



# MAKER'S GUIDE TO CIDER LAW

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2018 Guide to Licensing, Labeling, Excise  
Tax, and Direct Shipment for  
New York Cider Makers

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Designed and prepared for the New York Cider  
Association by the Food and Beverage Law Clinic at  
Elisabeth Haub School of Law

**NEW  
YORK  
CIDER  
ASSOCIATION**



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# Acknowledgements & Disclaimer

The Food and Beverage Law Clinic is a part of John Jay Legal Services, Inc., a non-profit legal services organization housed at the Elisabeth Haub School of Law at Pace University. The Food and Beverage Law Clinic represents farmers, food and beverage entrepreneurs, and non-profit organizations seeking to improve our food system. We would like to thank the New York Cider Association for the opportunities and experiences resulting from this project. We especially thank Jennifer Smith, Christine Sisler, and Sonya Del Peral for their help with this project.



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**Disclaimer:** This document is meant to be a reader-friendly and simplified explanation of legal topics of licensing, labeling, direct shipment, and tax for cider makers in New York State. This guide is meant for personal and educational purposes only. A guidebook, even one referencing the law, is no substitute for a lawyer. This guide was prepared based on the law as of May 2018, and the statutes and other authorities referenced herein may have changed since that time.

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# LICENSING

A Cidery is defined by the New York Alcohol Beverage Control law (“NY ABC law”) as “any place or premises wherein cider is manufactured for sale.”<sup>1</sup> The NY ABC law includes a special definition for “farm cidery,” which includes any place or premises where cider is produced exclusively from apples sourced in New York State. This type of cider, “New York state labelled cider,” will also be referred to herein as “NY Cider” for short. This section will begin by describing the Farm Cidery and Farm Winery licenses, the more popular choices for new and/or small cider operations. Next, this section will cover the Cider Producer & Wholesaler’s license, as well as additional licenses, permits, and certificates. Note that the Farm Brewery license also permits the production of NY Cider, but is not described below as it is to date a less popular choice for small cider operations. *For an illustrative breakdown of major differences between the various licenses, please refer to Appendix A.*

## FARM CIDERY LICENSE

Holders of this license exclusively produce NY Cider and are subject to maximum production limits. Farm Cideries are given collective rights with other “New York Farm Producers,” which includes the right to sell and conduct tastings of one another’s products. New York Farm Producers are farm cideries, farm wineries, farm breweries, and farm distilleries. To maintain the license, Farm Cideries:

1. Must manufacture more than 50 gallons but less than 250,000 gallons annually.
2. Must manufacture or sell at wholesale NY Cider exclusively.

## Exceptions to the NY-Sourcing Requirement

The requirement to use ingredients sourced in New York has a few exceptions. The New York State Commissioner of Agriculture & Markets can excuse this requirement when an act of God, natural disaster, or continued adverse weather condition has destroyed the NY apple crop to the point cider production is infeasible. This only arises, however when the Commissioner of Agriculture and Markets, in consultation with the State Liquor Authority

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<sup>1</sup> Art. 1 Sect. 3(7-c) of the ABC law. The full law is available here: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

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("SLA") Chairman, makes the determination. This occurs only after a licensee certifies that (a) they took reasonable efforts to obtain the quantity necessary for cider production, and (b) NY grown apples are unavailable. Furthermore, this authorization only extends to the amount necessary to cover crop loss (if the cidery can obtain 75% of the usual amount from NY farms, they can only utilize out-of-state apples to cover the remaining 25%).

## Privileges Under the Farm Cidery License

Farm Cideries are entitled to a number of benefits under the license, chief of which is being able to sell at retail for on-premises and off-premises consumption NY State labeled cider, beer, wine, and liquor (made by farm cideries, farm breweries, farm wineries, and farm distilleries, respectively). In addition, a farm cidery may perform a number of activities beyond simply producing cider, such as conducting other on-premises non-alcohol sales, such as jellies & jams, pome fruits & juices, souvenirs, and bottling & production equipment, as well as a number of activities in conjunction with an additional permit (covered later in this section).

*Farm Cideries are permitted to conduct tastings on-premises and off-premises to the extent set forth on Appendix B.*

## FARM WINERY LICENSE

Alcoholic beverages produced from apples may fall under the definition of both wine and cider under New York law. Cider is defined as “the partially or fully fermented juice of fresh, whole apples or other pome fruits, containing more than three and two-tenths per centum but not more than eight and one-half per centum alcohol by volume: (i) to which nothing has been added to increase the alcoholic content produced by natural fermentation; and (ii) with the usual cellar treatments and necessary additions to correct defects due to climate, saccharine levels and seasonal conditions.”<sup>2</sup> New York defines wine as “the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, or other fruits or plants...” which thus includes apples.<sup>3</sup> In other words, the fermented juice of apples can be considered “cider” up until 8.5% alcohol by volume (beyond 8.5% is considered wine), but that doesn’t mean it has to be; below 8.5% *it falls under the definitions of both cider and*

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<sup>2</sup> § 3(7-b) of the NY ABC Law

<sup>3</sup> § 3(36) of the NY ABC Law

wine. The law addresses this reality by directing the producer to designate which definition the product will be sold as and accordingly conform to the corresponding requirements and standards under the law. Additionally, the Farm Winery License authorizes the production of NY Cider under the New York ABC Law. Thus, cider makers can opt to operate under the farm winery license in lieu of a cider-focused license. This is obviously advantageous if the operator desires to sell both cider along with grape-based wines.

The farm winery license operates similarly to the farm cidery license, with a number of key differences. Beyond the ability to produce and sell wine at wholesale, farm wineries are authorized along with other wineries in New York to ship wines directly to consumers (bypassing the three tier system of producers, distributors, and retailers), a process referred to as “direct shipment.” An explanation of this process is detailed later in this guide.

