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Hidden Ownership of Alcohol Establishments: Problem Significance and Addressing the Crime

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This guidance document was written by David Reitz, Elizabeth Mattfeld, and Maria Carmona for the National Center for Alcohol Law Enforcement (NCALE). NCALE is a project of the International Institute for Alcohol Awareness at the Pacific Institute for Research and Evaluation.

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Introduction

Retail alcohol establishments are "cash flow" businesses; that is, many of the transactions completed in bars, restaurants, and other businesses that sell alcohol are completed using cash. Consequently, retail alcohol outlets are attractive businesses for individuals seeking either to divert income from the alcohol business toward illegal activities or to launder cash revenue derived from illegal enterprises. Frequently, such individuals seek to hide their involvement in or control over the business due to their own past criminal behavior or to their involvement in a civil suit such as divorce. This document examines the topic of hidden ownership of retail alcohol establishments and details why hidden ownership investigations should be pursued by law enforcement agencies. It includes guidance on how to conduct investigations and how to build a strong case for prosecution. It is intended to serve as a supplement to training and technical assistance provided by staff of the National Center for Alcohol Law Enforcement (NCALE). Requests for guidance beyond that which is provided in this document should be addressed to NCALE.

Problem Significance

Hidden Ownership Defined

Hidden ownership is a business interest, usually financial, that is undisclosed or sheltered from public view and/or government scrutiny. Financial interest, in turn, is defined as an economic investment in, or the right to participate in the profit and loss of a business. Financial interests may be evident in real estate property ownership or leases, personal property ownership or leases, notes or loans, or franchise agreements (use of trade names). Undisclosed ownership of a licensed alcohol outlet falls under the category of white collar crime, indicated by a legitimate business that is run illegally for the gain of its owners, as well as the categories of occupational crime and economic crime.

During the course of a hidden ownership investigation, it is important to establish who has control of the business. Control is defined as the power to exercise authority or dominating influence over the business, and the ability to regulate, direct, or dominate the business. Elements of control include, but are not limited to, the following:

- Right to hire and fire employees or contractors,
- Right to commit to contracts,
- Acting as an insurance beneficiary,
- Bearing the risk, or partial risk of profit and loss,
- Guaranteeing the debt or other obligations such as a lease,
- Having responsibility for any liability and payment of taxes,
- Having responsibility for daily business decisions such as pricing and ordering.

Types of Hidden Owners

Each state dictates the circumstances under which a person may be granted a license to sell or distribute alcohol. A person whose background would prevent them from being granted a license, for example a convicted felon, characterizes one type of hidden owners.

Additionally, people who need to "hide" income may be involved in a case of hidden ownership. This includes persons who are involved in a civil suit, such as a divorce, and who do not want to disclose the business as a financial asset. A person who has declared bankruptcy may not want the assets of the business to be claimed for payment of outstanding debts. Participation in a hidden ownership "scam" may also allow a person to misrepresent taxable income and therefore decrease tax liability.

Individuals who receive monies from illegal activities, as part of or outside the business may use a cash business to "launder" monies. Cash monies received through an illegal transaction are then deposited in small amounts to a legitimate business account. This process allows the person to avoid declaring the cash, and thus having to prove where it originated. Monies received outside the country or through illegal means internationally, for example through human or arms trafficking, may also be "laundered" in this manner.

Hiding Ownership

If a person seeking to disguise the flow of money has a criminal background, he or she may be prevented from receiving a license to sell or serve alcohol at the establishment. This is a strong incentive to create a shell corporation or partnership essentially "hiding" the criminal background. In order to do this, however, the person seeking the license must secure another person with no criminal history who is willing to act as a "front" to obtain the license. In addition, often this shell organization will consist of multiple layers and agreements making it difficult to determine true ownership. Agreements can include lease and management agreements that act as a joint venture or partnership. Such agreements can also indicate how some or all business ownership will be transferred to another entity in the event of a failure to conform with the provisions of the agreement. As indicated earlier, a key concept to pursue in hidden ownership investigations is who has "control" of the organization or business.

