remove "on a farm premises or any other premises"

Page 1, line 11, remove "primarily"

Page 1, line 12, replace "farm" with "domestic"

Page 1, line 14, after the underscored period insert "The state tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 51] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant."

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Page 3, after line 22, insert:

**"SECTION 3. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$ .08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Sparkling wine - per wine gallon	1.00 (.264 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)"

Renumber accordingly

Date: 2/2/07

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1249 Amendment

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Amendment 90455.0201

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Drovdal Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) 13 No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice vote - Amendment passed*



Date: 2/2/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1249

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 90455.0201

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Motion Made By Drovdal Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich	/	
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande	/		Representative Winrich	/	
Representative Headland	/				
Representative Weiler	/				
Representative Wrangham	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Representative Pinkerton

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1249: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1249 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "farm" with "domestic", replace "section" with "sections", and after "5-03-06" insert "and 5-03-07"

Page 1, line 4, after "commissioner" insert "and the imposition of tax on alcoholic beverages sold in this state"

Page 1, line 8, replace "**Farm**" with "**Domestic**"

Page 1, line 9, replace "farm" with "domestic"

Page 1, line 10, remove "on a farm premises or any other premises"

Page 1, line 11, remove "primarily"

Page 1, line 12, replace "farm" with "domestic"

Page 1, line 14, after the underscored period insert "The state tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 51] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant."

Page 1, line 15, replace "farm" with "domestic"

Page 1, line 19, after the underscored period insert "Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16."

Page 1, line 21, replace "farm" with "domestic"

Page 1, line 22, after "premises" insert ", but only on contiguous property under common ownership,"

Page 1, line 23, after the underscored period insert "The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product by the glass or enclosed containers, at a designated trade show, convention, festival, or similar event approved by the state tax commissioner." and replace "farm" with "domestic"

Page 2, line 2, after the underscored period insert "However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery."

Page 2, line 6, replace the first "farm" with "domestic" and replace the second "farm" with "domestic"

Page 2, line 8, replace the first "farm" with "domestic" and replace the second "farm" with "domestic"

Page 2, line 10, replace "farm" with "domestic"

Page 2, line 22, replace "farm" with "domestic"

Page 2, line 24, replace "farm" with "domestic"

Page 2, line 29, replace "farm" with "domestic"

Page 3, line 13, replace "farm" with "domestic"

Page 3, line 15, replace "farm" with "domestic"

Page 3, line 20, replace "farm" with "domestic"

Page 3, after line 22, insert:

**"SECTION 3. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

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Sparkling wine - per wine gallon	1.00 (.264 per liter)
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Alcohol - per wine gallon	4.05 (1.07 per liter)"

Re-number accordingly

2009 SENATE FINANCE AND TAXATION

HB 1249

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1249

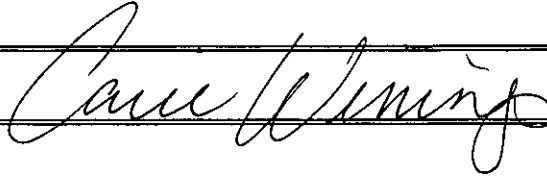
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/02/2009

Recorder Job Number: 9909

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened hearing on HB 1249.

**Representative Dan Ruby, District 38:** Testified as sponsor and in support of the bill and to explain the bill. This would bring our law into some consistency with some other areas dealing with alcohol that we have. We currently have micro-breweries and we also have domestic winery law and these deals with distilleries and it would allow a licensing of a distillery to be very similar in operation to wineries and micro-breweries. Whereby a company can start out to be licensed to distill sprits and then also have another section of their business that would be a tax paid area where they can sell their product as well as to sell their product through a wholesaler. They can't sell it to a retailer directly, that has to go through the wholesaler and that is the same as the areas of law we have for the other entities. It would be the same as the winery laws. Some changes were made in the House side to address some opposition that the wholesalers had. (Continued on to point out a few areas that need cleaned up in the bill) See Attachment #1 for proposed amendment to clear up a little issue.

9.05 **Chairman Cook:** Am I to understand that if someone wanted to open a distillery in North Dakota right now they couldn't do it?

**Representative Ruby:** I believe the only way you could is under the existing manufacturing law. Which if I understand correctly, applies to all the alcohols, but you can only sell through a wholesaler. There is no limit on product or sales for the most part. They will be competing with mass market brand names. There are none to this day; that is how effective it has been.

**Chairman Cook:** So they would not be able to have an event for 20 days and they would not be able to sell a limited amount of their product to a wholesaler?

