



Department of  
**Revenue**

# Tennessee Alcohol Tax Manual

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## Chapter 1: Introduction

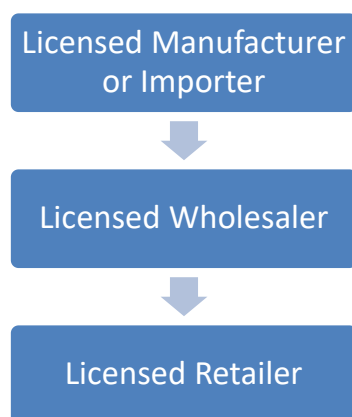
### Overview

Alcoholic beverage and beer taxes are imposed on entities that manufacture and distribute those beverages in Tennessee. These taxes operate to regulate the entities engaged in this type of business and the movement of alcohol in the state, while also generating revenue. There are several alcoholic beverage and beer taxes, some of which are imposed at the state level and some at the local level.

Whether a beverage is subject to Tennessee’s alcoholic beverage taxes or beer taxes depends on its alcohol content and the type of alcohol. Beer taxes are imposed on beer, ale, or other beverages with an alcohol content of not more than 8% by *weight*, except wine.<sup>1</sup> Alcoholic beverage taxes are imposed on beer with an alcohol content of more than 8% by *weight*, distilled spirits, liquor, wine, and other liquids containing distilled alcohol capable of being consumed by humans regardless of alcohol content.<sup>2</sup>

The alcohol and beer tax statutes are found in Tenn. Code Ann. §§ 57-1-101 *et seq.*<sup>3</sup> Both the Tennessee Department of Revenue (the “Department”) and the Tennessee Alcoholic Beverage Commission (the “ABC”) promulgate rules and regulations regarding alcoholic beverages. The Department’s rules and regulations are found in TENN. COMP. R. & REGS. 1320-04-01 -02, and -06, available online under the Tax Resources page on the Department’s website.<sup>4</sup> The ABC’s rules and regulations are found in TENN. COMP. R. & REGS. 0100-01-.01 *et seq.*<sup>5</sup>

### Three-Tier System



Tennessee has a three-tier system for distributing alcoholic beverages. Generally, a licensed retailer may only purchase alcoholic beverages from a licensed wholesaler, a licensed wholesaler may only purchase alcoholic beverages from a licensed manufacturer/importer, and neither a licensed manufacturer/importer nor a licensed wholesaler may sell alcoholic beverages directly to a consumer. However, there are limited exceptions that are addressed later in this manual.

## Regulatory Agencies

The manufacture, distribution, and retail sale of alcoholic beverages and beer in Tennessee is regulated by multiple entities. Alcoholic beverages, such as wine and distilled spirits, are regulated at the state level, whereas beer is primarily regulated at the local level.

### 1. Alcoholic Beverage Commission

The ABC is the primary licensing and regulatory body for all persons wishing to engage in the manufacture, distillation, or sale of alcoholic beverages.<sup>6</sup> The alcoholic beverages within the ABC's purview include distilled spirits, liquor, wine, and high alcohol content beer. The ABC does not regulate the manufacture or sale of beer with an alcohol content of 8% by weight or less. The ABC issues numerous alcoholic beverage licenses and permits, including manufacturer licenses, wholesaler licenses, retailer licenses, liquor-by-the-drink licenses, winery direct shipper licenses, and server permits.

For more information about the ABC, visit <https://www.tn.gov/abc>.

### 2. Department of Revenue

The Department is responsible for registering every brand of alcoholic beverage and beer with alcohol content of 5% by weight or greater distributed in Tennessee, as well as every beer manufacturer and beer wholesaler operating in the state.<sup>7</sup> The Department also collects the alcoholic beverage taxes and state beer taxes – alcoholic beverage gallonage tax, alcoholic beverage wholesale tax, beer barrelage tax, and a portion of the wholesale beer tax.<sup>8</sup>

### 3. Local Governments

Local governments regulate the manufacture and sale of beer, as well as the sale of alcoholic beverages for consumption on the premises, within their jurisdictions. Local governments also collect the local beer taxes – the annual privilege tax and the wholesale beer tax. Some municipalities also impose an inspection fee on licensed retailers of alcoholic beverages.<sup>9</sup>

## Chapter 2: Brand Registration and Termination

Every alcoholic beverage brand and brand of beer with an alcohol content of 5% by weight or greater sold in Tennessee must be registered with the Department. The Department maintains a list of all active brand registrations, which is available [HERE](#).<sup>10</sup>

### “Brand” Defined

“Brand” is defined to mean the following:

- Every distilled spirit, wine product, beer product with an alcoholic content of 5% by weight or greater, and high alcohol content beer product bearing a distinct brand name or trade name, as those terms are defined or used by the Alcohol and Tobacco Tax and Trade Bureau of the US Department of Treasury (the “TTB”);
- Within the group of wine or distilled spirit products marketed under a particular brand name, products that fall within the separate classes or types, as defined in the Federal Bureau of Alcohol, Tobacco, and Firearms (the “ATF”) standards of identity; or
- The name, trademark, or trade name of the product, as indicated on the certificate of label approval (the “COLA”) as registered with TTB, or, if no certificate of label approval is required, then the name, trademark, or trade name of the product.<sup>11</sup>

If a product uses the same brand name on the COLA for individual varieties of the brand, the product may be registered as one brand with the varieties listed within that one brand registration. If the varieties have a different brand name, each variety is considered a separate brand and each must be registered. For example:

- The brand name on the COLA is “Smith Family Wine.” Smith Family Wine includes a chardonnay, sauvignon blanc, and chenin blanc. Although these are three separate varieties of Smith Family Wine, they constitute one brand name and one registration for Tennessee brand registration purposes.

### Introduction of a New Brand

Every manufacturer or importer distributing brands in Tennessee must register each brand it distributes and pay the brand registration privilege tax prior to distributing the brand in



the state. No wholesaler can order, receive, accept, or offer for sale any brand until the brand has been registered with the Department.<sup>12</sup>

To register a brand, the manufacturer or importer must submit the following items to the Department:

- Brand registration application;
- Brand registration privilege tax;
- Copy of the federal basic permit;
- Copy of the brand label (if the brand is distributed under more than one label, each respective label must be submitted);
- Copy of the federal certificate of label approval (COLA) for the brand;
- Original Tennessee wholesaler contract with the exact brand name listed; and
- For alcoholic beverage brands, a copy of the non-resident Tennessee license for the manufacturer or importer applying for registration.

If a manufacturer fails to register a brand that is being sold in Tennessee, the Department will notify that person to stop distribution of that brand in the state until the brand is properly registered. If the brand is not properly registered within 30 days of such notice, the Department will seize and sell any unregistered or improperly registered beverages.<sup>13</sup> The Department will also notify the ABC that the person's permit should be suspended pending proper brand registration.

### **Payment of Brand Registration Privilege Tax**

The brand registration privilege tax is due annually by May 31. The tax is based on the number of cases of each brand sold during the previous 12-month period. If a brand was not sold for the entire 12-month period, the tax will be based on the average monthly sales of that brand multiplied by 12. Tax is due in the following amounts:

- For each brand of distilled spirits for which actual wholesale sales were 50 cases or more - \$250 per year.

- For each brand of distilled spirits for which actual wholesale sales were less than 50 cases - \$100 per year.
- For each brand of wine for which actual wholesale sales were 250 cases or more - \$250 per year.
- For each brand of wine for which actual wholesale sales were less than 250 cases - no tax is due.

**⚠ Please note that each brand registration must be renewed every year.**

## Transfer and Termination of Brands

A manufacturer or importer may only introduce a brand if there is a written contract between the manufacturer or importer and the Tennessee wholesale distributor that will sell the brand in the state. No manufacturer or importer will be permitted to transfer a brand from one wholesale distributor to another or terminate a contract without written permission of the Commissioner. The Commissioner can only permit a transfer or termination for *good cause*, asserted in *good faith*.<sup>14</sup>

"*Good cause*" is defined by law and means:

- Failure by a wholesaler to comply substantially with the requirements imposed or sought to be imposed upon him by the manufacturer, importer, or successor;
  - Such requirements cannot be discriminatory as compared with the requirements imposed on other similarly situated wholesale distributors either by their terms or in the manner of their enforcement, and the requirements are not in violation of any law or regulation.
- The failure by the wholesaler to act in good faith and in a commercially reasonable manner in carrying out the terms of the contract;
- Voluntary abandonment of the contract;
- Conviction of the wholesaler in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one year;

- Any act by a wholesaler which substantially impairs the manufacturer, importer, or successor's trademark or trade name;
- The institution of insolvency or bankruptcy proceedings by or against a wholesaler or any assignment or attempted assignment by a wholesaler of the contract or the assets of the distributorship of the benefit of creditors;
- Failure of the wholesaler to pay to the manufacturer, importer, or successor within 30 days after receipt of notice any uncontested sums past due the manufacturer, importer, or successor and relating to the contract; or
- Failure of the wholesaler to comply with federal, state, or local law or regulations applicable and material to the operation of the distributorship, which could reasonably impair the wholesale distributor's continued future performance.<sup>15</sup>

*"Good faith"* means honesty in fact in the conduct or transaction concerned.<sup>16</sup>

If a manufacturer or importer wants to transfer a brand to a different wholesale distributor or terminate a distribution contract completely, the manufacturer or importer must follow the process below. All documents submitted during the brand termination process should be sent to:

Tennessee Department of Revenue  
Legal Office  
Andrew Jackson Building, 11<sup>th</sup> Floor  
500 Deaderick Street  
Nashville, Tennessee 37242  
Bernadette.Welch@tn.gov

### **1. Initial Termination Request**

The manufacturer wishing to terminate a distribution contract must submit a written request to the Department. The initial termination request must state specific grounds for termination that constitute good cause, asserted in good faith. Additionally, the termination request should include documentation and other evidence that supports the request.