*“In the event that an alcoholic beverage meets the definition of both a cider... and a wine... label owner of such alcoholic beverage shall designate whether such alcoholic beverage shall be sold as a cider or a wine for all purposes under this chapter.”*

*- § 3(7-b)(b) of the NY ABC Law*



## The Advantages and Disadvantages to Designation as Wine

Because the designation choice dictates what rules and requirements a cider maker must conform to, it is important to recognize the distinctions between cider and wine as they are treated under NY law. Chiefly, cider is taxed at a significantly lower rate than wine (\$0.0379 per gallon as opposed to \$0.30). Cider can be sold not only in wine in liquor stores but in grocery stores and drug stores as well; wine, on the other hand, can only be sold in wine and liquor stores. Additionally New York requires a wholesaler to post wine prices to retailers on a monthly basis. However, the ability to direct ship apple wine is also a significant advantage. Notably, this consideration is made on a product-by-product basis; thus the designation choice adds flexibility as a cider maker determines how products will be offered.

# CIDER PRODUCERS & WHOLESALERS' ("P & W") LICENSE

Holders of this license have unlimited commercial capacity, with no maximum production limits. Because the P & W License permits an unlimited volume production model (quantity) without requiring in-state sourcing (quality), the license is not designed with the same level of market advantages available to local, craft producers, such as Farm Cideries. To maintain a P & W license, a licensee must make more than 50 gallons annually, although there is no maximum production limit.

If producing NY Cider, P & W licensees are granted additional privileges, such as selling that NY Cider to other farm cideries, distillers, wineries, and breweries or conducting tastings of that NY Cider or other NY Cider on the premises (as well as at hotels or restaurants operated by the licensee at or adjacent to the cidery). Further, a P & W Licensee can sell such NY cider at retail for off-premises consumption at state or recognized county fairs, or non-profit farmers markets.

*P&W Licensees are permitted to conduct tastings on-premises and off-premises to the extent set forth on Appendix B.*

## P & W Licensees are licensed to:

- Sell wholesale to licensed retailers
- Sell wholesale to other P&W Licensees
- Conduct tastings of NY Cider (both on-premises and in establishments that hold 7-day off-premises retail licenses
- Conduct tastings of NY Ciders in establishments that hold on-premises retail licenses, and with an additional permit (covered later in this section), can sell bottles of NY Cider at the tasting.





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# ADDITIONAL LICENSES, PERMITS AND CERTIFICATES

There are a number of additional licenses, permits, and certificates that licensed producers and retailers, as well as non-licensed parties, which require additional application and approval from the SLA. These licenses, permits, and certificates grant the holder rights and duties to perform a task in the cider chain of commerce.

## Trucking Permits:

Alcoholic beverages cannot be transported in New York unless the vehicle is either (a) owned (or leased) and operated by a licensee or (b) registered with the SLA pursuant to a Trucking Permit. In both cases, certain license- or permit-related information must be affixed to and visible on the vehicle. Trucking Permits are granted at the discretion of the SLA and are issued in the following forms:

1. *Individual Vehicle Permit*: Issued to one or more vehicles used for delivery of wine or liquor in an area with a population less than 1 million people. Vehicles must have sufficient exterior signage which is legible from a reasonable distance, including name and address of licensed producer, wholesaler, or retailer. Costs \$51 per vehicle, and can include taxi cabs.
2. *Fleet Permit*: Covers all of permit holder's vehicles for delivery of wine or liquor. Costs \$6,400 annually.
3. *Company Permit*: Covers all vehicles over 65,000 pounds hired or contracted by beer wholesaler. Costs \$6,400 annually.

## Cidery Retail Certificate

While cideries are prohibited from obtaining a Retail License, any cidery can apply for a certificate to sell NY Cider at retail for on-premises or off-premises consumption ("Cidery Retail Certificate"). While the two sound similar, the Cidery Retail Certificate carries with it significant limitations. Issued at the discretion of the SLA, the certificate is subject to three expressed limitations:

1. retail sales under the Cidery Retail Certificate shall not exceed, in the aggregate, fifteen (15) gallons to any "householder," with all sales to persons residing at a single address contributing to this fifteen gallon limit,

2. sales cannot constitute more than 5% of the Cidery Retail Certificate holder's total revenue from the sale of cider or apples during such term, and
3. no Cidery Retail Certificate holder may keep unsealed bottles or unsealed containers on the licensed premises, except for the purposes of tastings or samplings.

## Branch Office Permit

Farm Cideries and Farm Wineries both may operate up to a maximum of five branch offices subject to same rights and restrictions as the licensed premises. Branch Offices require pre-approval of location and intent to operate by the SLA.

## Tasting, Marketing, and Carry-Out Permits

In addition to the tasting privileges granted under the Farm Cidery, Farm Winery, and Producer and Wholesaler's License, cider makers can apply for an additional tasting permit or marketing permit to hold tastings of NY cider off premises throughout the state. In addition, a carry-out permit enables the licensee to sell bottled NY Cider at licensed or permitted tastings for off-premises consumption.



# FEDERAL LABELING REQUIREMENTS



Federal and state law both require that alcoholic beverages have a brand or trade label if they are going to be sold to the public. The two entities that regulate the labels for alcoholic cider and apple wines in New York are the United States Alcohol and Tobacco Tax and Trade Bureau ("TTB") and the New York SLA. There are a number of requirements at the federal level that New York-based cider makers must conform to or otherwise be aware of in order to remain in compliance.

## GENERAL REQUIREMENTS

For the purposes of the Federal labeling requirements, cider must meet the same requirements as wine. The main threshold in determining what requirements a particular cider must follow is the alcohol percentage. Ciders with 7% or more alcohol by volume must undergo the Certificate of Label Approval ("COLA") process (unless they are covered by a Certificate of Exemption from Label Approval). If a cider falls below 7% (or exempted from COLA), it will not have to get a label approved, but must comply with certain less stringent requirements which apply to all alcoholic beverages. For example, the cider will need nutritional facts statements that the FDA requires. The TTB has the following additional requirements for all alcoholic beverages:

- The information must be readily legible under ordinary conditions and on a contrasting background.
- The mandatory information must be more conspicuous than the descriptive or explanatory information, if mixed together.
- Mandatory information must be in English
- The brand name, production place, and person or entity who makes or distributes the wine maybe in another language if the words "Product of" appear before the name of the country of origin.
- The label cannot cover or be covered by any federal government stamps.
- The label must contain a full and accurate statement of all the contents of the container.