Vending machines are common place in on-premise establishments with a license to sell or distribute alcohol. Business owners seeking monies to support their business may unwittingly enter into a contract relationship with a disreputable vending machine contractors based on future vending machine profits. This contract may provide another clue in the search for ownership as it often places the owner in a position of paying a high interest rate. In the event that an owner is not able to pay the loan in a timely fashion, "control" of the business is then passed on to the contractor through a transfer or lien. Disreputable vending machine contractors often target establishments or businesses that are struggling financially because they have a higher likelihood of defaulting on payments, resulting in a transfer of "control" to the contractor or a new owner designated by the contractor.

The Need to Pursue Hidden Ownership

State mandated licensing restrictions have been put in place to protect the integrity of the three-tier system of alcohol distribution that includes a manufacturer, wholesaler and retailer. Most states have prohibitions on the vertical integration of these three tiers. Strategies such as multiple owner restrictions and industry control restrictions prevent any one entity from controlling more than one layer of the three tiers. Most states have statutes that make hidden ownership a violation for this reason.

Since the repeal of Prohibition in 1933, there is an expectation that all aspects of the sale and distribution of alcoholic beverages will be open to public scrutiny and above board. Public confidence is seriously compromised when there is a failure to investigate complex white-collar crime, and apparent inequity may be perceived to reflect prejudices. In addition, law-abiding industry members expect their professional peers to comply with the same regulations and statutes that they do; an indication of a level business playing field. If an industry member is not in compliance, and law enforcement does not pursue an investigation, industry confidence and overall compliance with the other regulations and statutes also may be adversely affected.

Other criminal acts may be associated with an establishment that is not complying with alcohol regulations. Enforcement of existing laws and investigation into hidden ownership may lead to detection and possible prevention of gambling, prostitution, drug sales, tax fraud, and trafficking in stolen goods. In general, enforcement deters hidden ownership as an investment alternative and helps to "weed out" licensees who are non-compliant.

In the global economy, illegally obtained monies may be related to criminal business enterprises across borders such as trafficking in drugs, arms, or humans. Targeting establishments with the potential for hidden ownership may deter participation in activities related to terrorism or participation in activities related to persons seeking illegal residence in the United States.

Key Elements of Hidden Ownership Investigations

Because hidden ownership investigations involve a time consuming and complex process, enforcement officers must exercise patience, persistence, and creativity in determining the presence of a hidden owner. Toward this end, law enforcement officers must ultimately determine the following:

- **Financial interests in the establishment**. This process can be complicated by the multiple layers of business records to review, similar to peeling an onion. Documentation will include agreements (e.g., partnership, management, lease), contracts (e.g., juke box, vending machines, video poker machines), corporate, partnership or limited liability company records, tax returns, employee handbooks, credit applications, and bank signature cards among others. Determining financial interest will also involve interviews with management and staff in order to determine whether compensation involves reduced salary or wage compensation in return for a share of profits.

- **Overall control of the establishment**. Any staff or "owner" who is aware that a hidden owner exists will hinder the process of determining overall control of the establishment. If a hidden business owner is suspected or if a business is involved in some form of money laundering, close monitoring of the establishment is necessary. This includes permitted exceptions such as limited partnerships, leases and minor stock ownership. Clues to hidden ownership situations include pre-signed but undated transfer papers, corporation papers, stock certificates, resignations, partnership agreements, and sales agreements. All of these documents should be signed and dated. Other documents indicating control or ownership include security agreements, notes and loans, vending contracts and payments related to such contracts. In assessing overall control of the business it is also necessary to interview and monitor employees to determine who has the authority to hire, terminate, make assignments, handle customer and employee complaints, and address compensation issues.

Conducting Investigations

A well planned and organized investigation will help to build a strong foundation for success in prosecuting a hidden ownership case. Strategic planning before the investigation begins will allow the investigation to capture critical information but also allow the investigation to be flexible, expanding to address new evidence as it is presented. As noted above, these cases can become quite complicated and a clear, systematic process will ensure that nothing remains to chance and the investigation is complete.

Initiating the Investigation

Before presenting any information to supervisors or the investigative team, it is important that an agent thoroughly review the initial complaint and become familiar with all allegations as well as with the complainants. The agent should also determine who the known individuals involved in the business are and prepare a written list of these individuals and/or known related business entities.