**⚠ In addition to sending the termination request to the Department, the manufacturer MUST also send a carbon copy of the termination request and all evidence submitted to the Department to the wholesaler, in whose name the brand is then registered. This can be evidenced by placing a “cc” line on the termination request. The Department will not review the termination request until such documentation is provided to the wholesaler.**

## **2. 30-Day Letter and Opportunity to Cure**

A manufacturer or importer may not seek termination of a distribution contract unless it gives the affected wholesaler a reasonable opportunity to cure (remedy) any deficiency alleged as a basis for contract termination.<sup>17</sup> The cure period shall be no less than *30 days*. After receiving an initial termination request, the Department will send written notification (the “30-Day Letter”) to the requesting party and the wholesaler stating the parties have at least 30 days from the date of the letter to cure any alleged deficiencies. The Department sends the 30-Day Letter to each party via certified U.S. mail.

## **3. Request to Proceed with Termination Request**

If the manufacturer or importer wants to pursue its termination request following the cure period, it must notify the Department in writing that it wishes to proceed with its termination request.

The manufacturer or importer may submit additional evidence supporting its stated basis for contract termination. The request to proceed must include a description of the steps taken in attempt to cure the alleged deficiencies. As with the initial termination request, a carbon copy of the request to proceed and all evidence submitted to the Department must be sent concurrently to the wholesaler in whose name the brand is then registered. This can be evidenced by placing a copy “cc” line on the request to proceed.

The Department recommends that the manufacturer or importer use certified mail or a similar service that provides receipt confirmation for mailing its request to proceed packet to the Department and to the wholesaler. A requesting manufacturer or importer is encouraged to submit with its request to proceed any and all supporting evidence it has not previously submitted, if any, supporting the requester’s position that the cure period did not result in a satisfactory outcome.

#### 4. Wholesaler Response

The affected wholesaler may, but does not have to, respond to the manufacturer or importer's request to terminate its distribution contract. The wholesaler has 30 days from its receipt of the request to proceed to mail its response and any supporting evidence to the Department. The wholesaler must submit a carbon copy of its response and all evidence, as submitted to the Department, concurrently to the manufacturer or importer that is requesting termination. This can be evidenced by placing a copy "cc" line on the wholesaler response.

#### 5. Preliminary Determination

Upon the earlier of the Department's receipt of the wholesaler response or the expiration of the 30-day period where the wholesaler may respond, the Commissioner will make a preliminary determination as to whether sufficient evidence has been offered to establish a *prima facie* case of good cause, asserted in good faith, to terminate the distribution contract. In this case, "*prima facie*" simply means that enough evidence to terminate the contract has been provided without having an administrative hearing. The Department will notify the parties by certified mail of the Commissioner's preliminary determination.

#### 6. Appeal of Preliminary Determination

Parties may request an administrative hearing to challenge the preliminary determination under the Uniform Administrative Procedures Act (the "UAPA") by submitting a written request for a hearing within *10 days* of the date on the notice of the Commissioner's preliminary determination.

To request an administrative hearing, the affected party must submit a written request to:

Tennessee Department of Revenue  
Administrative Hearing Office  
Andrew Jackson Building, 11<sup>th</sup> Floor  
500 Deaderick Street  
Nashville, Tennessee 37242  
Fax: (615) 741-6463  
DORConference.Request@tn.gov

If an administrative hearing is not requested in a timely manner, the preliminary determination becomes final upon the expiration of the 10-day period to request the

hearing. If a hearing is timely requested, the Department's Administrative Hearing Office will initiate the administrative hearing process under the UAPA on the issue of whether the manufacturer or importer has established "good cause, asserted in good faith."

During the UAPA hearing process, termination of the contract will not take effect unless and until the Administrative Law Judge approves the termination. If the Administrative Law Judge determines that the manufacturer or importer has failed to establish "good cause, asserted in good faith" as required, the provisions of the contract will remain in full force and effect. Failure by the manufacturer or importer to ship to the wholesaler a reasonable amount of the brand at issue is grounds for revocation of the manufacturer or importer's license.

## 7. Final Determination

Failure to request an administrative hearing within the 10-day period outlined above converts the preliminary determination to a final determination. After this period, the parties no longer have a right to an administrative hearing. However, if an administrative hearing is timely requested, the decision rendered by the Administrative Law Judge on whether the manufacturer or importer established "good cause, asserted in good faith" becomes the Initial Order of Final Determination.

Parties may seek the Department's reconsideration of the Initial Order of Final Determination within *15 days* after its entry. If reconsideration of the Initial Order of Final Determination is not requested within that time period, the initial order becomes final after the 15-day period ends.<sup>18</sup> For example:

- The Department issues a preliminary determination terminating a contract on January 1, 2020. The distributor requests an administrative hearing, in writing, on January 5, 2020. This request keeps the preliminary determination from becoming a final determination. After the administrative hearing takes place, the Administrative Law Judge finds good cause, asserted in good faith, and issues an Initial Order of Final Determination that terminates the contract on March 1, 2020. If either party seeks a reconsideration, it must do so by March 15, 2020.

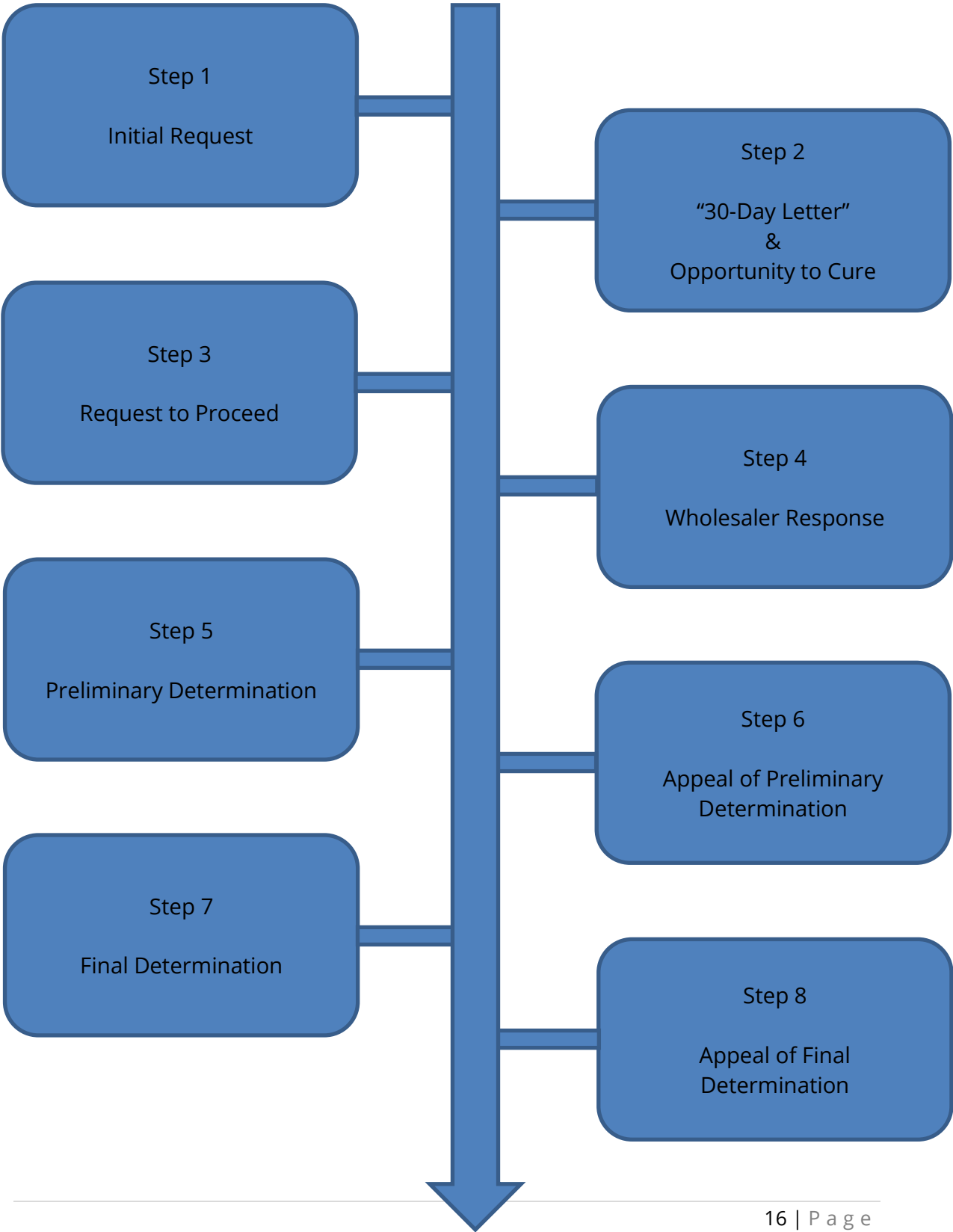
## 8. Appeal of Final Determination

Parties have 60 days from entry of the final determination to file an appeal in Chancery or Circuit Court.<sup>19</sup> The judicial review is confined to the record that is established during the administrative hearing. This means that no additional evidence may be submitted during the appeal. The reviewing court may affirm the decision of the Department or remand the case

for further proceedings. The court may reverse or modify the Department's decision if it determines the administrative findings, inferences, conclusions, or decisions are:

- In violation of constitutional or statutory provisions;
- In excess of the statutory authority of the agency;
- Made upon lawful procedure;
- Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- Unsupported by evidence that is both substantial and material in light of the entire record.

