



TAX BULLETIN SALES AND USE TAX 2019-02

Taxation of the sale of malt or brewed beverages in Pennsylvania by manufacturers

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The Department of Revenue (“Department”) issues this Sales and Use Tax Bulletin to inform taxpayers engaged in the manufacture and sale of malt or brewed beverages of a change in law. This guidance only applies to manufacturers of malt or brewed beverages selling their own malt or brewed beverages directly to the ultimate consumer. It does not apply to any other sales made by manufacturers, including, but not limited to, food, merchandise, malt or brewed beverages made by another manufacturer, or any other items. The guidance in this Tax Bulletin will be applied prospectively only, beginning with the effective date above.

Section I provides a general overview of the Sales and Use Tax law as it applies to manufacturers. Section II provides examples of the application of the Sales and Use Tax law.

I. General Overview

Article II of Pennsylvania’s Tax Reform Code of 1971 (“TRC”), 72 P.S. §§ 7201-7282, as amended, imposes a tax of six percent (6%) of the purchase price on the sale at retail or use of tangible personal property and 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 is 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 or Use 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). Act 13 of 2019 changed the Sales Tax as it applies to sales of malt or brewed beverages made by manufacturers directly to consumers for on or off premises consumption to a Use Tax on manufacturers for any malt or brewed beverages sold directly to the ultimate consumer for consumption on or off premises. Act 13 also sets the Use Tax base at 25% of the retail price of the malt or brewed beverage sold for consumption on or off premises.

Therefore, pursuant to Act 13, a manufacturer is required to collect Sales Tax or remit Use Tax on its sales of malt or brewed beverages in the following manner:

- A manufacturer must collect Sales Tax on the entire purchase price for any sales made directly to a retail dispenser or retail liquor licensee¹ or another manufacturer². The manufacturer does not reduce the purchase price to calculate the Sales Tax due.
- A manufacturer must remit Use Tax on 25% of the retail price for any sales of its own malt or brewed beverages made to the ultimate consumer for consumption on or off premises.

The changes in the law made by Act 13 apply only to sales made by a manufacturer of malt or brewed beverages under its manufacturing license directly to the ultimate consumer for consumption on or off premises. A manufacturing license includes a brewery license (G), a brewery storage license (GS), and a brew pub license (GP). If a manufacturer sells its malt or brewed beverages to a separate legal entity, including a related entity that holds another license such as a restaurant license, the manufacturer must charge and collect the Commonwealth's Sales Tax on the full consideration paid for the malt or brewed beverages.

II. Application of the tax

The following examples demonstrate how a manufacturer must either charge and remit Sales Tax or pay Use Tax to the Commonwealth.

Example 1

Brew Co. is licensed as a manufacturer (G license) of malt or brewed beverages by the Pennsylvania Liquor Control Board ("PLCB"). Brew Co. holds no other licenses from the PLCB. In the normal course of business, Brew Co. manufactures and sells malt or brewed beverages to a variety of customers, including importing distributors, holders of restaurant liquor licenses, and consumers at its onsite taproom. Brew Co. makes the following sales of its own malt or brewed beverages:

1. Twenty cases, five one-half barrel kegs, and ten one-sixth barrel kegs to XYZ, Inc., an importing distributor. Brew Co. charges XYZ a total of \$2,500 for all of the products.
2. Four cases and two one-sixth barrels to DEF, LLC, an establishment holding a restaurant liquor license. Brew Co. charges DEF a total of \$320.
3. Two hundred pints, 25 crowlers, ten cases, and two one-sixth barrels to various individual customers who will be the ultimate consumer of the products for consumption on or off premises. Brew Co. charges its customers a total of \$1,000.

¹ For purposes of the Sales and Use Tax law, a retail dispenser or retail liquor licensee includes, but is not limited to, licenses such as a restaurant (R) license, hotel (H) license, eating place retail dispenser (E) license, or any similar license where the licensee is authorized to sell alcohol for consumption on premises or off premises in quantities not to exceed 192 oz. in a single transaction.

² For purposes of this bulletin, sales to another manufacturer includes brewery (G, GS or GP) licensees, limited winery (LK) licensees, and limited distillery (AL) licensees.

In transaction number 1, Brew Co. does not need to charge and separately state the Commonwealth's Sales Tax on an invoice provided to XYZ. Sales from a manufacturer to an importing distributor or distributor are exempt from the sales tax.³

In transaction number 2, Brew Co. must charge and separately state the Commonwealth's Sales Tax on an invoice provided to DEF. The total Sales Tax that must be collected by Brew Co. is \$19.20 (\$320 x 6%). If Brew Co. is located in either Allegheny or Philadelphia County, it must also collect the local sales tax on the entire purchase price. DEF does not charge sales tax on its sale of the malt or brewed beverages to its customers.

In transaction number 3, Brew Co. must remit Use Tax on the malt or brewed beverages sold from its taproom directly to the ultimate consumer for consumption on or off premises. Since this is a Use Tax and the duty to pay and remit the tax is on the manufacturer, the manufacturer cannot separately state the tax on a receipt provided to the ultimate consumer. Instead, the manufacturer must remit the Use Tax when it files its Sales and Use Tax return with the Department. The manufacturer must calculate its Use Tax liability in the following manner:

Total of Retail Sales:	\$1,000
Purchase Price for Use Tax Purpose (Total Retail Sales x 25%):	\$250
Use Tax Due (Purchase Price x 6%):	\$15

If Brew Co. is located in either Allegheny or Philadelphia County, it must also remit the local use tax on the purchase price. The results above will be the same whether Brew Co. makes the sales from its brewery facility, brewery storage facility, or brew pub facility.

Example 2

In addition to the facts in Example 1, Brew Co. purchases five one-sixth barrel kegs of malt or brewed beverages from LNM Brewing, Inc., another PLCB licensed manufacturer (G license), to sell for consumption on premises. Brew Co. pays LNM Brewing \$125 per one-sixth barrel keg. Brew Co. also purchases two twelve-bottle cases of wine at \$15 per bottle from a PLCB licensed limited winery (LK license). Finally, Brew Co. purchases one six-bottle case of whiskey at \$25 per bottle and one six-bottle case of vodka at \$20 per bottle from a PLCB licensed limited Distillery (AL License).

Each manufacturer that sells the products listed above to Brew Co. must charge and collect the Commonwealth's 6% Sales Tax on the entire purchase price paid by Brew Co.⁴

³ Note that when a distributor sells malt or brewed beverages to retail licensees or individual consumers the distributor must charge and separately state the Commonwealth's sales tax on the full purchase price.

⁴ If any of the other manufacturers are located in either Allegheny or Philadelphia County, they must also collect the local sales tax on the purchase price. If the other manufacturers are not located in either Allegheny or Philadelphia County but Brew Co. is, then Brew Co. must remit the local use tax on the purchase price.



<u>Seller</u>	<u>Entire Purchase Price</u>	<u>Total Tax Due</u>
LNM Brewery	\$625	\$37.50
Limited Winery	\$180	\$10.80
Limited Distillery	\$270	\$16.20

Brew Co. should not charge its customers Sales Tax when it sells the various products from other manufacturers for consumption on its premises. For additional information please visit The Department's website www.revenue.pa.gov.