**Representative Ruby:** Yes, and there would be no tasting either, and that is key to selling the product.

**Senator Oehlke:** I have never seen at trade shows samples to be given.

**Representative Ruby:** It can be done, it has to follow local ordinances and monitored closely.

**Senator Oehlke:** I suspect that you would be limiting the activity to 21 and older?

**Representative Ruby:** Yes.

**Senator Dotzenrod:** Did I hear you say that under the provisions of this that there would be no tasting allowed?

**Representative Ruby:** Currently under the existing law with a manufacturer license there is no tasting in a distillery, and with this there would be. They are very careful in the amounts given out.

13.45 **Jeff Peterson, Owner, Point View Winery, Burlington, North Dakota:** See Attachment #2 for testimony in support of the bill.

15.20 **Chairman Cook:** We are talking cognac and brandy?

**Jeff Peterson:** Yes.

**Senator Dotzenrod:** (Mentions an operation in Minnesota.) I assumed that it was possible to do this in our state already, but it appears that we couldn't have an operation producing vodka from grain in our state.

**Jeff Peterson:** It could have been done, but basically the current law makes it difficult with no tasting and ability to sell on premises.

17.30 **Chairman Cook:** Further testimony? (No)

**Senator Dotzenrod:** I have a question on the amendment for Representative Ruby regarding limiting sales to 9 liters per month and the amendment puts in there per person; you are allowing customers that want to buy for their own use but there is a limit on what they can buy, so you want the large quantities to go to a wholesaler?

**Representative Ruby:** Exactly. There is allowance to direct ship to customers within the state. Only intrastate, that is a big issue we had with the wineries before. It removed the ability of states to have reciprocity agreements because they may not have been treating each other equally. The tax department did say was that they could direct ship intrastate. The wholesale industry wanted the limit of 9 liters because they felt they felt that was consistent with federal guidelines. We put in the two words per person because we didn't want it to be misinterpreted to mean that all they could sell to people personally in a shipment for a whole year or direct shipping to someone. The wine industry has taken off because of prior legislation that we passed and we want to do that for distilleries of spirits as well.

21.19 **Senator Anderson:** Comment.

**Representative Ruby:** People are probably not going to buy that amount, but that is a case and that is the easiest way to ship it.

**Chairman Cook:** Closed hearing in HB 1249.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1249

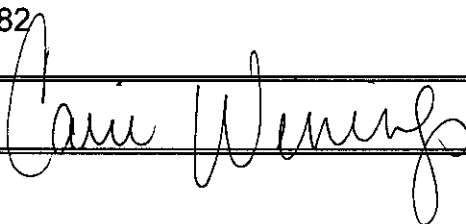
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/03/09

Recorder Job Number: 10082

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HB 1249.

**Senator Triplett:** Clarified some information. **Moved the amendments 90455.0301.**

**Senator Oehlke: Seconded.**

**A Voice Vote was taken: Yea 7, Nay 0, Absent 0.**

**Motion passed.**

**Vice Chairman Miller: Moved a Do Pass As Amended.**

**Senator Hogue: Seconded.**

**Chairman Cook:** Discussion?

**Senator Anderson:** I am going to vote in favor. I do have some misgivings, but this is new so we will see how it goes. It says that it is supposed to be for small domestic distilleries and I believe that. It is supposed to use a majority of North Dakota farm products and I don't know how that is going to be checked on. Let's give them a chance I guess.

**Senator Dotzenrod:** As I understood it, we have a law in North Dakota, If you were a major distillery in the US and you wanted to distill North Dakota barley or grain to make a hard alcohol product, you could do that; this is introduced to cover those sort of family sized or



smaller operators that want to have the public come in. I think it kind of goes with the way things are moving today.

**Vice Chairman Miller:** There are people in my district back home that are putting together a potato distillery. I don't think they have concern about this legislation, but I think it would help them.

**Senator Anderson:** We did establish that you could buy for your own personal use 2 and 38/100 per month.

Chairman Cook: Let's take the roll.

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Senator Hogue will carry the bill.**

#1  
90455.0301  
Title.

Prepared by the Legislative Council staff for  
Representative Ruby  
February 27, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1249

Page 1, line 17, replace "51" with "5001 et seq."

Page 1, line 24, after "month" insert "per person"

Page 2, line 10, after "product" insert "and to sell its product"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**HB 1249, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1249 was placed on the Sixth order on the calendar.

Page 1, line 17, replace "51" with "5001 et seq."

Page 1, line 24, after "month" insert "per person"

Page 2, line 10, after "product" insert "and to sell its product"

Renumber accordingly

2009 TESTIMONY

HB 1249

# HB1249

Testimony #1  
January 19, 2009

With the recent consumer interest in small craft distillery products across the United States many states have been enacting legislation to take advantage of the economic development opportunities that such an industry can provide. Some of those states are: Montana, South Dakota, Iowa, Colorado, Washington, Oregon, Missouri, New York and Maine to name a few. All have similar provisions like those proposed in HB1249.

