

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 16, 2018

Opinion No. 18-12

Taxation of Licensed Distilleries Selling Their Own Alcoholic Beverages for On-Premises Consumption Under Tenn. Code Ann. § 57-3-202(i)(4).

Question

Is a licensed distillery that sells its own alcoholic beverages for consumption on the premises, as authorized by Tenn. Code Ann. § 57-3-202(i)(4), required to remit the tax that is imposed under Tenn. Code Ann. § 57-4-301 on businesses that sell alcoholic beverages at retail for consumption on the premises?

Opinion

Licensed distilleries that sell their own alcoholic beverages for consumption on the premises, as authorized by Tenn. Code Ann. § 57-3-202(i)(4), must remit the 15% tax imposed on the sales price of each alcoholic beverage sold under Tenn. Code Ann. § 57-4-301(c)(1), because they are exercising the taxable privilege of “engag[ing] in the business of selling at retail in this state alcoholic beverages for consumption on the premises.” Tenn. Code Ann. § 57-4-301(a). These distilleries are not, however, required to remit the annual taxes imposed by Tenn. Code Ann. § 57-4-301(b)(1), which are specific to facilities licensed under Tenn. Code Ann. §§ 57-4-101 *et seq.*

ANALYSIS

Tennessee Code Ann. §§ 57-3-201 and -202 authorize the Alcoholic Beverage Commission to issue manufacturer’s or distiller’s licenses “for the manufacturing of alcoholic spirituous beverages or vintage alcoholic beverages.” Tenn. Code Ann. § 57-3-202(a). “Any person, firm, or corporation desiring to manufacture for commercial purposes any alcoholic spirituous beverages shall make application to the commission for a license to manufacture the same.” *Id.* A distiller’s license issued or renewed under Tenn. Code Ann. § 57-3-202 authorizes the distillery “to sell to any person of legal drinking age alcoholic beverages for consumption on the premises of the distillery, other than the bonded premises, where such consumption is also permitted by federal law.” Tenn. Code Ann. § 57-3-202(i)(4)(A). Alcoholic beverages sold under Tenn. Code Ann. § 57-3-202(i)(4) “must be manufactured on the premises of the distillery.” *Id.*

Tennessee Code Ann. § 57-4-101 authorizes the sale of wine and other alcoholic beverages for consumption on the premises of certain enumerated facilities, such as hotels, restaurants, commercial airlines, premier type tourist resorts or clubs, and convention centers, provided that the facilities are located in a jurisdiction that has authorized the sale of alcoholic beverages for on-premises consumption. *See* Tenn. Code Ann. §§ 57-4-101, -103. Owners of any of the enumerated

facilities who desire to sell wine or other alcoholic beverages for on-premises consumption must apply to the Commission for a license to do so. *See* Tenn. Code Ann. §§ 57-4-201, -301.

Tennessee Code Ann. § 57-4-301(a) provides that “[i]t is hereby declared the legislative intent that every person is exercising a taxable privilege who engages in the business of selling at retail in this state alcoholic beverages for consumption on the premises.” Applicants for an on-premises consumption license must pay a \$300 fee to the Commission when their applications are submitted. *See* Tenn. Code Ann. § 57-4-301(b)(1). Once the license is approved, for the exercise of the privilege described in Tenn. Code Ann. § 57-4-301(a), licensees must pay annual taxes to be earmarked for and allocated to the Commission for administrative and enforcement expenditures. *See* Tenn. Code Ann. § 57-4-301(b)(1). The amount of the annual tax is based on the type of facility holding the license to sell alcoholic beverages for on-premises consumption. For example, private clubs holding an on-premises-consumption license must pay an annual tax of \$500. *See* Tenn. Code Ann. § 57-4-301(b)(1)(A).

Tennessee Code Ann. § 57-4-301(c)(1) further provides:

In addition to the privilege taxes levied in subdivision (b)(1), there is further levied a tax equal to the rate of fifteen percent (15%) of the sales price of all alcoholic beverages sold for consumption on the premises, the tax to be computed on the gross sales of alcoholic beverages for consumption on the premises for the purpose of remitting the tax due the state, and to include each and every retail thereof.