It is essential that the agent develop a clear understanding of the specific violation reported by the complainant and the specific statutes that make the violation unambiguous. Toward this end, the agent should be able to detail where and when the violation has occurred. The agent should know the source of the data used as well as how reliable and current the data are. The agent should have a grasp of contextual issues such as past violations, police reports, and calls for service associated with the establishment as well as whether the establishment is associated with local authorities and local politics. Finally, an agent should be prepared to comment on the complainant's motivation and background. This information should address whether there is a known ongoing conflict between the complainant and the establishment. Other sources should be used to confirm any information related to motivation and background.

Each law enforcement agency will have its own standards for determining whether to pursue an investigation. Once the decision to pursue an investigation has been made, however, it is likely that periodic updates for the supervisor will necessary. In anticipation of such updates, the investigative team should keep detailed records of all evidence collected. Any notes made while conducting particularly complex aspects of the investigation (e.g., bookkeeping analysis) are also important to retain.

It is advisable that the investigating agency consult with the local criminal prosecutor in the event the case may be appropriate for some type of criminal indictment. The prosecutor will instruct the investigators on the element(s) they will need to prove beyond a reasonable doubt. If the matter is handled as a purely administrative matter and the penalty is license revocation, the standards of proof may be similar but less stringent than those for a criminal process.

Ultimately at the end of a full investigation, agents should be able to provide information about why the violation is occurring and either how the interest is being hidden and/or how the revenue is being returned to the person whose identity is being hidden. Such information will be dependent on information derived from analyses of business records as well as responses to questions posed to staff, partners, and others regarding the direction of money flows.

Initial Business Analysis

Conducting a business analysis begins with a review of all immediately available records such as license files, tax reports (sales income, corporate withholding, property), police reports, property records and appraisals, utility records and Secretary of State records (corporate records, UCC liens). Other readily available sources of business information include documentation on suppliers and other types of licensing information as well as businesses that conduct business with the retailer such as utilities, beer and liquor wholesalers, and state agencies such as Labor, Lottery and Revenue. Each entity may possess records of ownership that are different from those records retained by the establishment being investigated. The alcohol licensee may not anticipate an investigation will sweep this broadly and therefore he/she might actually disclose true control to one of these sources.

Business analysis will also include undercover surveillance. It is advisable that such surveillance be conducted by a two-person team, and that each member of the team understands what specifically he/she should be looking to see. Some things to look for include, who appears to be in charge of overall business activity, whether all sales are rung up on a cash register, and if any cash is disbursed by employees or managers; for example, as a result of a delivery to the establishment. Surveillance teams should also note the clientele. Undercover surveillance includes asking common questions such as: Who owns the business? Who is the boss? How is business going? Before concluding this initial undercover surveillance, the team should obtain license plate information of all vehicles in the parking lot if it does not appear impractical in order to determine if the suspected hidden owner is present.

Information collected through undercover surveillance and through research on the type of business will enable investigators to get a better understanding of ways that ownership may be hidden. Reconsidering the "who, what, where, when, why, and how" of the allegation in light of this new information will help investigators determine whether there is enough information to warrant further investigation either at the present time or at a later point in time, or whether the investigation should be terminated due to an apparently unfounded allegation or to insufficient information. This recommendation should be shared by way of reports (including a written report) provided to the supervisor, partner, or investigative team.

If the recommendation to proceed with the investigation is accepted by the supervisor, a plan to gather further evidence must be developed. The written plan should include the following:

- Records needed to prove the case
- Sources of information available to prove the case
- Names of individuals who should be contacted and interviewed

- Justifications for any additional undercover work
- Detailed descriptions of the violations
- Key elements of the relevant statute for which the investigation will prove violations
- Special equipment or specialized assistance needed to complete the investigation
- Anticipated defenses that may be forwarded by the owners
- Other agencies or entities included in the investigation and who can be advised of the investigation.

Continuing Business Analysis: Examining Reports and Records

There are a number of business records that detail the daily business operations of the establishment. ***Source records*** include income items that reveal the flow of funds into the business. Income items include, but are not limited to, bank statements, deposit slips, cash register tapes, and sales or revenue journals. Expense items show the flow of funds out of the business. Expenses may include a wide variety of items, including invoices or receipts for inventory purchases, petty cash slips, utility bills, and employee timecards, among other items. Well-documented source records are important to the owners of legitimately owned and operated businesses, so the manner in which such records are maintained by the business should also be of interest to the investigation.