This is a new opportunity for the use of traditional North Dakota agriculture commodities to create a high value product. Spirits produced by these small craft distilleries focus on production of small lots of high quality product that primarily market to the tourist trade.

North Dakota wineries would have the opportunity to expand their market through the addition of a distillery to their current winery operations. Many of the craft distilleries across the United States started first as a winery and expanded their operations as their states provided legislation to allow production.

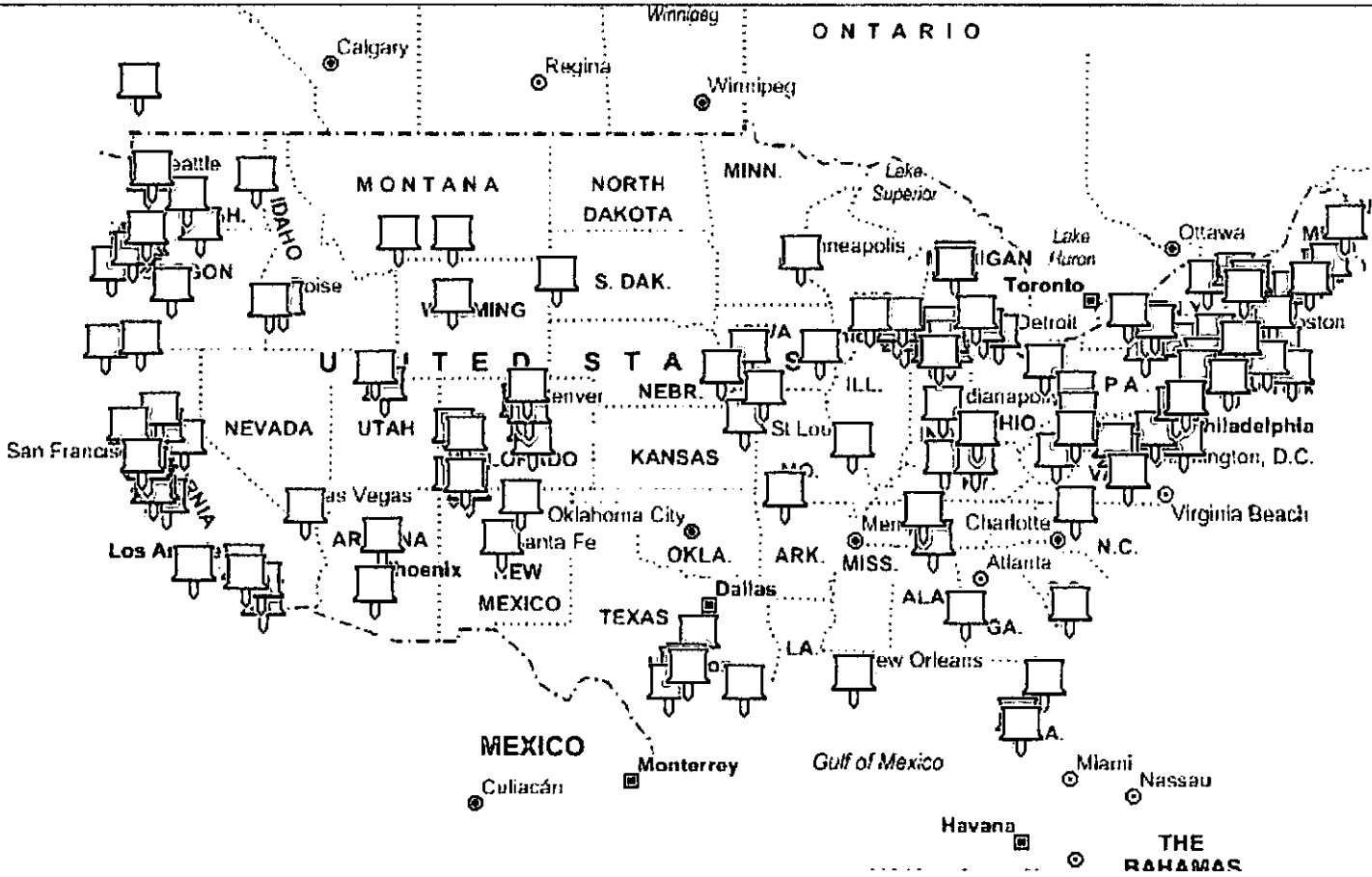
## **Farm distillery benefits to North Dakota:**

- New economic development opportunity for ND entrepreneurs, and fruit and grain farmers
- Provide new markets for ND grown crops like grains, molasses even honey.
- Potential market expansion opportunities for ND wineries
- Increased Agri-Tourism trade
- Substantial excise tax collection for ND

Please vote yes for HB1249. Thank you for giving me the opportunity to present testimony.