- If the label contains a representation about an ingredient used in the production, the representation must be conspicuous enough to set it apart from the other information.
- The label must be fixed on the container so that it can only be removed with a thorough application of water or other solvents.
- The TTB allows the labels to have other information if it complies with these requirements and does not conflict with any of the sections of the statute.

## Government Health Warning Statement

The following statement is required to be placed on the label and may be on the front, back, or side of the label:

**GOVERNMENT WARNING:** (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

## CIDERS WITH <7% ALCOHOL OR COVERED BY EXEMPTION

Ciders with less than 7% alcohol content by volume or covered by a certificate of exemption from label approval, do not need to apply for a COLA. However, there are a number of requirements that nonetheless must be complied with on each label:

### Brand/Trade Name

The name under which the product will be marketed. The name can include any statement about flavor, description, vintage, age, and geographic designation or appellation. The name may not contain any statement which creates any impression or inference about the characteristics of the product that are false.

### Class/Type/Designation

The class and type designation states what the type of wine is and what tax category it falls under. An example would be a label saying “Hard Cider.” This information is important

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because the TTB can use what the label says as evidence for determining how it will be taxed. This classification should accurately tell the consumer what they are buying.

Additionally, there are certain factors which dictate how a product must be referred to, apart from its brand name. Chiefly, it must be consistent with its tax class. Beyond that, if the cider has additional fruit juices or ingredients, for example blueberry or cinnamon, respectively, they must be denoted accordingly. Effervescence beyond 0.392 g/100ml of carbon dioxide (CO<sub>2</sub>) must also be denoted. Thus, a cider with 6% alcohol, 0.5 g/100ml of CO<sub>2</sub> and containing cinnamon could be labeled as “*Cinnamon Apple Pie, Carbonated Hard Cider with Cinnamon.*” *Both a sample label, as well as a chart with examples of compliant labeling, can be found in Appendix C & D, respectively.*

## Net Contents

The information on the container that states the metric standard of fill for the bottle. This statement may be placed on the label or on the bottle itself. If the statement is placed on the bottle, the application for the label registration must include a picture of the bottle where the information will appear. The authorized standards of fill are:

- 3 Liters
- 1.5 Liters
- 1 Liter
- 750 Milliliters
- 500 Milliliters
- 375 Milliliters
- 187 Milliliters
- 100 Milliliters
- 50 Milliliters

## Name & Address

The label must state either “bottled by” or “packed by” followed by the name of the bottler or packer and the address of the place where the wine was bottled or packed. If the wine was imported, then the label must include “imported by” followed by the name and address of the importer’s principal place of business in the US. If the wine was imported and then bottled or packed in the US, the label must include “imported by and bottled/packed in the United States by” followed by the name and address of the location where the importer bottled or packed the wine.

A bottler or packer is only allowed to have one address listed with their name. They may have an additional address associated with their name if:

- they are actively engaged in the conduct of an additional bona fide and actual alcohol beverage business at the additional place or address; and
- the label also contains the appropriate description indicating the function that occurs at the additional place or address.

## Alcohol Content:

The label must state how much alcohol is in the beverage. The alcohol content must be stated in a percentage of *alcohol by volume*.

## Declaration of Sulfites

The TTB requires that for wines intended for interstate commerce containing 10 or more parts per million of sulfur dioxide must contain the statement "CONTAINS SULFITES" on its label. This does not apply to wines intended solely for intrastate commerce.

## Other Mandatory Information:

If applicable, the TTB also requires:

- For blends of American and Foreign wines, any reference made to the presence of the foreign wine must state the exact percentage by volume.
- The label must state if the wine contains FD&C Yellow No. 5, cochineal extract, or carmine.
- Disclosure of major food allergens. This includes milk, egg, fish, crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as proteins or food ingredients containing proteins derived from these foods, except highly refined oils or food ingredients that are exempted by the Food & Drug Administration (FDA).

# CIDERS WITH 7% OR MORE ALCOHOL BY VOLUME

Ciders with 7% or more alcohol by volume are regulated under the Federal Alcohol Administration Act. The act implements labeling, qualification, advertising, and other regulations, chief of which is the COLA process. Ciders at 7% or more alcohol by volume must meet the following standards of type on their labels, determined by the size of the container:

SIZE OF THE CONTAINER	SIZE OF THE FONT
Containers holding <i>more than 187 milliliters</i>	No smaller than 2 millimeters
Containers holding <i>187 milliliters or less</i>	No smaller than 1 millimeter
Containers for <i>5 liters or less</i>	Between 1 and 3 millimeters

## COLA APPLICATION PROCESS

The TTB utilizes the "Certificate of Label Approval/Exemption," or COLA. The application process may be done online, and the TTB has a variety of resources on the COLAs Online Customer page<sup>4</sup> to assist with navigating the online interfaces. The TTB still accepts paper submissions, however such submissions would not be track-able online.

### Step 1: Pre-COLA Product Evaluation

Depending on the type of product, the TTB may require the applicant to submit a product evaluation before a label may be approved and the beverage will be produced or imported. These evaluations are not required for every type of alcoholic beverage. The need for a product evaluation depends on the ingredients that are used and how the alcohol is made.

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<sup>4</sup> <https://www.ttb.gov/labeling/colas.shtml>

## Determining Whether a Formula Is Required:

The TTB website has a [search engine](#)<sup>1</sup> which allows users to determine if their beverage will require a Formula. An applicant may input the industry they are in (Distilled Spirits or Wine), the type of beverage they are producing, and whether the product is domestic or imported. The result will either be that the product needs a formula or the applicant may submit an application for label approval.

**COLA Registry**  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

For the latest guidance and updates on the Tax Cuts and Jobs Act of 2017 and how it affects the alcohol industry, visit our [Crift Beverage Modernization and Tax Reform page](#).

TTB Alcohol and Tobacco Tax and Trade Bureau  
U.S. Department of the Treasury

Who We Are What We Do TTB Audiences Resources

English Français 4/2

TTB Home > Formulation > Which Alcohol Beverages Require Formula Approval

### Which Alcohol Beverages Require Formula Approval?

For certain wines, distilled spirits and beers, TTB must evaluate the ingredients and production process before the product can be made or imported, and before the bottler or importer may apply for a Certificate of Label Approval (COLA). In addition, in some cases we also conduct laboratory analyses of a sample of the product in conjunction with reviewing the formula.

