INDUSTRY NOTICE 2017-001

TO: Florida-Licensed Distributors of Alcoholic Beverages  
    Florida-Registered Brand Owners of Spirituous Seltzer Beverage Products

FROM: Thomas R. Philpot, Director  
      Division of Alcoholic Beverages and Tobacco

SUBJECT: Spirituous Seltzer Beverages

DATE: January 17, 2017

The Division of Alcoholic Beverages and Tobacco has recently reviewed the brand registration and excise tax classification for several alcoholic beverage brands comprising a product variety commonly known as non-malt spirituous seltzer beverages. The Division’s review has determined that clarification regarding this product variety may be needed to ensure the consistent and compliant registration and reporting of these particular products within the industry in Florida.

This notice is intended to provide general information regarding the Division’s approach to regulation of these products under the Florida Beverage Law and to encourage industry members whose portfolio includes these or similar alcoholic beverage products to evaluate and determine whether modifications, if any, may be necessary for the member’s brand registration, license series, or tax reporting for continued distribution or sales of these products.

Brand Registration of Spirituous Seltzer Beverages

The alcoholic beverage products regulated by the Florida Beverage Law are classified in three primary beverage types – beer or malt beverages, wine, and liquor. The Division relies on this statutory delineation of the alcoholic beverage product types in the licensing, auditing, and enforcement of regulated entities engaged in the manufacturing, distribution, or retail sale of alcoholic beverages in Florida.

Section 563.01, Florida Statutes, defines “beer” and “malt beverages” to mean all brewed beverages containing malt. Section 564.01, Florida Statutes, defines “wine,” in part, to mean all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Section 565.01, Florida Statutes, defines “liquor” to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

By definition, alcoholic beverages not containing malt do not qualify to be registered as beer or malt beverage. Similarly, alcoholic beverages not made from fresh fruits, berries, or grapes do not qualify to be registered as wine. If unable to qualify as beer or wine, an alcoholic beverage may be categorized as liquor. Pursuant to the Florida Beverage Law, spirituous seltzer beverages and similar products that do not contain malt and are not made from fresh fruits are classified as liquor for the purpose of brand registration in Florida.

Accordingly, brand registrants are encouraged to review the Florida registrations for any spirituous seltzer beverage brand within their product portfolio to
determine whether the registration is properly recorded with the Division. By January 31, 2017, manufacturers or brand registrants must notify the Division in writing if any brand registration record discrepancy is identified for a spirituous seltzer beverage that was not properly classified in the brand registrant’s prior registration.

Distributors Eligible for Distribution of Spirituous Seltzer Beverages

For distribution of products classified as a liquor under the Florida Beverage Law, a distributor of alcoholic beverages must hold the Distributor of Beer, Wine, and Liquor (KLD) license.

Distributors engaged in the distribution of spirituous seltzer beverages subject to classification as a liquor are encouraged to review the current series of the license issued to the distributor and determine if modifications to the license classification are needed for future distribution and sale of these or similar products. If necessary, distributors of spirituous seltzer beverages subject to classification as a liquor must apply to the Division to secure the appropriate license authorizing distribution of these product types by January 31, 2017.

Alcoholic Beverage Excise Tax Applicable to Spirituous Seltzer Beverages

Alcoholic beverages that are not classified as a malt beverage or as wine, which contain less than 17.259 percent alcohol by volume, are subject to alcoholic beverage excise taxes at a rate of $2.25 per gallon. The Florida Beverage Law requires that this rate be computed and remitted with the monthly report for all spirituous seltzer beverages or similar alcoholic beverages sold during the previous calendar month.

Licensees who manufacture or distribute a spirituous seltzer beverage product are encouraged to review the pricing and reporting of the product within their current operations and to make adjustments as determined necessary to ensure monthly reports to the Division appropriately account for the tax rate applicable to the product. The Division will audit the report due in March 2017 and subsequent monthly reports for compliance with the tax rate applicable to this product variety.

Vendors Eligible for Retail Sale of Spirituous Seltzer Beverages

In accordance with section 564.06(5)(b), Florida Statutes, alcoholic beverage products which contain less than 6 percent alcohol by volume, however derived, shall be available for purchase and sale by any licensee holding a valid license to sell alcoholic beverages for consumption either on or off premises. The Florida Beverage Law expressly provides that nothing contained in chapters 562, 563, 564, or 565, Florida Statutes, shall be construed to prevent such sales.

Distributors engaged in the sale of spirituous seltzer beverages are encouraged to verify the alcohol by volume of these products within their portfolio and to govern sales of the products to retail vendor licensees accordingly.

Thank you for your consideration as we work together to promote compliance among the licensees regulated by the Division. As always, please contact the Division if our team can be of further assistance as you consider plans for the sale of spirituous seltzer beverages or other similar products in your licensed operations.

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