Sincerely,

Jeff Peterson  
Pointe of View Winery



Small Craft Distilleries



**Testimony Of Patrick Ward in Opposition to HB 1249**  
**House Finance and Tax Committee**  
**January 19, 2009**

Testimony # 2

Chairman Belter and members of the Committee. My name is Patrick Ward and I represent the North Dakota wholesale Liquor Dealers in Opposition to this bill.

North Dakota has a long established 3 tier system for the manufacture and distribution of alcohol products which is designed to ensure that all liquor sold in this state is accounted for and taxes are collected. This system involves a manufacturer, wholesaler and retailer.

The one exception to this system is the domestic winery law in section 5-01-17 of the code which was created as a form of value added agriculture. That law requires use of North Dakota raised and produced raw ingredients; places a limit on how much, where, and how the product can be sold; and otherwise safeguards how the product is distributed and marketed. This bill creates a whole new system for hard liquor production without the same safeguards.

Here are some differences and concerns we have:

- Domestic wineries must use raw product from ND
- They are limited to 25 days of off site sampling
- Would an ethanol plant be able to convert to a farm distillery? Crank out vodka?
- Would minors have access to "moonshine" at tasting, etc.?
- 25,000 gallons is a lot of liquor.
- Direct shipments in other law (5-01-16) are limited to 1 case of beer or 7 gallons of wine. There seems to be no limit here.

In sum, we oppose this expansion of the domestic winery law. We urge a do not pass on HB 1249. Thank you.

**PROPOSED AMENDMENTS TO HOUSE BILL 1249**

*Prepared and proposed by the North Dakota Office of State Tax Commissioner  
January 19, 2009*

Page 1, line 2, replace "section" with "sections" and after "5-03-06" insert "and 5-03-07"

Page 1, line 4, after "commissioner" insert " and the imposition of tax on alcoholic beverages sold in this state"

Page 3, after line 22, insert:

"**SECTION 3.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, farm distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

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Sparkling wine - per wine gallon 1.00 (.264 per liter)

Distilled spirits - per wine gallon 2.50 (.66 per liter)

Alcohol - per wine gallon 4.05 (1.07 per liter)"

Re-number accordingly

PROPOSED AMENDMENTS TO HB 1249

Page 1, line 10, remove "or any other premises."

Page 1, line 11, remove "primarily."

Page 1, line 19, after year, add "Direct sales within this state are limited to 2.38 gallons [9 liters] or less per month for personal use and not for resale. The packaging must follow the labeling requirement in section 5-01-16(5)."

Page 1, line 21, remove "A farm distillery may."

Page 1, line 22, remove "hold events inside and outside its premises allowing free samples of its spirits and."

Page 1, line 23, remove "to sell its spirits by the glass or in closed containers." and replace with "The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a farm distillery allowing the farm distillery, subject to local ordinance, to give free samples of its product by the glass or in closed containers, at a designated tradeshow, convention, festival, or similar event approved by the state tax commissioner."

ZUGER KIRMIS & SMITH  
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Rebecca S. Thiem, P.C.\*\*  
Jerry W. Evenson, P.C.^  
Lawrence A. Dopson  
Lawrence E. King, P.C.\*\*^^  
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John A. Zuger  
1940-2006  
Thomas O. Smith  
1944-2001

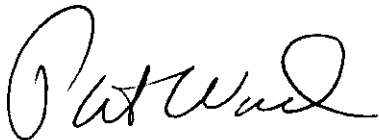
Also licensed in  
Illinois \*  
Kansas~  
Minnesota\*\*  
Missouri+  
Montana++  
South Dakota^^  
^Certified Civil Trial Specialist  
National Board of Trial Advocacy

January 21, 2009

Chairman Belter and Members of the Committee

As you know from my testimony, the Wholesale Liquor Dealers would like to see a do not pass on HB 1249 relating to the "farm" distillery. In the event that this bill has traction, we would at a minimum like to see it tailored back so that it is similar to the exceptions to the three tier system for microbrew pubs and domestic wineries. A draft proposed amendment to that effect is attached.

Thanks for your cooperation.



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#2

# HB 1249

## Testimony of Jeff Peterson

Chairman Cook and members of the committee:

My name is Jeff Peterson and I am owner and operator of Pointe of View Winery in Burlington, North Dakota. I am here to testify in favor of HB 1249.

With the recent consumer interest in small craft distillery products across the United States many states have been enacting legislation to take advantage of the economic development opportunities that such an industry can provide. Some of those states are: Montana, South Dakota, Iowa, Colorado, Washington, Oregon, Missouri, New York and Maine to name a few. All have similar provisions like those proposed in HB1249.

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“The State tax commissioner will not issue the farm distillery license until the applicant has established that it has applied for and obtained the necessary Federal registrations and permits as required under the Internal Revenue Code of 1986, 26 U.S.C. Chapter 51, and the Federal Alcohol Administration Act, 27 U.S.C. 203, for the operation of a distilled spirits plant.”