

TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 16-08

Revenue rulings are not binding on the Department. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The legal incidence of the Tennessee beer barrelage tax.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

Tennessee relies on a regulated three-tier system for the distribution of beer¹ that involves manufacturers,² wholesalers, and retailers.³ Under this system, a retailer must purchase beer from a wholesaler located in Tennessee, and all such purchases must be delivered by the wholesaler to the retailer's licensed premises or directly to the retailer at the wholesaler's premises.⁴ Moreover, a wholesaler must purchase beer from a manufacturer, importer or other wholesaler holding a permit issued pursuant to TENN. CODE ANN. § 57-5-101.⁵ A wholesaler's purchases must be delivered to a warehouse owned or operated by the wholesaler and located within Tennessee.⁶

¹ TENN. CODE ANN. § 57-5-101(b) (Supp. 2016) states that beer includes "beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in TENN. CODE ANN. § 57-3-101, provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol." Under 2014 Tenn. Pub. Acts Ch. 861, § 1, the alcohol content requirement for beer will increase to not more than eight percent (8%) by weight effective January 1, 2017.

² Although the term "manufacturer" is not defined specifically for purposes of the beer barrelage tax, TENN. CODE ANN. § 57-5-101(f) (Supp. 2016), provides a general definition of a "manufacturer" that includes "a holder of a license to manufacture or import beer." The term "supplier" is used interchangeably for "manufacturer" throughout Title 57, Chapter 5 and is defined to include a manufacturer or importer pursuant to TENN. CODE ANN. § 57-5-502(9) (Supp. 2016).

³ The terms "wholesaler" and "retailer" are not defined for purposes of the beer barrelage tax. However, elsewhere in Title 57 relative to beer and the three-tier system of distribution, a "wholesaler" is defined as "a person or entity that sells beer to retailers," and a retailer is defined as "a person who sells beer for consumption and not for resale." TENN. CODE ANN. §§ 57-5-502(11); 57-6-102(9), (11) (Supp. 2016).

⁴ TENN. CODE ANN. § 57-5-201(c) (Supp. 2016).

⁵ *Id.*

⁶ *Id.*

The taxpayer requesting this revenue ruling has posed questions regarding which party in this system is responsible for reporting and paying the Tennessee beer barrelage tax in the following circumstances:

- When a beer manufacturer contracts with a Tennessee wholesaler to distribute beer;
- When a beer manufacturer operates as a retailer or is qualified and holds a license as a restaurant, limited service restaurant, or hotel pursuant to the requirements of TENN. CODE ANN. § 57-5-101(c)(1); and
- When a manufacturer operates as a retailer that sells its beer to retailers within the same county pursuant to TENN. CODE ANN. § 57-5-101(c)(2).

RULINGS

1. Is a beer manufacturer who contracts with a wholesaler to distribute beer responsible for reporting and paying the Tennessee beer barrelage tax?

Ruling: No, when a beer manufacturer contracts with a Tennessee wholesaler to distribute beer, the Tennessee wholesaler is responsible for reporting and paying the Tennessee beer barrelage tax. This is true regardless of whether the beer manufacturer is located in Tennessee or located outside of the state and imports beer into Tennessee.

2. Is a beer manufacturer that is operating as a retailer or is qualified and licensed as a restaurant, limited service restaurant, or hotel pursuant to the requirements of TENN. CODE ANN. § 57-5-101(c)(1) responsible for reporting and paying the Tennessee beer barrelage tax?

Ruling: Yes, a beer manufacturer operating as a retailer or qualified and licensed as a restaurant, limited service restaurant, or hotel pursuant to the requirements of TENN. CODE ANN. § 57-5-101(c)(1) is responsible for reporting and paying the Tennessee beer barrelage tax.

3. Is a beer manufacturer operating as a retailer that sells its beer to retailers within the county in which it is located pursuant to TENN. CODE ANN. § 57-5-101(c)(2) responsible for reporting and paying the Tennessee beer barrelage tax?

Ruling: Yes, a manufacturer operating as a retailer that sells its beer to retailers within the same county is considered to be acting as a wholesaler and, thus, responsible for reporting and paying the Tennessee beer barrelage tax.

ANALYSIS

Tennessee imposes a beer barrelage tax on the privilege of storing, selling, distributing, and manufacturing beer.⁷ The tax is imposed at the rate of \$4.29 per barrel of thirty-one liquid gallons stored, sold, distributed by gift or sale, or manufactured in Tennessee.⁸ The tax on barrels containing more or less than thirty-one (31) gallons is imposed at a proportionate rate.⁹ Beer manufactured in Tennessee and thereafter exported for sale, distribution by gift, or dispensed gratuitously and consumed on the premises is not included in the measure of the beer barrelage tax liability.¹⁰

The beer barrelage tax does not apply to beer previously used as a measure of the beer barrelage tax.¹¹ TENN. COMP. R. & REGS. 1320-4-1-.03(1) (1983) (“Rule 3”) generally provides that “the taxable incident attaches when such beer has come to rest at the wholesaler’s premises or warehouse.”

1. MANUFACTURER DISTRIBUTING THROUGH A WHOLESALER

When either a Tennessee or an out-of-state beer manufacturer sells beer to a Tennessee wholesaler, it is the wholesaler’s responsibility to report and pay the Tennessee beer barrelage tax.