On occasion, source records will be disposed of by the owner and replaced by fraudulently created documents. Particular scrutiny should be placed on the whether the source documents provided by the business appear to contain the same handwriting or whether there are other indications that the documents may not be originals. In addition, a search of the establishment's refuse will sometimes reveal the attempted destruction of source records or other documents that could help support the anticipated charges. The attempted destruction or alteration of source documents clearly demonstrates a licensee's intent to deceive authorities and eliminates any attempt to claim a lack of knowledge or understanding of the requirements.

Accounting records also detail day-to-day business operations. Accounting records may consist of journals that list and/or summarize cash register collections, credit card sales, doors charges, checks and cash paid for business expenses, monies received, all purchases on credit, and other transactions not included in standard income and expense categories. A general ledger often combines all balance sheets accounts, income statement accounts and journals into one chart while a chart of accounts lists all accounts that a business uses to track its operation. Many businesses use a combination income and expenditure ledger to track the daily, weekly, or monthly financial position of a business.

Accounting reports typically include a balance sheet illustrating a business' financial position as it stands on a particular day. It includes information regarding assets, liabilities, and owner's equity (i.e., what would remain if all liabilities were paid off out of current assets). Another accounting record is the income statements that show business profit or loss during a particular time period, for example, its fiscal year. The statement format may vary but a simple format will show net income before taxes after factoring total sales, costs of goods sold, operating and administrative expenses and other income.

Other important documents for review include:

- Corporate records (e.g., articles of incorporation, certificate of incorporation, stock book)
- Partnership agreements
- Joint venture agreements
- Limited Liability Corporation articles of organization and operating agreement
- Management agreements
- Franchise agreement
- Purchase agreement
- Tax returns
- Employee handbooks
- Business policy and procedure manual
- Credit applications
- Copies of licenses or permits
- Reports from independent auditors (if a corporation)

- Bank signature cards
- Vending machine contracts
- Utility records

These documents can provide important information regarding such things as who controls profits, how profits are apportioned, who controls records, who controls employee hiring, firing, and compensation, and how business profits may be beholden to other entities or individuals not named as the business licensee.

Review business records and reports with the establishment's bookkeeper and document his/her responses. Ask the bookkeeper to explain what each record and report is and what it does in order to allow you to "see the big picture" of how the business runs. Be sure to look for discrepancies, inconsistencies, and notations on the records, and ask questions about them. Source documents should flow flawlessly into journals which flow into general ledgers which flow into income statements and balance sheets. Ultimately, this type of analysis enables you to determine who exercises ultimate and significant control over the establishment.

Interviewing and Documenting

Interviewing skills in conjunction with proper case documentation can make or break a case. It is imperative that investigators conduct complete interviews of all the appropriate constituencies and that they document the information gleaned from these interviews into clear and concise reports.

Key interview components include the location of the interview. Depending on the circumstances, it may be preferable to conduct the interview in an office at the establishment, the enforcement agency, or at another site. Interviews should proceed according to an outline. The outline will ensure that all important topics are addressed, but it should also be flexible enough to allow for discussion of leads or developments that present themselves during the course of the interview. The third critical component of a productive interview involves self-monitoring of emotions and attitudes while conducting the interview. Interviewers should refrain from ridiculing or "talking down to" the subject, remaining instead as business-like and respectful as possible. Also, interviewers should periodically ask questions to make sure that he or she is being understood. As the interview progresses, it is also helpful to the tone of the interview to express appreciation for the information given.

When conducting interviews, it is best to ask short questions because there is less possibility for confusion and greater likelihood that responses will remain on topic. Avoid asking leading questions in order to prevent possible later assertions that the content of responses did not originate with the interviewee. Lastly, take notes during the interview, perhaps explaining at the start of the interview that the notes will ensure that responses are accurately captured.

Among the individuals that should be interviewed are the store manager, the bookkeeper, other employees, suppliers and the listed licensee. The investigation should also anticipate interviewing individuals not initially included in the interview list. These individuals will likely surface through information collected during initial interviews. Interview questions will address who has authority for making personnel decisions and practices as well as financial decisions and practices. Interviews should gather information regarding how manager compensation is handled, who supplies alcohol and food products, and how deliveries are handled. Questions will also address formal agreements and level of communication between the manager and the licensee. Interviews with suppliers will address whether any credit is provided to the business and how business negotiations are conducted among other topics.