TTB regulations most commonly require formulas when flavoring or coloring materials are added to an alcohol beverage. Some imported products are also subject to pre-import formula approval and/or laboratory analysis. For further information on alcohol beverage formula requirements, visit the [alcohol beverage formulas page](#).

#### Do I Need Formula Approval for My Product?

To determine if your beer/malt beverage requires formula approval or formula approval with lab sample analysis either browse a list or use this tool.

**Beer/Malt Beverage**

To determine if your wine or distilled spirit requires formula approval, use the tool below.

INDUSTRY

BEVERAGE

Domestic  Imported

#### Related Information

We also have charts that provide the current formula requirements for all Wines, Distilled Spirits, and Malt Beverages. These charts serve as general guidance; however, TTB may require, on a case-by-case basis, information about the formulation and ingredients of any alcohol beverage at any time during the label review process or whenever necessary to enforce TTB regulations.

The TTB does not require a formula for most domestic ciders with 7-14% alcohol by volume. A Formula will be required under two scenarios.

- 1) Imported cider/perry products with 7% or more alcohol by volume;
- 2) Domestic cider/perry products, if it meets one of the following:
  - a) The beverage contains added flavors (including spirits and other alcohols)
  - b) The beverage contains extra sugar or water
  - c) The beverage is a mixture between 2 kinds of wines

Thus, an 8% apple wine from France, a cider mixed with strawberry wine, or a cider sweetened with raw sugar, would all be examples of products which require formulas. A Formula Analysis involves creating both a complete list of all the ingredients used in the beverage as well as a step-by-step description of how the beverage was made.

## Step 2: TTB Application

The permittee or brewer whose name, address, and basic permit number or plant registry number, appears on an unapproved Form 5100.31 is responsible to apply. An applicant must fill out the Form 5100.31, which can be found on the TTB website at: <https://www.ttb.gov/forms/>. The instructions for the form are attached in the document.



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The application may also be submitted [online](#).<sup>5</sup> Along with the application, an applicant may be required to submit the pre-COLA product evaluation, and if it is the first time the applicant is applying, a copy of the approved basic permit or brewer’s notice. There is no application fee for the COLA, however it must be submitted in duplicate with product labels attached to the form.

The TTB has 90 days from the date it receives an application in which they either approve or deny the label. If the 90 days passes and the TTB does not respond, the applicant may appeal. The TTB may extend the approval period for an additional 90 days if the TTB sends a notice to the applicant explaining that there are unusual circumstances that require more time to consider and what those issues are. If the application is denied, the applicant has two options. The applicant may make the changes that the TTB pointed out on the application and resubmit. The applicant also has the option to appeal the TTB decision before making any changes.

## Certificate of Label Exemption

An applicant may include on the Form 5100.31 that they would like to be exempt from the labeling requirement. The CELA allows the applicant to forego the registration and approval of a label. The main impetus for applying for an exemption is when the product is intended to be sold solely within one state. Accordingly, the applicant must show in the application that the wine will not be sold; offered for sale; shipped or delivered for shipment; or otherwise introduced to interstate or foreign commerce.

# THE TAX CLASS LABELING REQUIREMENT

The Protecting Americans from Tax Hikes Act of 2015 (“PATH” Act) changed the Hard Cider tax class eligibility to allow more beverages to receive the tax benefits. Please see the taxation section for a full breakdown of the implications. In doing so, however, it obscured the lines between labeling conventions and how they indicate which tax class a product belongs to. The TTB’s solution was to require that the statement “Tax Class 5042(b)(6)” be placed explicitly on the label.

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<sup>5</sup> <https://www.ttb.gov/labeling/colas.shtml>

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To assist with the transition, the TTB has stated that the statement will not be required to be placed on the label until January 1, 2019. Nonetheless, existing cider makers should make the necessary adjustments to their labeling process, and new producers should begin labeling with the tax statement to avoid costs associated with the transition.

## INGREDIENTS DICTATE HOW CIDERS MAY BE NAMED

Naming conventions for cider (and all alcoholic beverages) must not obscure the contents or mislead the consumer as to what is in the bottle. Further, product names must be consistent with their tax class either by operation of law for ciders under 7% alcohol by volume, or by virtue of their COLA (where there must be a statement of composition). The “Hard Cider” tax class, for example, does not include ciders with other fruit juices/ingredients included. Therefore, in order to be taxed at the hard cider rate, you could not name your product “Raspberry Cider.” This is even if there is no actual raspberry juice in the beverage—say if it was merely describing the color of the liquid—as it would both be misleading to the consumer and contrary to the tax class’s parameters. Importantly, however, tax classes are not labeling standards. Thus, although a product may not be hard cider tax eligible, it does not mean it cannot be called “hard cider.” *For the tax implications, please refer to the excise tax section.*

Tax classes aside, added fruit or other non-fruit ingredients (cinnamon, honey, etc.) must be included in the product name and displayed on the label. This can be achieved simply by naming the product “blueberry cider” or “cinnamon cider.” Fanciful names can be displayed alongside these names (“blueberry-apple blast” or “cinnamon apple pie” for example, would thus be acceptable respectively). Fanciful names must not be misleading, and must be in the same size and font as the statement of composition.

When the product’s effervescence meets the threshold for designation, set at 0.392 g/100mL of CO<sub>2</sub>, it must be included in the name. How this should be described is based on the process in which the beverage is carbonized; either naturally via fermentation (sparkling) or by injecting CO<sub>2</sub> (carbonated). This is easily solved by appending “sparkling” or “carbonated” to the beginning of the product name. *Appendix F provides a number of product examples with appropriate labeling conventions based on product ingredients and effervescence.*

# NEW YORK LABELING REQUIREMENTS



In New York, all alcoholic beverages are required to have the same information. The SLA requires an approved brand or trade label be affixed to any bottles of alcoholic beverages that will be sold to the public in addition to federal labeling requirements. One notable exception, however, is that SLA will accept the COLA in lieu of the state brand label for any wine that has a COLA (including cider designated as wine). The SLA requires that the registration fee be paid for the label, except in the case of the small batch fee exemption described below. The TTB does not have a registration fee.

