



## **TAX BULLETIN SALES AND USE TAX 2018-02**

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### **Taxation of the Sale of Malt or Brewed Beverages in Pennsylvania by Manufacturers**

The Department of Revenue (“Department”) provides this Sales and Use Tax Bulletin to taxpayers engaged in the manufacture and sale of malt or brewed beverages. Act 113 of 2011, P.L. 530 (Dec. 22, 2011), Act 39 of 2016, P.L. 273 (June 8, 2016) and Act 166 of 2016, P.L. 1286 (Nov. 15, 2016) made significant revisions to the Liquor Code, 47 P.S. § 1-101, *et seq.*, and how manufacturers of malt or brewed beverages may sell their products within the Commonwealth. In this document, these Acts will be referred to collectively as “Liquor Reform”.

The Department recognizes that tax law and liquor law are two very complex areas of the law, and this Tax Bulletin is intended to clarify and explain in plain language the taxation of the sale of malt or brewed beverages by manufacturers of such products under the current state of the law. This Tax Bulletin only applies to manufacturers of malt or brewed beverages and sales of malt or brewed beverages made by manufacturers. This Tax Bulletin does not apply to any other sales made by manufacturers, including, but not limited to, food, merchandise, or any other items. The guidance in this Tax Bulletin will be applied prospectively only, beginning with the effective date above.

#### **I. General Overview**

Pennsylvania’s Tax Reform Code of 1971 (“TRC”), as amended, imposes a tax of six percent (6%) of the purchase price on the sale at retail or use of tangible personal property or certain enumerated services within this Commonwealth. 72 P.S. § 7202(a). The tax is imposed upon the purchaser, that is, the customer, but the tax must be collected by the vendor and remitted to the Commonwealth. *Id.* Allegheny County and Philadelphia County also impose an additional one percent or two percent, respectively, on the state sales tax base. The definition of “sale at retail” includes the sale of malt or brewed beverages by a manufacturer to any person for any purpose, except sales to an importing distributor or distributor. 72 P.S. § 7201(k)(10). The TRC excludes from the definition of “sale at retail” the sale of malt or brewed beverages by a person holding a retail dispenser or retail liquor license. *Id.* Therefore, a manufacturer is required to collect Sales Tax on its sales of malt or brewed beverages to any person for any purpose except sales to importing distributors or distributors, whereas sales of malt or brewed beverages by

retail liquor licensees or retail dispenser licensees are not subject to Sales Tax. Whether or not a transaction is subject to the Sales Tax depends on the type of license held by the seller and the purchaser. <sup>1</sup>

Section II of this Tax Bulletin defines each applicable term and identifies how each of the various Pennsylvania Liquor Control Board (“PLCB”) licensees fit into the TRC’s five broad categories. Section III explains to whom manufacturers of malt or brewed beverages may sell their products after Liquor Reform. Section IV explains how a manufacturer’s sales are taxed and provides manufacturers with two options for collecting tax.

## II. Definitions

There are more than 70 types of licenses and permits issued by the Pennsylvania Liquor Control Board (“PLCB”), however the TRC addresses only five broad categories of licensees:

- A. Manufacturers of malt or brewed beverages;
- B. Distributors;
- C. Importing distributors;
- D. Retail dispenser licensees; and
- E. Retail liquor licensees.

The terms “manufacturer of malt or brewed beverages,” “distributor,” “importing distributor,” “retail dispenser,” and “retail liquor license” are not defined by the TRC, but they are defined by the Liquor Code and the PLCB’s regulations.

**Distributor and importing distributor** – A “distributor” is a person licensed by the PLCB to purchase malt or brewed beverages from Pennsylvania manufacturers and from importing distributors, and resell malt or brewed beverages to other PLCB licensees or consumers (but not to importing distributors or other distributors). 47 P.S. § 1-102. An “importing distributor” is a person licensed by the PLCB to import and purchase malt or brewed beverages from out of state manufacturers of malt or brewed beverages, other out of state persons, Pennsylvania manufacturers of malt or brewed beverages, and, under certain circumstances, other PLCB licensed importing distributors. *Id.* An importing distributor may resell malt or brewed beverages to other PLCB licensees (*i.e.*, other importing distributors, distributors, restaurants, etc.) and the public within the designated geographical areas authorized by the applicable territorial agreement for a given brand of malt or brewed beverage. *Id.* A distributor is referred to as a “D” licensee. An importing distributor is referred to as an “ID” licensee. Both licenses are issued under 47 P.S. § 4-431(b).