The interview with the listed licensee should include all questions posed to the manager and the bookkeeper in order to allow for comparison and notation of any inconsistencies. In addition, the interview with the licensee should include the licensee describing the nature and source of his/her initial investment in the establishment. This will allow investigators to determine any changes to the nature of the licensee's relationship to the licensed establishment since the license was first issued. The licensee interview should produce information on how the licensee receives monies (profit) from the business. Depending on whether the case is purely administrative or potentially criminal in nature a thorough review of the state and federal standards of Miranda and the issues of admissibility of statements should be discussed with the supervising prosecutor.

Authority, Consent and Record Request

It is clear from the information in previous sections that business records are central to a hidden ownership investigation. Often, however, a problem premise will attempt to impede the investigation. Investigators should be familiar with the administrative and criminal authority that provides them with the right to inspect business records. This section will focus on the authority to obtain the business records, obtaining consent to review the records, and preparing a formal records request.

Administrative agencies such as Alcohol Beverage Control Agencies are typically delegated administrative authority to inspect or obtain records under regulatory law. This allows an investigator to move forward in a case of suspected hidden ownership. A records "request" constitutes an official agency appeal for records pursuant to its administrative authority. An "administrative summons" or subpoena is more formal than a request and requires production of records based upon a more formal procedure for producing such records. Records may be given directly to the investigator or may be channeled through an administrative board or judge and on to the investigator. An administrative summons often permits a formal appeal procedure that grants a licensee the right to protest production before a formal administrative body or administrative law judge.

If the primary focus of the investigation is on criminal law violations and future criminal charges, then administrative authority to review records may invalidate the criminal case. Case law will vary from state to state, so it is advisable to seek legal guidance as to the proper route to secure records. For criminal investigations, search warrants issued based on probable cause need to be approved in advance by a judge. An application for a search warrant should include information pertaining to the location of the records, laws being violated, why records are believed to be evidence of a crime, and rationale for determining that the records are present at the particular location.

A minimum of three agents should be involved when executing a search warrant and an inventory of the recovered items should be created while still at the location. One copy of the inventory list should be left at the location of the search and another returned to the court. It is also advisable to consider taking photographs or video footage of the location. The full execution of the warrant will likely take several hours, so a full day should be allocated for the event.

Grand jury investigations of law violations often utilize a *subpoena duces tecum* for the production of records and/or testimony about those records, before a formal judicial investigative body. Because of several conditions that apply to grand jury investigations (e.g., prohibition on use of records in administrative hearings until after the issuance of indictments, prohibition on communication with supervisors if they are not sworn grand jury investigators), such investigations may work to the detriment of some hidden ownership investigations. *Grand jury investigations are recommended only in cases where the focus of the investigation includes other criminal activities and not just hidden ownership.*

Licensee's consent to share records is the most direct route to obtaining records. If the licensee does not control records, he/she can authorize the person who does control the records to cooperate fully with the investigation. After receiving records, it is important to always provide a receipt to the person who provided them. The process is similar to obtaining a "consent to search" in criminal cases, and if criminal charges are the primary focus, this is also a practical route.

Banks and third party record keepers may present a barrier to obtaining records. Most banks or third party record keepers will refuse to provide records without a formal subpoena, summons, search warrant or formal release from the person holding or owning the account. As stated above, the most direct route to obtaining records from third parties is to have the licensee provide a written authorization to release. Utilities, government agencies or some other businesses may have their own standard procedures for releasing records. In such instances, follow such procedures and get certified copies of the records if possible.

In proactive investigations, preparing records requests is typical practice. Planning for record requests will allow the process to proceed efficiently. Investigators should know what records are needed, who controls them, and who will be responsible for them once they are obtained by the investigation. Licensee or bookkeeper requests are often as broad as possible, including all records and writings that pertain to the business operation. Sometimes, however, the request is quite specific if only a few known items are all that is needed to prove or disprove the case. Knowing what records to request will be based in large part on information gathered through interviews (e.g., records on hand, purpose of records).

When issuing a request, cite the agency's authority to obtain records in the request and identify by name the person to whom the request is directed and the entity about which the request relates. Provide a list of records requested, and indicate where they should be delivered. Lastly, obtain a dated signature of the person receiving the request and the person who, on behalf of the agency, received the records. Retain a minimum of two copies of the signed and dated request, one for the investigative office and one for the licensee (or person providing the records).