The UAPA hearing process is not required to appeal a final determination to Chancery or Circuit Court. It may, however, allow the parties to build a more complete record on which to base an appeal of a final determination. Parties may want to consider relevant standard(s) of review and the circumstances of their specific termination request proceeding when deciding on whether to challenge a preliminary determination through a UAPA hearing and/or appeal a final determination in Chancery or Circuit Court.





## Chapter 3: Alcoholic Beverage Taxes

Alcoholic beverage taxes consist of a manufacturer privilege tax (repealed in 2019), a wholesale gallonage tax, and a wholesale enforcement tax. Each of these taxes are discussed in detail throughout this chapter. First, it is important to know the relevant definitions and how variations to the “three-tiered” distribution system affect the application of these taxes.

### “Alcoholic Beverage” Defined

“Alcoholic beverage” is defined as alcohol, spirits, liquor, wine, high alcohol content beer, and every liquid containing alcohol, spirits, or wine that is capable of being consumed by a human being, other than patent medicine and beer with an alcohol content of 8% alcohol content by weight or less. Beverages containing less than 0.5% alcohol by volume, other than wine, are not considered to be alcoholic beverages and are not subject to regulation or taxation.<sup>20</sup>

#### 1. “Wine”

“Wine” is the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine, and seasonal conditions, with an alcohol content of up to 21% by volume. No other product may be called “wine” unless designated by appropriate prefixes descriptive of fruit or other product from which the beverage was predominantly produced, or an artificial or imitation wine.<sup>21</sup>

#### 2. “High Alcohol Content Beer”

“High alcohol content beer” is beer, ale, or another malt beverage with an alcohol content of more than 8% by weight and not more than 20% by weight, except wine, provided that no more than 49% of the overall alcoholic content of such beverages may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.<sup>22</sup>

Beer products with an alcohol content of 8% by weight or less are defined as beer. Beer is subject to the beer taxes in Chapter 4, rather than the alcoholic beverage taxes explained in this chapter.

**⚠ Although the alcoholic beverage tax statutes refer to alcohol content by weight (ABW), the industry measures alcohol content by volume (ABV). To convert from ABV to ABW use this formula:  $ABV \times .8 = ABW$ .**

## Exceptions to the Three-Tiered System

As mentioned in Chapter 1, Tennessee has a three-tiered system for distributing alcoholic beverages. However, there are some exceptions to this distribution structure.

### 1. Manufacturers and Distillers

In addition to authorizing the manufacture of alcoholic beverages, other than wine, a manufacturer's license allows the manufacturer to:

- Sell products that are manufactured on the premises at retail on the premises; and
- Serve samples of products that are manufactured on the premises, with or without cost.<sup>23</sup>

Any product distributed in either of these ways must be obtained from a licensed wholesaler. There are additional limitations on these methods of distribution, which are regulated by the ABC. These limitations include the amount of alcohol that can be sold to individuals per visit, where samples can be provided in the manufacturing facility, and the hours of retail sales. For more information about manufacturer licenses, visit <https://www.tn.gov/abc>.

#### *Retail Licensee Consumer Tastings*

A retail licensee may offer complimentary samples of the alcoholic beverages it sells for tastings to be held on its premises. Generally, a distiller may provide products for retail licensee consumer tastings through a licensed wholesaler.

Public Chapter 437 (2021) authorizes a distiller who provides its product to a retail licensee for consumer tastings to have a licensed wholesaler deliver the product to the retailer using a zero-dollar invoice.

Alternatively, the distiller may obtain the product to be used for the consumer tasting from the wholesaler for a zero-dollar invoice and deliver the product to the retail licensee's

premises. In this case, the distiller must notify the wholesaler in writing at least five business days prior to picking up the product of the date and location of the consumer tasting(s) for which the product will be used.

A distiller may acquire a reasonable amount of product from a wholesaler to be delivered to a retail licensee for consumer tastings that will occur within 30 days of acquiring the product. If the distiller has leftover product after this 30-day period, the distiller may email the wholesaler to notify it of the approximate amount of leftover product, and the distiller may possess this overage for another 30 days. This process may continue indefinitely until the extra product is used up or poured out by the distiller.

A distiller may not leave excess or leftover product, either sealed or unsealed, with a retail licensee. Such product must be taken by the distiller and held for use in future consumer tastings.

## 2. Wineries

### *Winery License*

A winery license allows the license holder to manufacture and bottle wine, as well as engage in the following methods of distribution:

- Serve wine without charge as complimentary samples for tasting at the winery;
- Sell wine at retail in sealed containers at the winery, but not for consumption in bonded areas;
- Donate wine to nonprofit organizations without charge; and
- Exchange wine in bulk to other wineries.<sup>24</sup>

A winery can self-distribute its wine within 100 miles of the winery to licensed, on premise establishments if:

- Its total annual wine production is 50,000 gallons or less; and
- It does not have a wholesale distribution contract that includes a county within 100 miles of the licensed winery where the wine was manufactured or bottled.

There are limitations on these methods of distribution, which are regulated by the ABC. For more information about winery licenses, visit <https://www.tn.gov/abc>.

### *Farm Wine Permit Holders*

A Tennessee farm wine permit holder is authorized to grow produce that is shipped to a winery and manufactured into a wine product, and then self-distribute that wine product, provided:

- Its total annual wine production is 50,000 gallons or less; and
- It does not have a wholesale distribution contract that includes a county within 100 miles of the licensed winery where the wine was manufactured or bottled.

### *Satellite Locations*

A licensed winery or farm wine permit holder may obtain a satellite permit from the ABC to operate a satellite facility where it serves samples, with or without charge, and sell wine for consumption either on or off the permitted premises. Wineries and farm wine permit holders that produce more than 50,000 gallons of wine per year must supply their satellite locations with wine obtained from a wholesaler. Wineries and farm wine producers that produce 50,000 gallons or less per year are not required to obtain wine provided at their satellite facilities from a wholesaler.

## **3. Wine Direct Shippers**

Certain entities, including manufacturers of wine, are eligible to obtain a direct shipper license from the ABC. A direct shipper's license allows the licensee to ship wine by common carrier directly to Tennessee consumers, without having to obtain the wine from a wholesaler.<sup>25</sup> Distilled spirits and high alcohol content beer cannot be shipped directly with this license.

Winery direct shippers may ship no more than nine liters of wine to any individual during any calendar month. In addition, the winery direct shipper may not ship more than 27 liters of wine to any individual in any calendar year. However, a winery direct shipper that produces or manufactures less than 270,000 liters of wine per calendar year may ship up to 54 liters of wine to an individual per calendar year.<sup>26</sup>

Winery direct shippers may only ship wine sold under a brand name owned or licensed to the winery, produced by the winery, produced exclusively for the winery under an existing contract, or produced and bottled exclusively for the winery.<sup>27</sup> Fulfillment centers must obtain a license from the ABC to assist wineries in making direct shipments of wine to consumers and fulfillment centers must report quarterly to the ABC about their shipments.

For more information about direct shipper licenses, visit <https://www.tn.gov/abc>.

## Manufacturer Privilege Tax

Previously, a \$1,000 privilege tax was imposed on anyone engaged in the manufacture of alcoholic beverages in Tennessee. However, this tax was eliminated in May 2019 and manufacturers are no longer subject to this tax.<sup>28</sup>

## Wholesale Gallonage Tax

Tennessee levies a tax on each gallon of alcoholic beverages sold or distributed in the state. The wholesale gallonage tax is a state tax only. No county, municipality, or other taxing district has the power to levy a like tax.<sup>29</sup>

The tax rate depends on the type and alcohol content of the beverage.

Alcohol Type	Tax Rate (per gallon)
Alcoholic Beverages with ABW of 7% or less <sup>30</sup>	\$1.10
Wine and Alcoholic Beverages with ABW of more than 7%, (includes High Alcohol Content Beer) <sup>31</sup>	\$1.21
Distilled Spirits <sup>32</sup>	\$4.40

### 1. Who Pays the Tax

Generally, the wholesale gallonage tax is paid by *wholesale distributors*. However, depending on the manner of distribution, other entities may be responsible for collecting this tax.