**Manufacturer of malt or brewed beverages** – A “manufacturer of malt or brewed beverages” is any person licensed by the PLCB “to engage in the manufacture, transportation and sale of malt or brewed beverages.” 47 P.S. § 1-102. A manufacturer of malt or brewed beverages also

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<sup>1</sup> As explained in greater detail in Section III, below, after Liquor Reform manufacturers are able to sell their products directly to the public without obtaining a retail license. This development has led to new issues in the application of the Sales Tax to sales of malt or brewed beverages by manufacturers, which this Tax Bulletin seeks to clarify.

includes “any person engaged in the legal manufacture of malt or brewed beverages” outside the Commonwealth but within the United States. *Id.* A “brewery” is referred to as a “G” licensee. A G license is issued pursuant to 47 P.S. § 4-431-(a).<sup>2</sup>

A brewery (G) licensee may obtain a brewery pub license in addition to its brewery license. A brewery pub license is referred to as a “GP” license. A GP license is issued under 47 P.S. §§ 4-406.1(b), 4-446. The holder of a GP license may sell its malt or brewed beverages for onsite consumption. Further, a GP licensee must prepare food on its premises, just like a retail dispenser licensee.

A brewery (G) licensee may also obtain up to two brewery storage licenses in addition to its brewery license. A brewery storage license is referred to as a “GS” licensee. A GS license is issued under 47 P.S. § 4-431(a.2). A GS license allows the holder of a G license “to receive, store, repackage, sell and distribute malt or brewed beverages in the same manner as it can at its place of manufacture” at an additional facility.

For purposes of the Sales and Use Tax, a brewery (G) licensee, brewery pub (GP) licensee, and brewery storage (GS) licensee are all considered manufacturers of malt or brewed beverages.<sup>3</sup>

**Retail dispenser and retail liquor licensee** – A “retail dispenser” is a person licensed by the PLCB to engage in the retail sale of malt or brewed beverages for consumption on the licensee’s premises. 47 P.S. § 1-102. A “retail liquor licensee” is a person or entity “holding a hotel, restaurant, club or public service liquor license or other license issued under the Liquor Code for the sale of liquor and malt or brewed beverages at retail.” 40 Pa. Code § 3.1; *see also* 47 P.S. § 4-407(a). A retail dispenser and certain retail liquor licensees may also sell malt or brewed beverages for off-premises consumption but not in quantities in excess of 192 fluid ounces in a single sale to one person. 47 P.S. §§ 1-102, 4-442(a)(1), 4-407(a).

There are many license types that allow retail sales of malt or brewed beverages to the public. The license types most relevant to this bulletin are:

- A. Restaurant;
- B. Hotel; and
- C. Eating place retail dispenser.

A restaurant license is referred to as an “R” license. An R license is issued under 47 P.S. § 4-401(a). A hotel license is referred to as an “H” license. An H license is issued under 47 P.S. § 4-401(a). An eating place retail dispenser license is referred to as an “E” license. An E license is

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<sup>2</sup> Another type of manufacturing license exists called an alternating brewery license. An “alternating brewer” is referred to as an “AG” licensee. An AG license is issued pursuant to 47 P.S. § 4-431.1(a). Sales by an alternating brewery (AG) licensee will never be subject to the Sale Tax as an AG licensee’ must make all of its sales to an importing distributor.

<sup>3</sup> While brewery (G), brewery pub (GP), and brewery storage (GS) licenses are separate licenses, only the holder of a brewery (G) license may obtain either a brewery pub (GP) or brewery storage (GS) license. The brewery pub (GP) and brewery storage (GS) licenses are ancillary licenses of the manufacturer’s G license, not separate manifestations of the G license. For this reason, the Department considers all three licenses manufacturing licenses.

issued under 47 P.S. § 4-432(a). The list above is not a complete list of retail licenses issued by the PLCB.

### III. Sales of malt or brewed beverages after Liquor Reform

As a result of recent changes in the law, manufacturers of malt or brewed beverages are now able to sell their products to a larger pool of customers beyond importing distributors, distributors and retail licensees. Manufacturers may now directly sell their products to:

- A. Distributors and importing distributors;
- B. Limited Wineries;
- C. Other breweries;
- D. Retail licensees;
- E. Special occasion permit holders;
- F. Distilleries and limited distilleries; and
- G. The public.

A licensed brewery may sell its own malt or brewed beverage products for off-premises consumption in any quantity and in any container or package from its licensed brewery (G) or brewery storage (GS) facility, in addition to previously existing sales opportunities, like obtaining a brewery pub (GP) license. 47 P.S. § 4-440. Further, without needing any additional type of license, as a result of Acts 39 and 166 of 2016, breweries may sell their own products and the malt or brewed products of other PLCB licensed breweries, wine from PLCB licensed limited wineries, and distilled spirits from PLCB licensed limited distilleries and distilleries for on-premises consumption. 47 P.S. § 4-446(a)(2). Act 39 of 2016 also allows G licensees to obtain special permits to participate in off-premises malt or brewed beverage and food expositions and to obtain permits to sell their products at farmers markets. 47 P.S. § 4-446(c).

In essence, manufacturers can now act as a traditional retailer when selling their products to the public for on-premises consumption, and distributors when selling their products to the public for off-premises consumption.