An individual or entity that wants to sell alcohol in New York must apply to register the brand or trade label with the SLA. The SLA allows four different individuals or entities to apply for the label:

- 1) The licensed owner of the brand
- 2) A wholesaler that is appointed as the agent by the unlicensed owner of the brand
- 3) A wholesaler approved by the SLA if the owner does not register or appoint an agent
- 4) A wholesaler appointed by the SLA if the owner is a retailer who does not file or appoint an agent

The Standard Cider Brand Label application form can be found on the [SLA's website](#).<sup>6</sup> Once the application is completed, the form and the required documents can be sent to the SLA by certified mail return receipt requested, registered mail return receipt requested, or overnight delivery service with proof of mailing. Pursuant to the recently passed Assembly Bill A8242, electronic filing will be allowed as well.

Although more uncommon, a licensed retailer or those who have the legal right to use a brand or trade name may apply for a "Private Brand Label." A prime example of this is a hotel chain or management company which operate under a common trademark, may sell

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<sup>6</sup> <https://www.sla.ny.gov/brand-labeling-1>

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cider under a private label in the hotels or affiliates of the brand owners, provided the chain/company owns or has a legal right to use the brand or trade name.

The term of the brand label registration coincides with the term of the brand owner's license and must be renewed annually.

## Application Requirements

Along with completed application form found on SLA website, the applicant must also submit:

- The Application Fee of \$150 by check or money order
- A legible photo or copy of the label being registered with each item clearly identified
- If the applicant is an appointed agent, a letter from the owner designating the applicant as the exclusive agent solely for the purposes of filing the application
- If the net contents statement is on the bottle and not the label, a picture of where the information is located on the bottle

## Separate Brand Label

If there is a difference in the brand or trade name; or class or type designation, then the owner must apply for registration of a separate brand label. There are two exceptions. The first is if the wine brand names differ only with respect to vintage year, then a separate label is not required. The second exception is that the placement of stickers bearing the words “direct”, “reserve”, or similar words does not create a separate brand or trade name.

## Change in Designated Agent

If a previously designated agent will no longer be the agent, the brand owner needs to designate a new agent. This new agent will need to apply for a new label registration. Any label that was approved for the former agent will be surrendered. The former agent can apply for a refund of any unused part of the fee.

## Small Batch Fee Exemption

Liquor, beer, or cider that is produced in “small batches” is exempt from the fee for brand label registration. “Small Batches” means 1,500 barrels or less per year. An application for registration must still be filed even if this exemption applies.

# PROHIBITED PRACTICES FOR LABELS

Both the State and Federal laws list what types of images and sentences cannot be used on the labels for alcoholic beverages. The Federal statute prohibits what is listed under the New York statute and contains additional examples of what cannot be used.

## New York Law

- False or untrue statements
- Statements disparaging of a competitor's products
- Statement, design, device, or representation that may mislead the consumer
- Statements of claims that the product has any health benefits



## Federal Law

All the same things prohibited by New York Law, as well as:

- A name that is the same as a person or entity that would mislead the public to think that the product is endorsed
- Statements creating an impression that the beverage has intoxicating qualities
- Coined word or name that creates an impression that the beverage can use it
- Name of a distilled spirit that creates an impression the wine is like the spirit
- Statement of age or representation relative to age
- Bottling date unless meets the size and font requirements and is preceded by "Bottled in"
- Miscellaneous dates unless there is an explanation of the significance
- Designs which resemble a US Government or Foreign Government stamp
- Statement that the wine is made or sold in accordance with an authorization or law
- Use of the word importer unless it is part of the bona fide name of a bottler or packer
- Use of a statement or design representing the US Armed Forces
- Health related statements or claims that will mislead consumers
- Geographic brand name unless the wine meets the appellation of origin requirements
- Name with geographic significance unless it has been used for a long time

# EXCISE TAXATION

Cider that is sold to the public is taxed at both the federal and state level. The Federal government and the New York government each have definitions of what is considered cider and how it will be taxed. Under both levels, a beverage must conform to specific criteria to be taxed as cider. If the beverage does not meet these definitions, then it will be treated as wine and taxed at the appropriate rate. The criteria for classification is based on (1) the beverage's alcohol content, (2) the level and origin of carbon dioxide, and (3) what was used to make the beverage. This section will discuss the different categories for a beverage to fall under and the tax implications for each category.

## FEDERAL TAX CLASSES

Cider is a term used to describe an alcoholic beverage that is made from apples, pears, other pome fruit, or the juice concentrate of a pome fruit. The TTB has created the “Hard Cider” class specifically for cider. Cider that meets the specific eligibility criteria will be taxed at a much lower rate than the otherwise higher wine rates. It is important to keep in mind that tax classes are not labeling standards; cider taxed as wine can still be labeled as cider, and cider taxed under the Hard Cider tax class does not mean it must be called “Hard Cider.” There are a total of six tax classes which cider may be taxed under:

- Hard Cider (*\$0.226 per gallon federal, \$0.0379 per gallon state*)
- Still Wine with less than 16% alcohol by volume (*\$1.07, \$0.30*)
- Still Wine with 16-21% alcohol by volume (*\$1.57, \$0.30*)
- Still Wine with 21-24% alcohol by volume (*\$3.15, \$0.30*)
- Sparkling Wine (*carbonated naturally via fermentation*) (*\$3.40, \$0.30*)



### Hard Cider Tax Class

Under Federal law, there is an established “Hard Cider” tax rate. The special tax class contains specific criteria for eligibility:

- Alcohol content must be between 0.5% and 8.5% alcohol by volume.
- The cider may contain no more than 0.64 grams of carbon dioxide per 100 milliliters.

- The cider may not contain other fruit juices or fruit ingredients.

### *The Role of Effervescence in Tax*

Although the maximum amount of CO<sub>2</sub> permitted under the Hard Cider tax class has increased under the PATH Act of 2015, the labeling requirement for effervescence has remained at 0.392 g/100mL. Having greater than 0.392 g/100mL only triggers a labeling requirement, not a tax class change.