A Word About Records

Records are evidence and should be viewed as such. Consequently, they must be considered relevant, competent, and material. That is, they must be relevant in that they relate in some logical way to the matter at hand. They must be material in that they help to prove the matter at hand. And, they must be competent in that they reflect the legality of the evidence to be submitted. *Improperly received or submitted evidence may not be competent.*

Records are an exception to the hearsay rules if they are official records, records of public agencies, records kept in the regular course of business, or they are statements against interest. Statements against interest are written records (or oral statements) by a person that would, or could, be used against their own interest.

The best evidence rule states that the original document is the best evidence. However, secondary evidence (e.g., photocopies) is admissible if the original is not available.

Analysis of Information

During the course of the investigation, interviews, records, and reports generate a large amount of information. It is important that time be spent analyzing the information to determine if it is adequate to proceed with the case. This analysis should be conducted with as objective a viewpoint as possible.

Information analysis should seek to find proof of specific elements of the violation. The investigation must determine which records prove each element and center the case on the records that will prove the charges. Not all records will lend themselves to this task, but the investigation should review and develop an understanding of other records and how they may relate to other potential violations.

The investigation should include analysis of business income and expenditures. This analysis will show if all income is being reported, or if the business is showing a loss. It will show if someone else is keeping the business afloat or laundering money through the business. Analysis will also indicate if income or sales tax fraud is potentially being perpetrated. It is helpful to create organizational and/or operational flow charts of the business and its key operating components, which may include; sales agreements, leases, management agreements and organizational ownership layers or tiers. Such visual displays of information will facilitate an understanding of how the business operates and how to prove your case. They will also make it easier to explain the case in court or at a hearing.

To determine if a record is used to hide or disguise ownership or business control, analyze the information from each record and compare it to others, looking for inconsistencies. Several questions should be considered to help frame the analysis. For example: Does the management agreement hide a partnership or joint venture? Does a lease hide an ownership interest in an establishment? Do checks to persons with no legitimate employment or business purpose exist?

Using the licensee's sales records, verify gross sales figures. This involves comparing the daily sales reports with the register tapes, reconciling daily sales figures with monthly sales figures, and comparing sales to bank deposits.

Information analysis should also verify gross food sales when applicable. This can be accomplished by employing the Portion Control Method (PCM) or the Average Mark-Up Method (AMM). The PCM is best used when food records are complete, and requires review of invoices for food purchase, review of inventory records, categorizing food purchases, determining portion sizes for food sold, and calculating sales based on price per serving. The PCM is tedious in that it requires analysis of all required records as well as calculations based on these records, but it can also yield better information regarding gross food sales than the AMM. Table 1 illustrates the type of information that can be produced through the PCM.

Table 1: Example of Portion Control Method Based on Food Purchases

Item	Quantity per Case/Unit	# Cases/Units Purchased	Total Quantity Purchased	Serving Size	# of Servings	Menu Price	Calculated Sales
Shrimp	5 lbs.	25	125 lbs.	.5 lbs.	250	$7.00	$1750.00
French Fries*	5 lb.	100	500 lbs. - 125 lbs.	.5 lbs.	750	$2.00	$1500.00
Total Sales in this chart, calculated by adding all calculated sales = $ 3250.00							

* A ½ lb. of French fries were served with the shrimp dinners included above [totaling 125 lbs. or (250 servings with shrimp dinners) x .5 lbs.]. The rest of the French fries purchased (375lbs.) were sold separately in .5 lb. servings.

The AMM is better used when the licensee has not kept complete sales records. It requires analysis of inventory records and purchase records, and involves several steps of analysis that will yield figures for food sales percentages, true cost per portion for each menu item, mark-up per portion, average mark-up on food items, and gross sales. Tables 2, 3, 4, and 5 illustrate the type of information produced step-by-step through the AMM.

Table 2: Determining Percentage of Sales					
Category	**Cost per Category**	**/**	**Total Cost Good Sold**	**=**	**Percentage**
Meals with Entrees	$4,000.00	/	$10,000.00	=	40%
Other Food	$5,000.00	/	$10,000.00	=	50%
Non-Alcoholic Beverages	$1,000.00	/	$10,000.00	=	10%
Total	$10,000.00	/	$10,000.00	=	100%*

* Should equal 100% if accurate.