#### *Wholesalers*

Any wholesaler that imports alcoholic beverages into Tennessee or receives alcoholic beverages manufactured in Tennessee for eventual retail sale, in any size retail container, or in-state distribution by sale or gift, will pay the gallonage tax on each gallon or portion of a

gallon distributed or sold in the state.<sup>33</sup> Additionally, if a winery or farm wine permit holder supplies its satellite facilities with wine through a wholesaler, the wholesaler is responsible for remitting the gallonage tax on the wine provided to the satellite facility.<sup>34</sup>

### *Manufacturers*

Any Tennessee-licensed manufacturer can pay the gallonage tax directly to the Department on the amount of its own product that is needed for its own use, not to exceed 100 cases per month.<sup>35</sup> For example, when a manufacturer retains product to be used at a company event or party.

### *Direct Shippers*

Winery direct shippers must remit the gallonage tax to the Department on all Tennessee direct shipment sales.<sup>36</sup> While the winery direct shipper law requires winery direct shippers to remit Tennessee wine gallonage tax on Tennessee sales, the wine gallonage tax does not apply to non-Tennessee sales.<sup>37</sup> Any tax consequences for non-Tennessee sales are governed by the state where the sale occurs.

### *Wineries*

Wineries that sell their own products on the manufacturing premises must remit the gallonage tax on those sales. Additionally, a winery that self-distributes its product, pursuant to a self-distribution permit, must remit the gallonage tax for wine distributed in that manner. If a winery receives product from a farm wine producer, then manufactures and returns the finished product to the farm wine producer, the winery is responsible for the gallonage tax on that wine.<sup>38</sup>

### *Common Carriers*

Common carriers, such as commercial airlines, paddlewheel steamboat companies, and passenger trains, must report the wholesale gallonage tax on alcoholic beverages they bring into Tennessee on which they have not already paid alcoholic beverage taxes. The tax is calculated using the following formula:

$$\frac{\text{Quantity of type of alcoholic beverages purchased in the taxpayer's operating system (in gallons)}}{\text{X}} \times \frac{\text{Taxpayer's revenue passenger miles in TN}}{\text{Taxpayer's total revenue passenger miles in its system}}$$

The amount resulting from this calculation is then multiplied by the applicable tax rate of each type of alcoholic beverage.

The taxpayer's revenue passenger miles in Tennessee should only include miles from trips that originate from or end in the state, or trips that both originate from and end in the state.

### *Armed Forces Import Licensees*

Members of the armed forces of the United States or members of a reserve of Tennessee national guard unit, who have been stationed outside the United States, may obtain a license from the ABC to ship back to Tennessee any wine purchased while residing outside the country. These individuals are responsible for paying the wholesale gallonage tax on any alcoholic beverages shipped into Tennessee.<sup>39</sup>

## **2. Exceptions**

The following sales of alcoholic beverages are not subject to the wholesale gallonage tax. Wholesalers must properly document each type of the following sales to claim an exemption on their gallonage tax return.

### *Exports Out of State*

Shipments of alcoholic beverages from Tennessee manufacturers to out-of-state licensees (i.e. persons holding both federal and state permits to sell alcoholic beverages) are exempt from the gallonage tax.<sup>40</sup>

### *Sacramental Wine*

Wine sold, distributed, or used solely as sacramental wine by a church or synagogue is exempt from the wholesale gallonage tax. To document exempt sales of sacramental wine, the wholesaler must have an authorized designee from the church or synagogue receiving the wine sign the sales invoices. That authorized designee's signature must also be on file with the Department.<sup>41</sup>

### *Sales to Military Installations*

Sales of alcoholic beverages sold for consumption within the boundaries of a fort, base, camp, or post of the armed forces of the United States or to post exchanges, ship service

stores, commissaries, or messes operated by the United States armed forces are not subject to the wholesale gallonage tax.

A wholesaler making sales to a military installation must apply for this credit with the Department. In support of the application, the wholesaler must submit a copy of the invoice, signed by a person having proper authority over the post exchange, ship service store, commissary, or mess, certifying that the alcoholic beverages were sold and delivered to the military entity for consumption within its boundaries.<sup>42</sup> The signature on the invoice must match the one provided by the commanding officer of the military installation to the Department designating a person to sign invoices acknowledging the receipt of the products and a copy of this person's signature. The wholesaler must attach copies of all signed invoices to the monthly tax return.

### *Sales to Other Wholesalers*

Sales from one wholesaler to another wholesaler are not subject to the wholesale gallonage tax. Both wholesalers involved in these transactions must maintain sales invoices documenting these sales.

### *Returns from Retailers*

If a wholesaler returns alcoholic beverages to manufacturers, those returns are not subject to the wholesale gallonage tax. To claim a credit for returns, the wholesaler must attach the following documentation to its gallonage tax return for the month in which the credit is claimed:

- Evidence of authorization from the supplier for return or export of the specific product.
- A copy of the bill of lading regarding the product shipped.
- An affidavit from the person receiving the returned or exported product indicating the product received and, for distilled spirits, the destruction of the identification stamps on those products.
- Documentary evidence from the supplier that credit has been afforded the wholesaler for the returned or exported products.



### *Damaged or Deteriorated Merchandise*

If any product is damaged or deteriorated at the wholesaler's warehouse, the wholesaler can obtain a credit for that product. The wholesaler must contact the Department to request a representative come observe the broken containers or outdated product. The Department's representative will physically inspect the product, ensuring that the manufacturer's seal and federal strip stamp are still intact, and complete an Alcohol Breakage Form verifying the product was destroyed.

### *Loss by Fire or Act of Nature*

Wholesalers are not responsible for the wholesale gallonage tax on product that is lost due to an act of nature. To receive this exemption, the wholesaler must submit evidence that the loss occurred by fire or other act of nature before relief from tax liability may be granted.

## **3. Payment of the Tax**

The wholesale gallonage tax is due monthly, by the 15<sup>th</sup> day of the month based on the total taxable gallons distributed during the preceding month. Winery directs shippers, however, remit the tax on an annual basis, due January 15.

## **4. Bond Requirement**

Every licensed wholesaler in Tennessee must execute a bond securing payment of the tax. A person can satisfy the bond requirement by submitting a cash bond or a corporate surety bond.<sup>43</sup>

A wholesaler that is beginning business must file an initial bond of \$75,000 for a four-month period. At the end of the four-month period, the Department will adjust the bond amount to not less than 110% of the average tax liability for the initial four months for the remainder of the 12-month period or until the following July 1, whichever occurs first. In all subsequent years, the amount of the bond will not be less than 110% of the wholesaler's average monthly tax liability for the preceding 12-month period.

Any wholesaler that has been in continuous operation for three consecutive years and has timely paid the gallonage tax for the most recent 12 months, will not be required to maintain a bond.

If, on July 1 following beginning of business, the wholesaler has been in business for less than twelve full months, the wholesaler will determine the amount of the renewal bond for the ensuing year by dividing the total tax liability incurred during the period from the business's opening until July 1 by the number of months actually engaged in business to arrive at the monthly average tax liability. This monthly average will then be multiplied by 110% to arrive at the amount of bond the wholesaler is required to post for the ensuing year.

## 5. Records & Reporting Requirements

### *Records*

Each wholesaler, distiller, or manufacturer required to pay the wholesale gallonage tax must keep accurate and complete books and records, accounts, and other documents as may be deemed necessary by the Commissioner for at least three years. Such records include details reports of inventories, purchases, and sales.

### *Distillery Information Report*

The Department is required to allocate a portion of the gallonage tax to each county where a licensed distillery is located. For the Department to make this allocation, distilleries are required to report on a monthly basis the number of gallons of product sold to wholesalers. Distilleries should file these reports in TNTAP.

### *Direct Shipper Delivery Report*

Every common carrier, other than a rail carrier, that contracts with a direct shipper to deliver wine, beer, or other alcoholic beverages into Tennessee must file a monthly report of those shipments by the 25<sup>th</sup> day of each month. Although Tennessee law authorizes the direct shipment of wine only, common carriers must report all known deliveries of wine, beer, or other alcoholic beverages, regardless of whether the direct shipper making the sale is properly licensed. All reports may be available to the public under the open records law. Common carriers should file these reports online in TNTAP. If a common carrier amends a previously filed report, the amended report will completely replace the previously filed report. Thus, the carrier must include complete information for the entire period, including the previously filed information plus the corrections or additions.

**⚠ Common carriers are required to include all shipments on behalf of winery direct shippers and fulfillment centers in their monthly reports submitted to the Department.**

## Wholesale Enforcement Tax

Tennessee also imposes a wholesale enforcement tax on the wholesale sale of alcoholic beverages and high alcohol content beer in the state. The tax rate is 15 cents per case of alcoholic beverages sold in Tennessee.<sup>44</sup> Wholesalers must remit this tax monthly by the 15<sup>th</sup> day of the month, based on the number of cases sold during the previous month.

### 1. What Constitutes a Case

A case of alcoholic beverages is determined by the amount of alcohol. Cases can be of assorted size bottles and brands, though alcohol types cannot be mixed in the same case. Below are examples of what constitutes a case.

- Three containers of distilled spirits with a capacity of more than 64 ounces but no more than 128 ounces each.
- Twelve containers of wine with a capacity of more than 25.6 ounces but no more than 32 ounces each.

For further guidance on what is considered a case, see TENN. COMP. R. & REGS. 1320-4-6-.04.