However, because “hard cider” can refer to apple wines as well as cider, it causes confusion for the TTB to determine by looking at the label what tax class the product belongs to (thus, the solution was to require the tax class itself to be included on labels).

Accordingly, if a cider has greater than 0.392 g/100mL but no more than 0.64, it remains in the Hard Cider tax class but must be labeled “sparkling” or “carbonated” as appropriate.



Designation of effervescence begins at 0.392 grams of CO<sub>2</sub> per 100 milliliters. Sparkling or Carbonated Hard Cider means Hard Cider containing more than 0.392 but not more than 0.64 grams of CO<sub>2</sub> per 100 milliliters, resulting from the secondary fermentation within a closed container or by artificially injecting CO<sub>2</sub>, respectively. Should a cider not qualify for the hard cider tax class, it will be taxed as wine.

## Still Wine

Wine is a term used to describe an alcoholic beverage made with grapes or other fruits or vegetables, by the usual cellar treatments and with the necessary additions to cure any defects in the production. Federal law separates the wine tax classes by both alcohol percentage and by effervescence. Still wine is characterized by the absence of CO<sub>2</sub>, defined statutorily as containing less than 0.392 g/100mL. The higher the alcohol percentage, the higher the tax rate.

## Artificially Carbonated Wine

Artificially Carbonated Wine is defined as Wine (other than Hard Cider) artificially injected with carbon dioxide containing more than 0.392 grams of carbon dioxide per 100 milliliters.

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## Sparkling Wine

Sparkling Wine is defined as Wine (other than Hard Cider) containing more than 0.392 grams of carbon dioxide per 100 milliliters of wine resulting solely from the secondary fermentation of wine within a closed container.

## FEDERAL TAX CREDIT

With the passage of the Tax Cut and Jobs Act, the Federal government has increased the amounts for the tax credits that can be taken for wines and cider. There is no longer a requirement to be a small domestic producer that removes no more than 250,000 gallons of wine per year to receive this credit. From December 31, 2017 to January 1, 2020, the following tax credits are available:

### For Wines

- For the first 30,000 gallons removed, the tax credit is \$1 per gallon per year
- For the next 100,000 gallons removed, the tax credit is 90 cents per gallon per year
- For the next 620,000 gallons removed, the tax credit is 53.5 cents per gallon per year

### For Ciders

- For the first 30,000 gallons removed, the tax credit is 6.2 cents per gallon per year
- For the next 100,000 gallons removed, the tax credit is 5.6 cents per gallon per year
- For the next 620,000 gallons removed, the tax credit is 3.3 cents per gallon per year

## NEW YORK TAX STRUCTURE

Wine in New York is taxed at the same rate regardless of any other classifications at \$0.30 per gallon. Hard Cider, however, is taxed at \$0.0379

## TAX EXEMPTIONS

### Federal Exemptions

Personal Use (27 CFR §24.75): Wine that is removed for personal or family use will be exempt from taxes.



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**Specific Use (27 CFR §24.95):** Wine that is taken for analysis, testing, tasting, and sampling from a premise where the wine is made or stored is exempt from taxes.

**Tax Exempt Cider (27 CFR §24.76):** Cider that meets the following conditions will be exempt from taxes:

- Produced solely from the non-effervescent fermentation of apple juice;
- Without the use of any preservative method or material (no sulfites);
- When produced at a place other than a bonded wine premises; and
- Sold or offered for sale as cider, and not as wine or as a substitute for wine

This exemption does not apply for producers or distributors, however. In order to qualify as a producer or distributor by the TTB, the producer or distributor must operate a bonded wine premises.

## New York Exemptions

**Sale between two license holders (NY CLS TAX §424(1)(g)):** The tax commission may exempt from tax a sale between two holders of wine licenses.

**Returning from trip with out of state purchase (NY CLS TAX §424(4)(a)(i)-(ii)):** A person who is returning from a trip out-of-state who returns with alcoholic beverages will not have to pay taxes if:

- The quantity of such alcoholic beverages does not exceed certain limits specified in NY CLS TAX §424(4)(a) and (b);
- The person purchased the alcoholic beverages as an incident to a trip out of state from which they are returning;
- The alcoholic beverages will not be offered for sale or used for a commercial purpose; and
- If the trip is to a territory outside of the United States, the person shall have been outside of the United States for at least 48 hours.

**Sacramental Use by a Religious Organization (NY CLS TAX §424(5)):** Wine that is sold to a religious organization and used for sacramental purposes only will be exempt from taxes.

# DISTRIBUTION & DIRECT SHIPMENT



There are two types of sales in the NY ABC law: wholesale sales (or “sales at wholesale”) and retail sales (or “sales at retail”).

A wholesale sale is any sale that is “for resale.” This means that the buyer is going to resell the alcoholic beverage. Both the buyer and the seller must be licensed or permitted by the SLA to conduct any wholesale sale, and it is the seller’s responsibility to ensure that the buyer is properly licensed or permitted by the SLA before transferring title. The buyer in a wholesale sale cannot be the consumer, because consumers are prohibited from “reselling” alcoholic beverages.

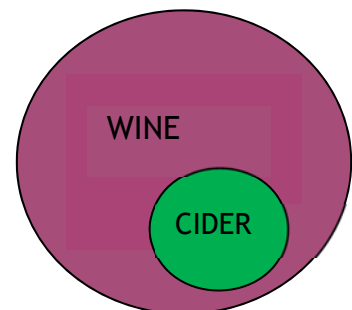
Retail sales are any sale “not for resale.” This means that the buyer in a retail sale must be the end user: the consumer. The seller in a retail sale must be properly licensed or permitted by the SLA to conduct the sale, and it’s the seller’s responsibility to confirm that the buyer is at least 21 years old.

## Bill of Lading

A bill of lading is a legal document that represents the cider involved in the sale. The bill of lading contains information about the seller, the buyer, the date, the quantity and type of item purchased, and the thing of value the seller received. A bill of lading (or equivalent paperwork) is required whenever a Cidery sells cider to any common carrier or transportation facility (other than the U.S. Government). With a bill of lading, the buyer can rest assured knowing that he or she is entitled to possession of what was bargained for, without having to physically possess the item.