As previously stated, Tennessee wholesalers must purchase beer from manufacturers or other wholesalers whereby all purchases must be delivered at a warehouse facility owned or operated by the wholesaler and located within Tennessee.¹² Furthermore, because the beer barrelage tax is imposed only once in the three-tier distribution system and generally applies when beer comes to rest at the location of the wholesaler, when a manufacturer located either in Tennessee or outside of the state sells beer to a Tennessee wholesaler, the Tennessee wholesaler is responsible for reporting and paying the beer barrelage tax.¹³

2. MANUFACTURER OPERATING AS A RETAILER OR QUALIFIED AND LICENSED AS A RESTAURANT, LIMITED SERVICE RESTAURANT, OR HOTEL

When a beer manufacturer operates as a retailer or qualifies for and holds a license as a restaurant, limited service restaurant, or hotel pursuant to TENN. CODE ANN. § 57-5-101(c)(1), it is required to report and pay the Tennessee beer barrelage tax.

⁷ TENN. CODE ANN. § 57-5-201(a)(1). TENN. CODE ANN. § 57-5-101(b) states that beer includes “beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in TENN. CODE ANN. § 57-3-101, provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol.”

⁸ TENN. CODE ANN. § 57-5-201(a)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ TENN. CODE ANN. § 57-5-201(b).

¹² TENN. CODE ANN. § 57-5-201(c).

¹³ See TENN. CODE ANN. § 57-5-201(b); TENN. COMP. R. & REGS. 1320-4-1-.03(1) (1983).

TENN. CODE ANN. § 57-5-101(c)(1)(A) states that upon meeting all necessary federal, state, and local license requirements, a beer manufacturer may operate as a retailer in certain circumstances. For a manufacturer to operate as a retailer, it must fulfill the licensing requirements of a retailer and annually make sales of no more than twenty-five thousand (25,000) barrels of beer, high alcohol beer, or both for consumption on or off the premises at the manufacturer's location or at a contiguous location.¹⁴

TENN. CODE ANN. § 57-5-101(c)(1)(B) provides that a manufacturer may qualify and hold a license as a restaurant, limited service restaurant, or a hotel in certain circumstances. A manufacturer may operate and hold a license as restaurant¹⁵ or limited service restaurant,¹⁶ if notwithstanding chapter 4 of title 57, "a restaurant or limited service restaurant may sell for off-premises consumption beer manufactured pursuant to this section at such location or at any other restaurant or limited service restaurant licensed under chapter 4 that is owned by the same person."¹⁷ A manufacturer may operate and hold a license as a hotel as defined under TENN. CODE ANN. § 57-4-102(20)(F)(iii) if the hotel only sells beer "manufactured pursuant to this section on the premises of the hotel."¹⁸

Although Rule 3 states that the incidence of the beer barrelage tax generally attaches when beer has come to rest at the wholesaler's premises, this tax is a privilege on the manufacturing, storing, selling, and distributing of beer within the state, and it only applies once.¹⁹ When a beer manufacturer acts as a retailer or qualifies and holds a license as a restaurant, limited service restaurant, or hotel pursuant to TENN. CODE ANN. § 57-5-101(c)(1), distribution through a Tennessee wholesaler is not required, and the parties in three-tier distribution system are condensed into one. Thus, under these circumstances, the manufacturer is responsible for reporting and paying the beer barrelage tax.

3. MANUFACTURER OPERATING AS A RETAILER THAT SELLS TO OTHER RETAILERS WITHIN THE SAME COUNTY

When a beer manufacturer operates as a retailer and sells its beer to retailers within the county in which it is located pursuant to TENN. CODE ANN. § 57-5-101(c)(2), it is required to report and pay the beer barrelage tax.

TENN. CODE ANN. § 57-5-101(c)(2) states that a manufacturer operating as a retailer pursuant to TENN. CODE ANN. § 57-5-101(c)(1)(A) may not sell its beer directly to retailers located within a county other than the county in which the manufacturer is located.²⁰ The law specifically classifies any transfer or

¹⁴ TENN. CODE ANN. § 57-5-101(c)(1)(A).

¹⁵ A restaurant is defined in TENN. CODE ANN. § 57-4-102(29) (Supp. 2016).

¹⁶ A limited service restaurant is defined in TENN. CODE ANN. § 57-4-102(21).

¹⁷ TENN. CODE ANN. § 57-5-101(c)(1)(B)(i).

¹⁸ TENN. CODE ANN. § 57-5-101(c)(1)(B)(ii).

¹⁹ See TENN. COMP. R. & REGS. 1320-4-1-.03(1); TENN. CODE ANN. § 57-5-201(a)(1).

²⁰ TENN. CODE ANN. § 57-5-101(c)(2). Additionally, TENN. CODE ANN. § 57-5-201(d) authorizes retailers to purchase from such manufacturers.

sale by a manufacturer operating as a retailer to an off-site retailer's location as a wholesale sale.²¹ Therefore, for purposes of the beer barrelage tax, a manufacturer in this instance is considered a wholesaler. Thus, according to Rule 3, the manufacturer acting as a wholesaler under these circumstances is responsible for reporting and paying the beer barrelage tax.²²

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: September 23, 2016

²¹ TENN. CODE ANN. § 57-5-101(c)(2).

²² Because under these circumstances, the manufacturer is acting as a wholesaler and defined as such under TENN. CODE ANN. § 57-6-102(11), it is also required to collect and remit the wholesale beer tax as set forth in Tenn. Code Ann. § 57-6-101 *et seq.*