### 2. Returned Cases

Cases of alcohol returned to a wholesaler by a retailer are exempt from the wholesale enforcement tax. The number of returned cases should be reported on the tax return.

### 3. Manufacturer Reporting Requirement

Each distiller, rectifier, vintner, and importer selling wine or distilled spirits to licensed wholesalers in Tennessee must, at the time those beverages are invoiced to the wholesaler, send a copy of the sales invoice to the Department.

## Chapter 4: Beer Taxes

Beer taxes consist of a local privilege tax, a beer barrelage tax, and a wholesale beer tax. Each of these taxes are discussed in detail throughout this chapter. However, it is first important to know the relevant definitions and how variations to the “three-tiered” distribution system affect the application of these taxes.

### “Beer” Defined

“Beer” is defined as beer, ale, other malt beverages, or any other beverages having an alcohol content of not more than 8% by weight, except wine as defined in Tenn. Code Ann. § 57-3-101(20).<sup>45</sup> No more than 49% of the alcohol content of beer may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.

Beer products with an alcohol content of more than 8% by weight are classified as alcoholic beverages (i.e. high alcohol content beer). These beer products are subject to the alcoholic beverage taxes in Chapter 3, rather than the beer taxes explained in this chapter.

**⚠ Although the beer tax statutes refer to alcohol content by weight (ABW), the industry measures alcohol content by volume (ABV). To convert from ABV to ABW use this formula:  $ABV \times .8 = ABW$ .**

### Exceptions to the Three-Tiered System

As mentioned in Chapter 1, Tennessee has a three-tier system for distributing alcoholic beverages, including beer. Although a beer manufacturer is generally required to distribute product through the three-tiered system, it may make retail sales of beer in the following instances:

#### 1. Self-Distribution

A manufacturer may operate as a retailer at its manufacturing location or a contiguous site and sell up to 25,000 barrels of beer or high alcohol content beer per year for consumption on or off the premises, provided it obtains the appropriate retail license.<sup>46</sup> A manufacturer operating as a retailer can sell its beer directly to retailers that are located in the same county as the manufacturer. In addition, such manufacturer can sell its beer directly to

retailers located outside the county in which the manufacturer is located, if the manufacturer:

- Self-distributes no more than 1,800 barrels of its beer annually in this state; and
- Is not prohibited from self-distribution in the county due to a contract with a beer wholesaler.<sup>47</sup>

If a beer manufacturer self-distributes more than 1,800 barrels of beer annually in this state, the manufacturer must enter into a contract with a wholesaler to distribute the manufacturer's beer within 90 days of exceeding the 1,800-barrel limitation.<sup>48</sup>

A beer manufacturer who self-distributes its beer is responsible for collecting and paying the [beer barrelage tax and the wholesale beer tax](#) on its self-distributed product. For the purpose of these taxes, any distribution, sale, or transfer of beer by a manufacturer directly to a beer retailer is considered a wholesale sale.

In addition to the registration and reporting requirements for a licensed beer manufacturer, a beer manufacturer who self-distributes its beer must register with the Department as a wholesaler and must comply with the licensing, permitting, reporting, and bonding requirements imposed on wholesalers in this state.

Self-distributing beer manufacturers are required to post a \$10,000 wholesale beer tax bond with the Department. The beer tax bond forms can be found on the Department's [website](#). A self-distributing beer manufacturer can register with the Department for a wholesale beer tax account and upload its supporting documentation on [TNTAP](#).

## **2. Restaurant or Limited Service Restaurant**

A manufacturer may hold a license as a restaurant or limited service restaurant and sell its beer for off-premises consumption at that restaurant location or any other licensed restaurant that is owned by the same person.<sup>49</sup>

## **3. Hotel**

A beer manufacturer in Blount County may hold a license as a hotel and sell beer that is manufactured on the premises of the hotel.<sup>50</sup>

## Manufacturer and Wholesale Distributor Registration

Every person in Tennessee who engages in the manufacture or wholesale distribution of beer is required to register with the Department and obtain a permit from the county or city where the business is located.

### 1. State Registration

The state registration fee is \$20 for wholesalers and \$40 for manufacturers. Entities must renew their registrations annually, by January 1. The Department issues a certificate of registration that the registered entity must post at its usual place of business. The manufacturer or wholesaler must receive and post the certificate of registration before it begins business.

The Department only issues beer manufacturer and wholesaler registrations on an annual basis. The Department will not issue these registrations on a short-term or partial year basis, even if a beer manufacturer or wholesaler plans on doing business in Tennessee for less than one year.

The Department will impose a mandatory penalty against new registrants who fail to register within 20 days of beginning business and against registrants who fail to renew by January 20 each year. The penalty is \$5 per month for each month or fractional part of a month but cannot exceed the total amount of the applicable annual registration fee.

The Department may impose an additional penalty against entities that know a certificate of registration is required but who engage in business without obtaining the certificate, and entities that continue operating on a revoked or suspended certificate. The penalty amount is discretionary but cannot exceed \$100 per day.

### 2. Local Permit

In addition to registering with the Department, businesses engaged in the sale, distribution, manufacture, or storage of beer must obtain a permit from the county or city where the business is located.<sup>51</sup> Beer wholesalers are required to obtain a permit from the county or city where they operate a warehouse. The beer permit application fee, regardless of jurisdiction, is \$250.<sup>52</sup>

The permit is valid:

- Only for the owner to whom the permit is issued. A permit cannot be transferred to another owner. If the owner is a corporation, a change in ownership will occur when control of at least 50% of the stock of the corporation is transferred to a new owner.
- Only for a single location, except where an owner operates two or more restaurants or other businesses within the same building. That owner may, in the owner's discretion, operate some or all these businesses under the same permit. The permit cannot be transferred to another location. A permit is valid for all decks, patios, and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business.
- Only for a business operating under the name identified in the permit application.

Within 10 days of being issued a permit, the permittee must file a copy of a valid resale certificate with the county or city issuing the permit and with each person from whom the person buys beer. The permittee must maintain a valid resale certificate throughout business operation.

A permit expires on termination of the business subject to the permit, change in ownership, relocation of the business, or change of the name of the business. A permit holder must return a permit to the county or city that issued it within 15 days of such termination or change in business. Any person engaged in the sale, distribution, or manufacture of beer without a permit commits a Class A misdemeanor.

For more information about local permitting, contact your local beer board. A list of local beer boards and contact information is available on the Department's website [HERE](#).

## Local Privilege Tax

A local privilege tax of \$100 is imposed on the business of selling, distributing, storing, or manufacturing beer in the state. Any entity engaged in these activities must remit the tax to the county or city in which it is located by January 1 each year. The tax is remitted to the county clerk for businesses located in the county outside the incorporated limits of any city or town, and to the official identified by the city or town for businesses located within the incorporated limits of the city or town.<sup>53</sup>

For more information about the local privilege tax, contact your local beer board. A list of local beer boards and contact information is available on the Department's website [HERE](#).

## Beer Barrelage Tax

Every person in this state manufacturing, storing, selling, or distributing beer or other beverages of not more than 8% alcohol content by weight, is subject to the beer barrelage tax. The barrelage tax is \$4.29 per 31-gallon barrel stored, sold, distributed by gift or sale, or manufactured in Tennessee. The tax is prorated for barrels containing more or less than 31 gallons of beer.<sup>54</sup> This tax is remitted to the Department monthly, on or before the 20<sup>th</sup> day of the month in which it accrues.<sup>55</sup>

### 1. Who Pays the Tax

When a manufacturer distributes its beer through a Tennessee wholesaler, that wholesaler is responsible for paying the barrelage tax. However, a beer manufacturer is responsible for the barrelage tax when:

- It operates as a retailer and sells its beer to other retailers within the same county, or
- It operates as a retailer or holds a license as a restaurant, limited service restaurant, or hotel.

### 2. Exempt Sales

The following sales are exempt from the barrelage tax and are separately reported on the barrelage tax return:

- Beer manufactured in Tennessee and exported for sale, distribution, or gift.
- Beer dispensed gratuitously and consumed on the manufacturing premises.
- Beer sold for consumption within the geographical boundaries of a fort, base, camp, or post of the armed forces of the United States, post exchanges, ship service store, commissaries, and messes operated by the United States armed forces.

Manufacturers and wholesalers that make an exempt sale to an armed forces installation must maintain copies of all invoices supporting the amounts claimed, signed by the military officer in charge of the armed forces facilities to which sales were made.



### 3. Bond Requirement

All persons responsible for remitting the beer barrelage tax must execute a bond securing payment of the tax. A person can satisfy the bond requirement by submitting either a corporate surety bond or by depositing collateral in the form of a certificate of deposit with a face value equal to the amount of the bond.<sup>56</sup>

An initial bond of \$20,000 is required to secure the proper payment of taxes during the taxpayer's initial 12-month license period. After the Department has received monthly returns that cover the initial three full months of the taxpayer's operation, the taxpayer may submit a written request to reduce the bond to an amount equal to no less than twice the amount of the taxpayer's average monthly tax liability over the three preceding months. If, at any time after the initial three months of operation, the Commissioner determines the taxpayer's average monthly tax liability to be greater than \$20,000, the taxpayer will be required to file a rider to increase the bond amount to two times the taxpayer's average monthly tax liability.