## DIRECT SHIPMENT OF WINE AS IT PERTAINS TO CIDER

The NY ABC law at present only contemplates direct to consumer shipments of wine, not cider. However, cider, when sold by a licensed winery and designated as wine, is eligible to be shipped directly to consumers.



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In 2005, the United States Supreme Court determined in *Granholm v. Heald* that New York and Michigan laws permitting intrastate (meaning within the state) direct wine shipments while not expressly permitting interstate (across two or more states) direct wine shipments violated the U.S. Constitution. State law cannot discriminate out-of-state competitors in favor of in-state commerce. Accordingly, New York and a number of other states have opted to permit direct shipment both of wine intrastate and interstate. This manifests as a form of reciprocity, meaning if state X can ship into state Y, state Y should be able to ship into state X.

Laws differ by state, and thus it is recommended to check both the definitions of cider and wine as well as the rules concerning direct shipment in the state where delivery will take place. Though unofficial, the National Conference of State Legislatures compiled a comprehensive summary of each state's direct shipment statutes in 2016 and can be a helpful place to start. It can be accessed [here](#).<sup>7</sup> Additionally, an infographic of the direct shipment states can be found in the appendix.

## Intrastate Direct Shipment

Any licensed winery or farm winery located in New York State is licensed to ship wine directly to consumers within New York State ("Direct Intrastate Wine Shipment Provision") subject to the following conditions:

- No more than 36 cases annually (with maximum 9 liters per case).
- Wine must be for personal use (not for resale).
- Consumer must be a New York Resident, 21 years of age.
- Shipping container must conspicuously contain on packaging: "CONTAINS WINE - SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY - NOT FOR RESALE."
- Shipper must maintain accurate records, showing:
  - total amount of wine shipped to address of purchasers of such wine,
  - the date purchased,
  - the name of the common carrier used for such shipment,

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<sup>7</sup> <http://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>

- the quantity and value of the shipment, and
- evidence that the person signing for the package and the customer are both 21 years of age or older.

## Interstate Direct Shipment

The NY ABC law allows any holder of a license to manufacture wine in a state other than New York to apply to the New York SLA for an Out-of-State Direct Shipper's License in the State of New York. This grants the licensee the right to ship wine, from a winery outside the State of New York, directly to consumers located in the State of New York, subject to the same conditions as intrastate shippers.



## Shipper's Rights against Common Carriers

Out-of-State Direct Shippers must require the common carrier affecting delivery to:

- Verify, with accompanying electronic or paper signature, that person receiving package is 21 years old or older, and refuse delivery if verification not possible or in doubt,
- File tax returns with the New York state department of taxation and finance all state and local sales taxes and excise taxes due on sales into New York State based on the tax rate at the location where delivery is made,
- Maintain records of all documents and transactions for three years and provide copies of such records upon request by the SLA,
- Consent to the jurisdiction of the laws of New York,

For out-of-state shippers, all sales shall be considered to have taken place in NY State. In addition, New York must be allowed to perform audits inside and outside the state. The license of both licensee and common carrier may be suspended or revoked for violations, and administrative proceedings may be brought by SLA against either party. Lastly, the common carrier and licensee are severally liable (liable for their own independent acts).

## *Use of Common Carrier*

The United States Postal Service does not ship alcohol. Therefore, entities looking to engage in interstate sales must obtain an alcohol shippers contract with a certified common carrier, such as UPS, FedEx, or DHL. Of course, an entity looking to sell to an out-of-state customer must first confirm that customer's state permits such direct shipments. Currently, UPS and FedEx require the presence and signature of someone 21 years of age or older to complete the delivery, and the common carriers charge shippers significant fees for these requirements. The rules and regulations of each common carrier are internal, subject to change, and are subservient to federal and state law.



# APPENDIX A - COMPARISON OF CIDER LICENSES

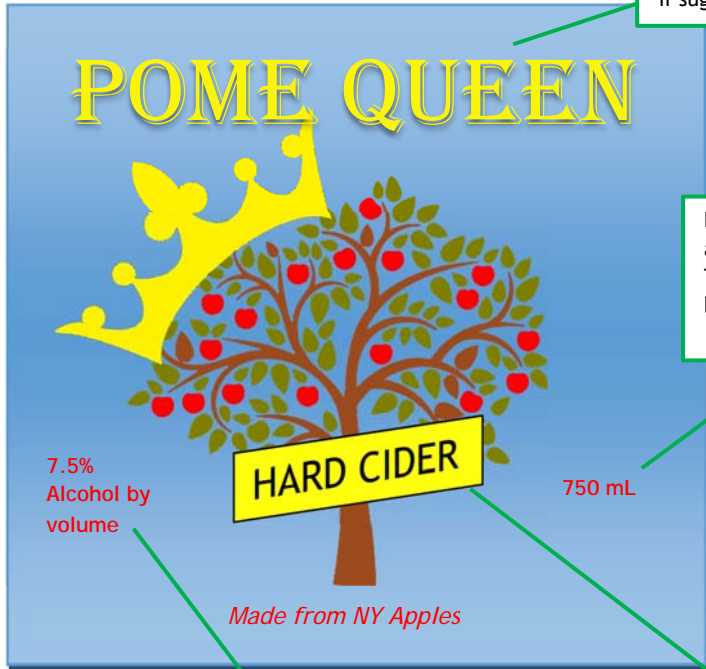
	Farm Cidery	Farm Winery	Producer & Wholesaler
Can I produce grape or other wines?	No	Yes	No
Can I produce cider (designated as such)?	Yes	Yes	Yes
Alcohol percentage limits? (alc. by vol.)	No greater than 8.5%	As cider - No greater than 8.5% As wine - No greater than 24%	No greater than 8.5%
How much can I produce annually?	Min. 50 gal. Max. 250,000 gal.	Min. 50 gal. of wine Max. 250,000 gal. of wine	Min. 50 gal. No maximum limit
NY-Sourced Ingredients Required?	Yes	Yes	No
Food production?	Liberal (condiments and “cider related foods in addition to other such food and crafts”)	Restrictive (Only fruit juice, jellies, preserves, tonics, salad dressings, and unpotable wine sauce)	No
Tastings: Food?	Must serve food at tastings, but given a wide range of options	Must serve food at tastings, but given a wide range of options	No
On- and Off-Premises Retail Sales and Tastings?	<i>See Appendix B</i>	<i>See Appendix B</i>	<i>See Appendix B</i>
Direct Shipment?	No	Yes (when designated as wine)	No
Where can it be sold?	On-premises, supermarkets, drug stores, and wine and liquor stores	As wine - Online (direct-to-consumer), on-premises, and wine and liquor stores As cider - same as farm cideries	On-premises, supermarkets, drug stores, and wine and liquor stores

