



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

How Can a Craft Brewer Use the Tax Code to Help with Cash Flow?

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Breweries can turn to the Internal Revenue Code to help with cash flow in these difficult times. Section 165(i) of the Internal Revenue Code allows a taxpayer to deduct any loss occurring in a “disaster area” and attributable to a “federally declared disaster” in either the year when the disaster occurred or the preceding taxable year. On March 13th, 2020, President Trump issued an emergency declaration in response to the COVID-19 pandemic making the crisis a qualifying federally declared disaster. Therefore, any sustained losses from the COVID-19 crisis can be deducted on a brewer’s 2019 tax return to provide the business with a possible tax refund.

To deduct a loss under section 165(i) from the COVID crisis:

- The loss must be caused by the COVID crisis in 2020;
- The loss sustained cannot be covered by insurance proceeds; and
- If a financial loss, the loss must be substantiated by completed transactions.

Some examples of deductible disaster losses under section 165(i) include (i) costs for prepaid raw materials and brewing supplies used to fulfill contracts that have been cancelled, (ii) costs related to closing taprooms, or (iii) worthless or spoiled inventory due to the state shut down.

A taxpayer must include with his or her amended 2019 tax return the following election statement to accelerate such 2020 losses to 2019:

- The name or a description of the disaster and date or dates of the disaster which gave rise to the loss (e.g., the COVID-19 March 13th emergency declaration).
- The address, including the city, town, county, parish, State, and zip code, where the damaged or destroyed property was located at the time of the disaster.

The CARES Act also temporarily lifted restrictions on a business's use of net operating losses under section 172 of the Code. The Act allows businesses to carry back net operating losses generated in 2018 through 2020 against the businesses' previous five years of operating income. In addition, the Act allows businesses to offset historical taxable income with such 2018 through 2020 net operating losses in full. Therefore, a brewery owner might work with his or her tax adviser to amend historic tax returns to claim the benefits of Section 165 and the CARES Act.

For more on the CARES Act Business Tax Provisions, see "[CARES Act Business Tax Provisions.](#)"