If a taxpayer has been in continuous operation for three consecutive years and has timely paid the beer barrelage tax for the preceding six months, the taxpayer will no longer be required to maintain a bond. Any taxpayer exempt from the bonding requirement who subsequently fails to timely pay the beer barrelage tax, upon that failure will again be required to execute and maintain a bond.

When a taxpayer is delinquent in paying the tax, the Commissioner may send written notice and demand for payment, by registered mail with return receipt requested, to the surety or sureties on the bond at the last known address. If the tax, interest, and penalties due are not paid within 10 days after the notice is mailed, the Commissioner may cancel the taxpayer's registration and pursue collection of the delinquent tax. The Commissioner is authorized to issue a distress warrant for the collection of all delinquent state privilege taxes due under this chapter, with interest and penalty in the sum of 10%.

#### *Records Requirements*

Every person subject to the beer barrelage tax must keep invoices, bills of sale, and other business records for at least two years. Retailers to whom beer is sold must keep duplicate bills of sale for at least two years as well. The Commissioner or authorized agents, representatives, or employees will be allowed to inspect all articles, containers, packages,

invoices, books, papers, and memoranda as may be necessary to ascertain whether the barrelage tax has been paid in full.

#### 4. Wholesale Beer Tax

The wholesale beer tax is imposed on every sale of beer by a wholesaler to any person other than another wholesaler. The tax is \$35.60 per 31-gallon barrel. The tax upon barrels containing more or less than 31 gallons is prorated.<sup>57</sup> This tax is remitted monthly by the 20<sup>th</sup> day of the month, based on wholesale sales in the preceding month.<sup>58</sup> The wholesaler remits the tax to multiple entities in the following amounts:

- \$34.51 per barrel is remitted to the county or municipality in which the retailer's place of business is located.
- 92 cents per barrel is retained by the taxpayer to defray the cost of remitting the tax.
- 17 cents per barrel is remitted to the Department, with a copy of the wholesale beer tax return.

When a wholesaler makes sales at its place of business, the \$34.51 portion of the tax is paid to the county or city in which the wholesaler's place of business is located.

##### *Who Pays the Tax*

Generally, the wholesale distributor is responsible for remitting the wholesale beer tax. However, beer manufacturers operating as retailers are responsible for remitting the wholesale beer tax on sales of beer they make to off-site retailers.<sup>59</sup>

##### *Exempt Sales*

The following sales are exempt from the wholesale beer tax:

- Beer sold to any post exchange, ship service store, commissary, open mess, officers' club, N.C.O. club, or other organization recognized by and located on any fort, base, camp, or post of the armed forces of the United States.
- Beer that is shipped outside Tennessee in the same month in which it was purchased.

- Beer that is damaged, lost, stolen, destroyed, or becomes unsalable while in transit, either by common carrier or the wholesaler's own transport equipment, prior to being stored in the wholesaler's warehouse.<sup>60</sup>

To claim the exemption for sales to armed forces installations, the manufacturer or wholesaler must maintain copies of all invoices supporting the amounts claimed, signed by the military officers in charge of the armed forces facilities to which sales were made.

### *Adjustment for Damaged Containers*

The wholesale beer tax is not due on beer that is damaged, broken, or destroyed from the time the beer leaves the brewery until it is delivered to the retailer. The wholesaler can claim an adjustment for damaged beer whether the damage is discovered upon arrival at the wholesaler's warehouse or after being stored at the warehouse, so long as the damage or unsalable condition occurred prior to arriving at the warehouse.<sup>61</sup> A deduction from receipts and purchases is available to wholesalers for all beer damaged or destroyed while in transit, either by common carrier or the wholesaler's own transport equipment.

A wholesaler cannot make an adjustment for damaged containers that exceeds 0.5% of its total monthly purchases, except in cases of fire, storms, acts of God, or unavoidable accidents. To claim an adjustment of more than 0.5%, the wholesaler must submit sworn statements from two witnesses substantiating the claim. The Department may disapprove any such claims.<sup>62</sup>

Wholesalers cannot make an adjustment or refund for damage, breakage, or shortage after the beer is delivered to the retailer. If, however, a wholesaler determines that beer sold to a retailer does not conform to quality control standards, it may provide replacement beer if the tax paid on the replacement beer is equal to the tax credit received on the beer being returned by the retailer.<sup>63</sup>

### *Gifts or Discounts*

No wholesaler may make any gift of beer or other item, or make any deal with, a retailer or other person to reduce the wholesale price of beer below the list price to encourage the retailer to make larger purchases. However, a manufacturer may offer a discount to the consumer via a coupon to be redeemed by the manufacturer. No retailer or wholesaler may participate, either directly or indirectly, in the redemption of such coupons.<sup>64</sup>

### *Designated Sales Territories*

Each beer manufacturer or importer will designate sales territories for each of its brands sold in the state and will name one licensed beer wholesaler to be the exclusive wholesaler of each brand within that territory. At least 10 days before introducing a new beer brand, the manufacturer or importer must submit a territorial designation form for each wholesaler listing the brands that wholesaler will distribute and the assigned distribution territory for those brands to the Department.<sup>65</sup> No wholesaler can distribute its specified brand(s) of beer outside of its assigned territory or knowingly sell to a retail that is located outside the wholesaler's assigned territory.<sup>66</sup>

If a manufacturer or importer wants to change wholesalers or alter the distribution territory for any brand, the manufacturer or importer must file a document containing the following information with the Department and each affected wholesaler at least 90 days before such change would take effect:

- A description of the geographical boundaries of the proposed territory.
- The name and address of the wholesaler currently distributing such brand(s) in the territory.
- The name and address of the proposed wholesaler and the notarized signature of the proposed wholesaler.
- The name and address of all persons or firms having a financial interest in the proposed wholesale business.

If the proposed change is agreeable to all parties, there is no 90-day waiting period and the change can take effect immediately.<sup>67</sup>

### *Wholesale Price List*

Each wholesaler will maintain a wholesale price list with the Department and the tax-collecting official of each county and municipality where wholesale sales are made. All such price lists are public record.<sup>68</sup> The price shall be fixed on each brand sold by container. The price shall be the same regardless of quantity of beer sold of a given brand by container and category. New wholesalers must file a price list within five days of beginning business.

Wholesalers that acquire new brands must file a new price list within five days of acquiring such brands.<sup>69</sup>

A wholesaler cannot sponsor or participate in any temporary price-cutting promotion or device by changing the wholesale price of a specific beer brand, container, or container category (e.g. cans, kegs, nonreturnable bottles). A wholesaler may, however, permanently reduce the wholesale price of beer. To be considered a permanent price reduction, the price change must remain in effect for at least 360 days. Any violations of such pricing regulations will result in the local beer board suspending the wholesaler's license or permit for 30 days.<sup>70</sup>

A wholesaler has the authority to increase the wholesale price of beer. There is no limitation on the number of price increases a wholesaler may make, but any increase in the wholesale price of beer will remain in effect for at least 360 days. In the event the federal excise tax increases, a wholesaler may raise the wholesale price in an amount less than or equal to the federal increase during a 360-day period, provided the wholesaler files such price increase within 10 days of the federal tax increase.<sup>71</sup>

In the event a wholesaler is unable to deliver beer to retail establishments due to an emergency, the wholesaler may change the wholesale price on sales made to retailers at its warehouse.<sup>72</sup>

### *Bond Requirement*

Each wholesaler must furnish a bond to the Department, as agent of the counties and municipalities involved, in the amount of gross wholesale beer tax payable, based on the wholesaler's highest month's sales in the preceding 12 months. A wholesaler beginning business will estimate its sales. In no event will a wholesaler's bond exceed \$10,000. However, a wholesaler that has been in continuous operation for three years and has timely paid all wholesale beer taxes during the preceding six months is not required to furnish a bond. If a wholesaler is exempt from the bond requirement and subsequently fails to timely remit the wholesale beer tax, then it will be required to again post a bond.

Wholesalers may post an indemnity bond or deposit collateral in the form of an authorized certificate of deposit. Interest on any deposited certificate of deposit will be paid to the wholesaler or to such person as the wholesaler may direct.<sup>73</sup>

### *Recordkeeping Requirements*

Every wholesale beer distributor doing business in Tennessee must keep accurate delivery tickets and records of each delivery of beer or other similar beverages to individual retailers and any other persons purchasing more than five gallons of beer at one time. The records must indicate:

- The date the merchandise was delivered.
- The name and address of the purchaser.
- The date of the sale.
- The quantity, size, brand, and price of each container sold.

Each retailer or recipient must sign the delivery ticket each time it receives beer from a wholesaler. The wholesaler shall keep the signed original or a digital copy, and the retailer must retain a duplicate, for at least two years. The Department, county, or municipality can inspect these records, if necessary.