### IV. Sales Tax and sales by manufacturers of malt or brewed beverages

#### A. Application of the tax

As discussed above, the taxability of a manufacturer's sale depends upon the type of customer to whom the manufacturer sells its product. When a manufacturer sells its own product under its brewery (G) license, brewery pub (GP) license, or brewery storage (GS) license, this transaction is taxable, unless the sale is to a distributor or importing distributor. For example, the following sales by a manufacturer of its own product are taxable:

- A. Sales to a limited winery;
- B. Sales to another manufacturer for that manufacturer to sell to the public;
- C. Sales to a retail licensee;
- D. Sales to a special occasion permit holder;
- E. Sales to a distillery or limited distillery;

F. Sales to the public for consumption on-premises or off-premises.

In each of the above transactions, the manufacturer is responsible for collecting the Commonwealth's six percent Sales Tax and remitting the tax to the Department.

The Department recognizes the confusion that will occur since a manufacturer is required to collect Sales Tax on each individual sale of its own product to the public for on-premises or off-premises consumption, while other licensees, not selling their own product but in all other respects acting in a similar capacity, do not collect tax. For example, a restaurant or hotel licensee sells malt or brewed beverages to the public without charging sales tax. In order to simplify the collection of taxes and ensure parity between similarly situated taxpayers for the sale of malt or brewed beverages, the Department will provide manufacturers' two options for collecting and remitting the Sales Tax. A manufacturer may either include the tax in the advertised purchase price of their product or they may separately state and charge tax on each individual sale.

B. Option to include Sales Tax in purchase price

The Department will permit a manufacturer (selling under a manufacturing license) to include the Sales Tax in the advertised purchase price of its own product instead of separately stating and charging its customers Sales Tax. This way, retail sales to the public will be treated in a similar manner, whether made by a manufacturer under a manufacturing license or a retail license.

Although a manufacturer is still required to collect tax upon the purchase price of each individual taxable sale of its own product, under this option, the purchase price advertised to the public is presumed to include the amount of tax to be collected. The Sales Tax shall be computed by the following formula:

$$(\text{Total receipts from the sale of its own products} \div 1.06) \times .06 = \text{Sales Tax due.}$$

For example, if a manufacturer charges a customer \$5 for a pint of its own beer for consumption on the manufacturer's premises, the manufacturer may include Sales Tax in the \$5 advertised price. In this example, the manufacturer must remit \$0.28 of Sales Tax to the Department as the deemed purchase price of the pint is \$4.72. If a manufacturer charges \$25 for a case of its own beer for consumption off-premises, the manufacturer must remit \$1.42 of Sales Tax to the Department, as the purchase price is deemed to be \$23.58.

A manufacturer electing to collect tax using this method must display a sign at the location where its prices are displayed noting that the displayed purchase price includes Sales Tax.

A manufacturer must pay Sales Tax when it purchases products other than its own to sell to the public for consumption on-premises. The Department will not require a manufacturer to collect Sales Tax on sales of other manufacturers' products to the public (similar to how a bar or restaurant operates).

C. Option to charge Sales Tax on individual sales

If a manufacturer selling its own products under its manufacturing license (G, GS, or GP) elects not to include the Sales Tax in the advertised purchase price of its products, the manufacturer must collect and remit Sales Tax on each individual sale of its own product, whether the sale is for on-premises or off-premises consumption. If a manufacturer sells the products of other manufacturers, it must collect the Sales Tax on the purchase price of those sales as well. The manufacturer should provide the other manufacturer with an exemption certificate claiming a sale for resale exemption.<sup>4</sup> A manufacturer claiming the resale exemption must collect Sales Tax when it sells the property to its customers. If a manufacturer does not provide an exemption certificate to the other manufacturer when making a purchase and pays Sales Tax on items that it later resells to customers, the manufacturer may claim a credit on its Sales Tax return. This credit is referred to as a credit for “Taxes Paid-Purchases Resold” (“TPPR”). 61 Pa. Code § 58.11.

#### D. Special rule for manufacturers selling under a retail license

As discussed above, under the TRC, Sales Tax is not imposed upon the sale of alcohol by a retail licensee (R, H, or E license). As such, when a manufacturer produces malt or brewed beverages, then sells its product under a retail license, Sales Tax is not charged on the sale to the ultimate customer. In these types of circumstances, the TRC allows the Department to require a taxpayer to determine a constructive purchase price upon which sales tax must be paid to the Commonwealth. See 72 P.S. § 7201(g)(3)(permitting the Department to “determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied.”).

Therefore, a manufacturer selling its own products under a retail license must use a constructive purchase price for its own products in order to determine the proper tax base upon which to remit Sales Tax to the Commonwealth. The Department considers the actual retail price of the malt or brewed beverages sold to consumers to best reflect the constructive purchase price. In order to accomplish this, the Department will allow a manufacturer selling under a retail license to calculate its tax owed in the same manner as a manufacturer in Section IV.B above.

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<sup>4</sup> When claiming the resale exemption, the purchaser must present to the vendor a valid, properly executed Pennsylvania Exemption Certificate (REV-1220), which is available on the Department’s website [www.revenue.pa.gov](http://www.revenue.pa.gov). The Exemption Certificate should be completed by checking item three (3) and inserting the claimant’s Revenue ID number.