Table 3: Cost per Portion for Menu Items Sample: Shrimp and Fries										
Ingredient	**Size Purchased**	**Cost**	**/**	**# of Units**	**=**	**Cost per unit**	**X**	**Portion Size**	**=**	**Cost per Portion**
Shrimp	Box	$22	/	5 lbs.	=	$4.40/lb.	X	.5 lb.	=	$2.20
Fries	Box	$1.60	/	5 lbs.	=	$.32/lb.	X	.5 lb.	=	$.16
Cocktail Sauce	Gallon	$3.50	/	8 oz.	=	$.03/oz.	X	3 oz.	=	$.09
Lettuce	Per Head	$.40	/	15 serv.	=	$.03/serv.	X	1 serv.	=	$.03
Orange	Individ.	$.20	/	10 serv.	=	$.02/serv.	X	1 serv.	=	$.02
Total Meal: Shrimp and Fries - Cost Per Portion = $2.50										

Table 4: Selling (Menu) Price Using the Items Sold Costing Formula*					
Menu Items	**Menu Price**	**/**	**Cost**	**=**	**Mark-Up**
Shrimp & Fries	$5.50	/	$2.50	=	2.20
Steak & Fries	$5.95	/	$2.70	=	2.20
Hamburger & Fries	$4.25	/	$2.00	=	2.12

After determining the mark-up for each item in a category (entrée, other food, non-alcoholic beverage), calculate an average mark-up for each category using the formula
[(Average Mark-up = Sum of Mark-ups / the # of items in the category].

Table 5: Gross Sales for Non-Alcohol Items Using Formula*					
Cost of Items Sold by Category X Average Mark-up by Category = Gross Sales by Category					
Category	**Cost per Category**	**X**	**Average Mark-up**	**=**	**Gross Sales by Category**
Meals with Entrees	$4,000.00 (See Step One)	X	2.17 (Average from step three)	=	$8,680.00

*Calculate for each category and then add the categories to determine Total Gross Sales using the Average Mark-up Method.

Records analysis also attempts to verify gross sales for alcohol beverages using the Actual Alcohol Purchased Method (AAPM). This method can be used to determine the gross sales of beer, wine, and mixed beverages when the licensee has not maintained complete sales records for the period under investigation. AAPM requires review of vendor invoices for beer, wine, and liquor from wholesalers who have conducted business with the establishment during the period under investigation. Table 6 illustrates how information regarding alcoholic beverage sales is organized when employing the AAPM.

Table 6: Alcohol Products Purchased Template								
Wholesaler	**Brand**	**Type**	**Size**	**Bottles per Case**	**# Cases**	**# bottles or kegs**	**Cost of items**	**Total Purchases**
Suzy Sunshine	Budweiser	Bottles in Cases	12 oz.	24	100	2,400	$0.70	$1,680.00
Suzy Sunshine	Vodka	Bottles in Cases	1.5 liters	9	10	90	$12.00	$1,080.00

The AAPM requires that the investigation determine the prices charged for each drink. This may involve noting different prices charged for the same drink depending on time of day, for example during happy hour, conducting interviews and/or surveillance to determine the serving sizes for draft beer, wine sold by the drink and the amount of liquor served in a mixed drink. The AAPM also factors total gross sales for wine and beer sold by individual containers. Table 7 illustrates how total gross sales for alcoholic beverages sold by the containers are calculated.

Table 7: Total Gross Sales of Beer Sold by Individual Containers

Brand	Size	Cases	Containers per Case	Total Containers	Price per Container	Total Gross Sales
Miller Lite	12 oz.	269	24	6,456	$2.00	$12,912.00
Coors Light	12 oz.	290	24	6,960	$2.00	$13,920.00
Budweiser	12 oz.	217	24	5,208	$2.00	$10,416.00
Bud Light	12 oz.	147	24	3,528	$2.00	$7,056.00
Total Gross Sales = $44,304.00*						

*Allowance for Spillage and Breakage must also be computed as a percent of the gross sales. You would then subtract this amount from the total gross sales.