The wholesaler must also retain records of every sale to persons purchasing fewer than five gallons of beer at a time, for at least two years. These records should reflect the daily quantity, size, brand, and price of each container the wholesaler sells.<sup>74</sup>

### *Investigations*

The Department may, on its own initiative, but must upon request of any county or municipality receiving this tax, make investigations to determine whether the full amount of tax imposed has been paid. Any county or municipality requesting an investigation may designate an agent to participate in the investigation. Wholesalers and retailers must make their books and records available for inspection and audit at all reasonable business hours. The results of any investigations will be reported to the counties and municipalities concerned.<sup>75</sup>

### *Enforcement*

If any wholesaler fails or refuses to remit the tax when due, the Department or any county or municipality to which the tax is owed, may institute legal action for collection of the

delinquent taxes. Additionally, counties and municipalities may suspend or revoke a wholesaler's beer permit if the wholesaler is delinquent.<sup>76</sup>

## Transportation of Beer

Any person engaged in transporting beer or other such beverages from outside Tennessee to any point within Tennessee must always have in their possession during transport:

- An invoice, bill of sale, or bill of lading showing the name and address of the consignor.
- The name and address of the licensed brewery, wholesaler, or distributor to whom the beverages are to be delivered.
- The quantity of those beverages.

It is illegal for any person to transport, or attempt to transport, any beer to a person or destination other than as designated on the shipment, bill of lading, or contract, and to any person not licensed to receive that type of beverage under the law or regulations. Additionally, it is illegal to agree to transport or deliver any shipment of beer when it is known that the shipment is not intended for a person legally permitted to receive the beverages.<sup>77</sup>

No person may transport within this state any beer on which the barrelage tax has not been paid, except for immediate delivery to a licensed brewery, wholesaler, or distributor in the state. Any person transporting untaxed beer must have in their possession during transport an invoice, bill of sale, or bill of lading showing the name and address of the consignor, the name and address of the licensed brewery, wholesaler or distributor to whom the beer is to be delivered, and the quantity and contents of the containers. If such person fails to produce an invoice, bill of sale, or recorded evidence, or, if when produced it fails to comply and accurately disclose the required information, the failure shall be *prima facie* evidence of a violation of these requirements.<sup>78</sup>

### 1. Common Carriers

A common carrier maintaining a permanent office within the state, where complete records of all beer transported from outside the state are kept and open for inspection by the

Department or any authorized agent at all reasonable times, will not be required to have these documents in the carrier's personal possession.<sup>79</sup>

If any common carrier transporting beer to a point within the state, or any insurance company insuring such products, comes into possession of those products because the products are damaged or otherwise not accepted by the consignee, that common carrier or insurance company will become liable for the barrelage tax. The carrier or insurance company will be relieved of that liability if proof, deemed satisfactory to the Commissioner, is furnished showing that the products have been destroyed or shipped to a point outside the state. This relief of liability does not authorize the common carrier or insurance company to subsequently sell the beer in Tennessee unless otherwise licensed to do so.

## **2. Other than Common Carrier**

Every person, other than a common carrier or a licensed brewery, wholesaler, or distributor engaged in making regular deliveries of beer or other such beverages to their customers, who possesses or transports five gallons or more of any such beverages within Tennessee, will have, during the entire time in possession of or transporting these beverages within this state, an invoice, bill of sale, or bill of lading showing the date of purchase or shipment, the name and exact address of the seller or consignor, and the name and exact address of the purchaser or consignee. The burden of proof shall be upon the person possessing or transporting such beverages to establish to the satisfaction of the collection officers that the invoice, bill of sale, or bill of lading offered as evidence that the tax thereon has been paid does, in fact, relate to the identical beverages in possession or transport.<sup>80</sup>

Any property confiscated as contraband solely for failure to have the documents required by this section may be returned upon order of the Commissioner, without the necessity of a hearing, upon a showing satisfactory to the Department that taxes imposed by the State upon such items have been paid.

These restrictions on the transportation of beer will not be construed as applying to interstate shipments through the state of Tennessee, where such shipments are accompanied and supported by proper invoices or bills of lading containing such information as the Commissioner may require.<sup>81</sup>



## Contraband

Any beer that is sold, offered for sale by, or in possession of, a retailer and that was purchased from anyone except a Tennessee licensed wholesaler or distributor, is contraband.

Additionally, any beer imported into the state, transported within the state, or in possession of a person in the state in violation of the law and regulations, is contraband, along with any vehicle in which it is being transported that is not a common carrier. Contraband beverages and vehicles are subject to confiscation by the Commissioner or any authorized representative, highway patrol officer, sheriff, or other peace officer.

### 1. Disposition of Contraband

Any contraband beer or vehicles that are seized are to be delivered to the Department for disposition. The Department may then deposit any seized beer with a duly licensed Tennessee wholesaler or distributor, located nearest to the site of the seizure, engaged in handling the particular brand of beer involved. The wholesaler will issue a receipt to the Commissioner to document the deposit, stating the quantity and brand of beer so deposited. That wholesaler may later exchange salable beer of the same quantity and brand name for the receipt with any person(s) who may be entitled thereto or to the proceeds of the sale of the beverage. These receipts will be admissible as evidence in any administrative hearing or any civil or criminal court hearing or trial.<sup>82</sup>

If, incidental to the confiscation of contraband beer, any alcoholic beverage found to be held or transported illegally is discovered, the confiscating officer is required to also seize that alcohol. Any alcoholic beverages seized in this manner will be delivered to the ABC for sale or disposition as contraband.

### 2. Notification of Seizure

As soon as feasible after confiscation, the Department will provide written notice to the person from whom the confiscation was made. Notice will also be made to all others with a legal interest in the confiscated party, to the extent they are made known to the Department or could be discovered by reasonable examination of public records of titles and liens. This notice can be made by personal delivery or mail to the last known address of the party. This notice must state:

- A description of the confiscated property.
- The reason for confiscation.
- The method for seeking recovery.
- The time limit for seeking recovery.
- The result of failure to seek or obtain recovery by the designated method.<sup>83</sup>

### **3. Claims Procedure**

Any person claiming any property seized as contraband goods may, within 10 days of receiving notice of such seizure, request a hearing with the Commissioner. However, any person requesting a hearing must post a \$250 bond with a solvent surety, made payable to the State, or in the alternative, execute a pauper's oath. The Commissioner will set a date for hearing within 10 days from the date the claim is posted or received.

The initial burden in the hearing shall be on the State to show, by a preponderance of the evidence, that the property in question was of such nature or was used in such manner as to be declared contraband. If the State meets this burden, the property shall be forfeited, unless the claimant can prove it is nevertheless qualified to recover the property by demonstrating:

- The claimant has an interest in the vehicle, aircraft, or boat, as owner or otherwise, which was acquired in good faith; and
- The claimant had, at no time, any knowledge or reason to believe that it was being, or would be, used in the violation of federal or state laws relating to beer.

## Chapter 5: Liquor-by-the-Drink Tax

Tennessee has authorized the sale of alcoholic beverages, wine, and high alcohol content beer for consumption on the premises of certain types of businesses. Sales of such alcoholic beverages for consumption on the premises is subject to Tennessee's liquor-by-the-drink tax. The businesses authorized to make sales of alcoholic beverages for consumption on the premises include:

- Hotels and motels
- Commercial passenger boat companies
- Restaurants
- Commercial airlines
- Passenger trains
- Charitable, nonprofit, or political organizations
- Tourist resorts or clubs
- Convention centers
- Historic performing arts centers
- Urban park centers
- Historic interpretive centers
- Community theaters
- Historic mansion houses
- Terminal buildings of commercial air carriers
- Zoological institutions
- Museums
- Commercial airline travel clubs
- Public aquariums or aquarium exhibition facilities
- Caterers
- Sports authority facilities
- Clubs
- Bed and breakfast establishments
- Motor speedways
- Theaters
- Paddlewheel steamboat companies
- Special historic districts (wine only)
- Other facilities as specified
- For-profit festival operators<sup>84</sup>

If a business sells at retail alcoholic beverages, wine, or high alcohol content beer for consumption on the premises, it must pay the liquor-by-the-drink tax on those sales. Sales of beer with an alcohol content of 8% by weight or less are not subject to the liquor-by-the-drink tax.

## Authorization to Sell Alcohol for Consumption on the Premises

A business can only sell alcoholic beverages for consumption on the premises if it is located in a jurisdiction that has authorized such sales and it has obtained the appropriate license from the ABC.

### 1. Local Referendum

Sales of alcoholic beverages for consumption on the premises are not allowed without prior authorization by the local government. A county or municipality must approve these sales by a referendum. If a county referendum has approved sales of alcoholic beverages for consumption on the premises, any municipality within that county may conduct a referendum to authorize sales for consumption on the premises within the boundaries of that municipality.

### 2. ABC License

If a business is located in a jurisdiction that has approved sales of alcoholic beverages for consumption on the premises, it may apply for a license to engage in such sales from the ABC. The ABC has numerous licenses for various types of businesses. Each license type has its own eligibility requirements and annual privilege tax based on the type and size of the business. For complete licensing requirements, visit the ABC's website [HERE](#).

#### *Alcohol Delivery Licenses*

Licensed alcoholic beverage delivery services may charge a fee of not more than 10% on the price of the alcohol being delivered.<sup>85</sup> The licensed delivery service is not responsible for remitting the taxes otherwise due on the alcohol it delivers.

