

## Distillery Free Samples

### **Distilleries Must Pay Sales or Use Tax on Free Samples Served at Their Locations**

Distilleries must pay sales or use tax on the alcohol that they serve for free as samples to visitors to the distilleries. A distillery must either:

- 1) pay sales tax to the wholesaler on its purchases of its products served as samples, or
- 2) if the wholesaler does not collect sales tax, pay use tax on the purchase price of the product that it serves as free samples.

### **The Tax Base for Free Samples Must Be at Least the Fair Market Value**

Sales and use tax law provides that a manufacturer (e.g., distillery) must pay tax on the fair market value of property that it manufactures or produces for its own use.

When a distillery buys its product back from a wholesaler to use as samples, it must pay tax on at least the fair market value of the product. If the wholesaler collects tax, but on a price that is less than the fair market value of the product, the distillery must pay tax on the difference between the price charged by the wholesaler and the fair market value.

Fair market value is at least the distiller's cost of materials, direct labor, and overhead for the product that it offers as free samples. Note, taxes and fees imposed on the manufacturer of the alcohol should be included with other overhead costs (e.g., federal and state excise taxes). However, taxes and fees imposed on wholesalers and retailers of alcoholic

beverages, such as the alcoholic beverage gallonage tax, alcoholic beverage enforcement tax, and municipal inspection fees, should not be included in the distiller's overhead costs.

### **Distilleries Are Not Required to Pay LBD Tax on Alcohol They Serve at Their Locations**

Distilleries are not required to pay liquor-by-the-drink tax on any alcohol that they serve for consumption on their premises, regardless of whether the alcohol is offered as a free sample or sold to the customer.

### **Wholesalers Pay Gallonage Tax on All Alcohol Purchased by Distilleries<sup>1</sup>**

Tennessee law requires distilleries to purchase all alcohol they sell or offer as free samples from a wholesaler. Wholesalers should pay the wholesale alcoholic beverage tax (also referred to as gallonage tax) on all alcohol that is purchased from them, including alcohol used as free samples.

### **For More Information**

Visit [www.tn.gov/revenue](http://www.tn.gov/revenue). Click on Revenue Help to search for answers or to submit an information request to one of our agents.

### **References**

Tenn. Code Ann. § 67-6-203; Tenn. Code Ann. § 67-6-209; Tenn. Code Ann. § 57-3-202(i); Tenn. Code Ann. § 57-3-303(a); TENN. COMP. R. & REGS. 1320-05-01-.103; Public Chapter 1027 (2018)

<sup>1</sup> This section was revised to make it clear that distilleries are required to purchase all alcohol they sell or offer as free samples from licensed wholesalers. Distilleries should not pay gallonage tax on the product they purchase from wholesalers.