Determining the total gross sales for liquor, wine (sold by the glass), and draft beer begins with calculating the number of servings the licensee can obtain from bottles of wine and/or liquor, and kegs of wine or beer purchased. This number is multiplied by the total number of bottles or kegs purchased in order to generate the total number of servings. The gross sales for liquor, wine and draft beer is determined by multiplying the total number of servings by the menu price.

AAPM will adjust the calculated gross sales for free-pour liquor, wine and gun-dispensed liquor to allow for spillage. Typical standards are five percent for individual sized bottled beer or wine coolers; eight percent for free-pour wine and spirits, and five percent for gun dispensed liquor. Spillage is typically not used in calculating gross sales for draft beer because the foam will take up space in the mug or glass.

Finalizing the Investigation

Once financial records analysis is completed, the investigation proceeds to its final stages. This section details the final steps necessary to complete the investigation, meet the elements required to prove the case, and prepare a strong case for hidden ownership.

A final review of relevant statutes and the elements required to prove the case is advisable as the investigation winds down. This review should prompt an answer to the question of whether there is sufficient evidence available to prove the violation In other words, the review should conclude whether the evidence is relevant, material, and competent.

Next, investigators should identify and review the preferred type of filing for the case. This process should reflect the initial determination in the planning phase that has served to shape the work thus far. Review of filing requirements for an administrative case is worthwhile as is the investigation's recommendation for action.

When filing a combined criminal and administrative case, it is likely that the criminal case will be negatively affected by the administrative case. Earlier consultation with the local prosecutor at the start of the investigation will help to prevent conflicts between criminal and administrative cases. Nevertheless, all case filing and evidence requirements should be reviewed again by attorneys involved with criminal and administrative filings. This can be accomplished expeditiously by teleconferencing with both attorneys at one time.

It is helpful for the investigation to capture a person's intent to commit a crime in order to counter the common defense that the suspect did not know that he or she was in violation. Intent is evident in failure to disclose true ownership interests at the time of the initial application or at other opportunities for questioning, involvement in other criminal acts such as tax fraud or drug sales, altered books and records, inadequate books and records, and unreported notes or loans, among other business irregularities.

The final written report should serve as a solid documentation of a case of hidden ownership written in a thorough, clear, and concise manner. The written report should follow a logical format (e.g., chronological order, by violation) and present facts objectively; that is without subjective discussion about the presented facts. Explanations should be brief, describing what occurred but refraining from bragging about what investigators had to do in order to prove the case.

Witnesses referred to in the body of the report should also be listed by name in a separate formatted witness list that is part of the report. A witness list includes the name, address and phone number of the witness and what evidence he/she will identify or testify about. Similarly, key items of evidence should be included in a separate formatted evidence or exhibit list. This formatted list includes the known chain of custody and a description of the statutes or elements of violations this evidence helps to prove. Any lab results or analysis should be available and in writing.

Lastly, there is a difference between investigative reports and a street officer's case report. Appearance and logical presentation enhances the case.

Summary and Conclusion

As "cash intensive" businesses, retail alcohol establishments have always been an attractive means for hiding income or laundering money. Most often, when the intent of operating such a business exists, those who control the business wish to hide their interest in the business not only because of the illegality of the intent, but also because the individuals involved may have a criminal history that would prevent them from having an alcohol license. Another common reason for hiding ownership is the hidden owner's involvement in a civil suit and his or her desire to hide business assets.

Law abiding members of the business community and the public have every right to expect that alcohol establishments will operate in compliance with all laws and regulations. Failure to pursue white collar crimes such as hidden ownership of alcohol establishments at a minimum erodes public confidence but also enable individuals to defraud the government of revenue and perhaps other individuals of duly owed monies. At worst, failure to pursue and prosecute hidden ownership cases allows much more heinous crimes such as drug trafficking and financing of potential terrorist activities to continue.

Although hidden ownership investigations require an investment of considerable time and resources and involve detailed analysis of a significant amount of material, the "pay off" is great. It is an outcome that can be measured not only in terms of diverted revenue captured but also in terms of quality of life improved and even lives saved.

Pacific Institute for Research and Evaluation

11710 Beltsville Drive, Suite 125
Calverton, MD 20705-3102
Toll Free: 1-866-95-NCALE (1-866-956-2253)
www.pire.org

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11710 Beltsville Drive, Suite 125
Calverton, MD 20705-3102
Toll Free: 1-866-95-NCALE (866-956-2253)
Inquiry@ncale.us