The Commissioner of Revenue is charged with the responsibility for collecting the taxes described in Tenn. Code Ann. § 57-4-301. *See* Tenn. Code Ann. § 57-4-302. The taxes “shall be collected by the retailer from the consumer insofar as it can be done.” Tenn. Code Ann. § 57-4-302(1).

Licensed distilleries that sell their own alcoholic beverages for on-premises consumption are not required to obtain the on-premises consumption license required by Tenn. Code Ann. §§ 57-4-101 *et seq.*, because their distiller’s licenses authorize them to sell their own alcoholic beverages for on-premises consumption. *See* Tenn. Code Ann. § 57-4-202(i)(4). The annual taxes imposed under Tenn. Code Ann. § 57-4-301(b)(1) are specifically imposed on on-premises consumption licensees and are based on the type of facility holding the license. Since licensed distilleries are not required to hold an on-premises consumption license to sell their own alcoholic beverages for on-premises consumption, they are not required to pay the annual taxes imposed under Tenn. Code Ann. § 57-4-301(b)(1).

The taxable privilege is not, however, limited to persons licensed to sell alcoholic beverages for on-premises consumption. By selling their own alcoholic beverages for on-premises consumption, as authorized by Tenn. Code Ann. § 57-3-202(i)(4), licensed distilleries are exercising the taxable privilege described in Tenn. Code Ann. § 57-4-301(a) of “engag[ing] in the business of selling at retail in this state alcoholic beverages for the consumption on premises.” Because Tenn. Code Ann. § 57-4-301(c)(1) imposes a tax for the exercise of this privilege that is not limited to those generally licensed for on-premises consumption sales, licensed distilleries are

also required to pay the privilege tax of 15% of the sales price of all alcoholic beverages sold for consumption on the distillery premises.

Similar to the authorization for distilleries under Tenn. Code Ann. § 57-3-202(i)(4), Tenn. Code Ann. § 57-3-207(s)(2) authorizes licensed wineries and farm wine producers to “serve wine manufactured by the winery or the farm wine producer for consumption on the premises of the winery or farm wine producer.” Tennessee Code Ann. § 57-4-207(t)(1) provides that sales of wine by wineries or farm wine producers for on-premises consumption “shall be subject to taxation pursuant to § 57-4-301(c) in addition to any sales tax which is due.”

It might be argued that the legislature’s specific declaration in Tenn. Code Ann. § 57-3-207(t)(1) that winery sales of wine for on-premises consumption are taxable under Tenn. Code Ann. § 57-4-301(c), together with the absence of such a declaration in Tenn. Code Ann. § 57-3-202, indicates that it intended for winery sales of wine for on-premises consumption to be taxed under Tenn. Code Ann. § 57-4-301(c), but did not intend for distillery sales of alcoholic beverages for on-premises consumption to be taxed under that section. This argument is not likely to prevail. It is, essentially, an argument that an exemption from taxation under Tenn. Code Ann. § 57-4-301(c) should be implied for distilleries because the legislature did not expressly provide that Tenn. Code Ann. § 57-4-301(c) applies to distilleries. But tax exemptions will not be implied; indeed, exemption statutes are to be construed against the taxpayer, every presumption is against exemption, and any well-founded doubt defeats a claimed exemption. *Hutton v. Johnson*, 956 S.W.2d 484, 488 (Tenn. 1997). Thus, regardless of statutory cross references, wineries that sell wine for on-premises consumption and distilleries that sell alcoholic beverages for on-premises consumption are both exercising a privilege that the legislature has granted to them through their respective licenses and declared to be taxable in Tenn. Code Ann. § 57-4-301(a). The exercise of that privilege by distilleries is thus subject to the tax imposed under Tenn. Code Ann. § 57-4-301(c).

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