# APPENDIX B - ON- AND OFF-PREMISE RETAIL SALES AND TASTINGS PERMISSIONS BY LICENSE

On-Premise	Farm Cidery or Winery Licensee	P & W Licensee	Off-Premise	Farm Cidery or Winery Licensee	P & W Licensee
Can the Licensee Sell at Retail and Conduct Tastings of its own NY State Labeled Cider?	YES	YES for <i>sales</i> for consumption off-premises if a license is obtained to do so; YES for <i>tastings</i> if licensee is a producer of NY Cider	Can the Licensee Sell at Retail and Conduct Tastings of its own NY State Labeled Cider?	YES, if a Farm Cidery, for <i>sales</i> at county/state fair & nonprofit farmers' markets for off-premises consumption; <i>tastings</i> only with a Tasting Permit	YES, if a producer of NY Cider, for <i>sales</i> at county/state fair & nonprofit farmers' markets for off-premises consumption; <i>tastings</i> only with a Tasting Permit
Can the Licensee Sell at Retail and Conduct Tastings of other NY State Labeled Cider?	YES	YES for <i>sales</i> for consumption off-premises if a license is obtained to do so; YES for <i>tastings</i> if licensee is a producer of NY Cider	Can the Licensee Sell at Retail and Conduct Tastings of other NY State Labeled Cider?	YES, if a Farm Cidery, for <i>sales</i> at county/state fair & nonprofit farmers' markets for off-premises consumption; <i>tastings</i> only with a Tasting Permit	YES, if a producer of NY Cider, for <i>sales</i> at county/state fair & nonprofit farmers' markets for off-premises consumption; <i>tastings</i> only with a Tasting Permit
Can the Licensee Sell at Retail and Conduct Tastings of Cider that is not NY State Labeled Cider?	NO	NO	Can the Licensee Sell at Retail and Conduct Tastings of Cider that is not NY State Labeled Cider?	NO	NO
Can the Licensee Sell at Retail and Conduct Tastings of NY State Labeled Wine/Beer, and Liquor?	YES	NO	Can the Licensee Sell at Retail and Conduct Tastings of NY State Labeled Wine, Beer, and Liquor?	NO	NO

# APPENDIX C - SAMPLE LABEL

## Front



Brand Name: NY ABC §107-a(5)(i) and 27 CFR §4.33  
Registered Brand Name for Marketing. Must be accurate if suggestive.

Net Contents: ABC §107-a(5)(iii) and 27 CFR §4.37  
The metric volume of the beverage.

Alcohol Content: 27 CFR §4.36  
How much alcohol by volume in the beverage

Class and Type Designation: NY ABC §107-a(5)(ii) and 27 CFR §4.34  
Accurately tell consumer what they are buying

## Back



Name and Address: 27 CFR §4.35  
Source information useful for consumer and regulator

Sulfites Contained in the Beverage: 27 CFR § 4.32(e)  
Denotes whether the product contains sulfites

Government Health Warning Statement: 27 CFR § 16.20  
A statement from the government warning consumers about the negative effects of the beverage.

Tax Class 5042(b)(6): 27 CFR §27.59(b)  
States the tax class in anticipation for the upcoming transition towards mandatory disclosure on the label



## APPENDIX D – NAMING CONVENTIONS BASED ON CONTENT

Alcohol %	Added fruit or other ingredients?	Effervescence?	Taxed as Hard Cider?	What can it be called?
8%	No	Still or under 0.392 g/100ml	Yes	Hard Cider, Cider, Apple Cider, Apple Wine
9%	No	Still or under 0.392 g/100ml	No	Hard Cider, Cider, Apple Cider, Apple Wine
7.5%	Cinnamon	Still or under 0.392 g/100ml	Yes	Cinnamon Cider, Cinnamon-apple Wine, etc.
7.5%	Blueberry	Still or under 0.392 g/100ml	No	Blueberry Cider, Blueberry-Apple Wine, etc. (can be accompanied by fanciful name)
8%	No	Sparkling, 0.5 g/100ml	Yes	Sparkling Cider, Sparkling Hard Cider, etc.
7.6%	Honey	Carbonated, 0.45 g/100ml	Yes	Carbonated Honey Cider, Carbonated Honey-Apple Wine, etc. (can be accompanied by fanciful name)

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## APPENDIX E - EXCISE TAX RATES

Tax Class	Federal Tax Rate (Per Gallon)	New York Tax Rate (Per Gallon)
Still Wine with Less than 16% Alcohol by Volume	\$1.07	\$0.30
Still Wine with 16% to 21% Alcohol by Volume	\$1.57	\$0.30
Still Wine with 21% to 24% Alcohol by Volume	\$3.15	\$0.30
Naturally Sparkling Wine	\$3.40	\$0.30
Artificially Carbonated Wine	\$3.30	\$0.30
Hard Cider/Cider	\$0.226	\$0.0379

## APPENDIX F - TAX CLASS EXAMPLES

Alcohol Content	Ingredients	Net Contents	CO <sub>2</sub> Levels (per 100mL)	Type of Product (for tax, not label purposes)	Federal Tax Rate	State Tax Rate
7.5%	Apples or Pears	1 Gallon	0.60 grams	Hard Cider	\$0.226	\$0.0379
14%	Grapes	1 Gallon	0.2 grams from secondary fermentation	Sparkling Wine	\$3.40	\$0.30
8.3%	Apples and Cinnamon Flavoring	1 Gallon	0.50 grams	Hard Cider	\$0.226	\$0.0379
6.4%	Apples and Bananas	1 Gallon	0.64 grams	Wine	\$1.07	\$0.30