#### *To-go Orders of Alcoholic Beverages<sup>86</sup>*

Persons or entities ("licensees") licensed to sell beer and alcoholic beverages for consumption on the person's or entity's premises may offer drive-through, pickup, carryout,

and delivery orders of alcoholic beverages and beer for consumption off the premises if the sale of alcoholic beverages and beer:

- Is accompanied by the sale of food in the same order;
- Is packaged in a container or bottle with a secure lid or cap to prevent consumption without removal of the lid or cap; and
- Consists of single servings of alcoholic beverages or beer (or multi-servings lawfully sold).

Licensees selling to-go orders of alcoholic beverages and beer must post a conspicuous sign stating that “a driver shall not consume alcoholic beverages or beer while operating a motor vehicle in this state.”

Licensees must collect liquor-by-the-drink tax on all sales of alcoholic beverages sold in to-go orders. The tax should be collected on to-go orders in the same manner that it is collected on alcoholic beverages sold for consumption on the premises.

**⚠ In accordance with Public Chapter 59 (2021), there is no Tennessee residency requirement to obtain a retailer’s liquor license.<sup>1</sup>**

### 3. Registration with the Department

Licensees must also register with the Department before engaging in business in the state. Licensees should register for the liquor-by-the-drink tax through TNTAP. This registration requires that licensees also submit a price schedule and a bond.

#### *Price Schedule*

Prior to entering business, every liquor-by-the-drink licensee must file a price schedule of all the alcoholic beverages that it offers for sale. The price schedule must include the following information:

- The number of drinks sold for each type of drink or for each category of drinks with the same price and pour size or bottle ounce;
- The ounce pour by drink or bottle ounces of each item sold; and

- The sales price for that sale (including both regular and special prices).

To satisfy this requirement, a licensee can either submit a report from its point-of-sale system that contains this information (such as a product mix report) or use the Department's price schedule form.

Licensees must update their price schedules at least annually. If a licensee makes any significant change to a price or pour amount listed in the schedule before the annual submission date, it should submit a new schedule.

**⚠ Price schedules are relied on as the basis for every liquor-by-the-drink tax audit. It is critical that liquor-by-the-drink taxpayers maintain current and accurate price schedules.**

### *Bond Requirement*

Licensees must post security with the Department to ensure proper payment of taxes. This security may be in the form of a corporate surety bond, a cash deposit, or a bond secured by a certificate of deposit. For all licensees, other than restaurants selling only wine, the amount of the initial security is \$10,000. For restaurants selling only wine, the amount of the initial security is \$2,000. After the first three months of operations and timely submission of all required reports and returns, the licensee can submit a written request to have the security adjusted to four times the average monthly tax liability of the first three months. The security amount cannot be adjusted to less than \$1,000.<sup>87</sup>

If a licensee forfeits or cancels its bond for any reason, its ABC license is automatically revoked. The Department cannot release the posted security unless all liability secured by the bond has been paid, or the statute of limitations on assessment of that liability has run, whichever occurs first.<sup>88</sup>

## **4. Transfer of Business**

Any person who purchases or obtains ownership of a business engaged selling alcoholic beverages for consumption on the premises cannot make any sales of alcoholic beverages until it obtains its own license from the ABC and registers for sales and alcoholic beverage taxes with the Department. Any person making sales without doing so is operating illegally and will be held liable for the taxes on those sales.<sup>89</sup>

Any person who sells, transfers, or otherwise terminates ownership in a business engaged in sales of alcoholic beverages for consumption on the premises must notify the Department within 15 days of the effective date of the sale, transfer, or termination. This notice should be provided as part of the person's final alcoholic beverage return and final sales tax return. Any person that fails to provide the required notice to the Department, with the result that the new owner continues to operate under the seller's or transferor's alcoholic beverage license, will be presumed to have allowed the illegal operation to occur. The business must also surrender its liquor-by-the-drink license to the ABC.<sup>90</sup>

Any person who, upon sale or transfer of a business, allows or permits the new owner or operator to remit tax, make wholesale purchases, or conduct business in any manner using the seller's or transferor's alcoholic beverage license or tax registration will be jointly and severally liable with the new owner or operator for any unpaid taxes accrued during the period of illegal operation.

### *Transfer or Sale of Inventory upon Closing or Sale of Business*

A retailer licensed under Tenn. Code Ann. §§ 57-3-204, 57-3-803, or 57-4-101 that sells or closes its licensed establishment may sell or transfer its alcohol inventory to the purchaser of the establishment or to another licensed establishment.<sup>91</sup> The purchaser or establishment receiving the inventory must hold the same type of license held by the seller. The following requirements must be met prior to the completion of the inventory transfer or sale:

- The seller must provide the Alcoholic Beverage Commission and Department of Revenue with written notice at least 10 days prior to the sale or transfer of the inventory. The written notice must identify the person or entity receiving the inventory, the date of the sale or transfer, and the quantity, types, and brands of alcohol being sold or transferred.
- Invoices and debts relating to the alcoholic beverages or wine sold or transferred must be paid in full prior to the sale or transfer.
- The purchaser or transferee must be licensed prior to the completion of the sale or transfer.

## **Payment of the Tax**

Anyone selling alcoholic beverages for consumption on the premises is liable for the liquor-by-the-drink tax. The tax rate is 15% of the sales price of all alcoholic beverages sold for

consumption on the premises. The liquor-by-the-drink licensee collects the tax from the consumer at the time of sale and remits it to the Department.

## 1. Gross Sales

The liquor-by-the-drink tax return requires that licensees report their gross sales of alcoholic beverages for consumption on the premises. A beverage's gross selling price is the total price for which it is sold, including the liquor-by-the-drink tax, the applicable sales tax, and any mandatory tips.<sup>92</sup>

### *Tips*

Tips should only be included in a licensee's taxable gross sales if they are mandatory. However, if a tip is mandatory but there are a substantial number of documented instances of deletion or reduction of the tip, then the tips are nontaxable. If there are only one or two such instances of a reduction or deletion of a mandatory tip, the tips are taxable, but the licensee will be given a credit for those instances. Additionally, if a tip is mandatory in the by-laws but those by-laws permit the tip to be deleted or reduced by the customer, then the tip is not taxable as part of gross sales.<sup>93</sup>

Tips should not be included in a licensee's taxable gross sales if they are voluntarily paid by the purchaser and are then returned to the person(s) performing the service.

## 2. Filing Frequency

The tax is due monthly by the 15<sup>th</sup> day of the month for sales made in the preceding month. Licensees with multiple locations must file a separate return for each place of business.

The Commissioner may, at the request of the licensee, authorize a taxpayer to file using an accounting period other than monthly. In this case, the licensee will file the return on or before the 15<sup>th</sup> day following the end of the reporting period. All other reporting requirements remain the same.

Additionally, the Commissioner may, for good cause, grant an extension of time, not to exceed 30 days, for a licensee to file the return and pay the tax due. Licensees should make requests prior to the tax due date, submit them in a signed writing, and state why the extension is needed.<sup>94</sup>



### 3. Delinquent Returns

When a licensee fails to timely file a return or is delinquent in payment of the tax for the third time in any one-year licensing period, the Commissioner may recommend to the ABC that the licensee's liquor-by-the-drink license be revoked or suspended. It is a misdemeanor for any licensee to continue in business after revocation or suspension of the license. Each day a business operates without a license is a separate violation.<sup>95</sup>

If a licensee is delinquent in the payment of the tax, the Commissioner may notify, by registered mail, any person, including the ABC, that has possession or control of any credits or other personal property belonging to the delinquent licensees, or owing any debts to the licensee at the time of the delinquency. If any person is so notified, that person cannot make any disposition of those debts or properties without the approval of the Commissioner, or until 30 days elapse from the receipt of the notice. Any person receiving such notice must advise the ABC of such property, credits, or debts within five days.<sup>96</sup>

## Inventory Deductions and Exemptions from Tax

Licensees cannot dispose of alcoholic beverages through any method other than by sale for consumption on the premises. Therefore, any disposition of alcoholic beverages that is not excused by law will be considered a sale and taxed accordingly. For this reason, the liquor-by-the-drink tax return requires that licensees report their inventory at the beginning and end of each month. Nonetheless, licensees can deduct product from their inventory for certain reasons. Upon proper proof of the following types of loss, the Department will issue a certificate to the licensee documenting the loss.

### 1. Theft

To prove a loss by theft, a licensee must provide the Department with proof that the theft was reported to law enforcement and the insurer has paid the claim for the loss.

### 2. Breakage

To prove a loss due to breakage, a licensee must contact the Department to request a representative come view the loss as soon as possible. The licensee must be able to demonstrate that the bottle had not been opened prior to the breakage. For example, showing that the seal or cork is still intact. If a product is unopened but no longer saleable, the product must be destroyed by or in the presence of a representative of the Department.

### 3. Acts of Nature

To prove a loss due to an act of nature, a licensee must contact the Department to request a representative come view the loss as soon as possible. The licensee must be able to demonstrate that the bottle had not been opened prior to the breakage. For example, showing that the seal or cork is still intact. If a product is unopened but no longer saleable, the product must be destroyed by or in the presence of a representative of the Department.

### 4. Alcohol Used for Cooking

Additionally, alcoholic beverages used and consumed in the preparation of food are exempted from a licensee's inventory of alcoholic beverages for consumption on the premises. Licensees must keep an accurate running inventory of alcoholic beverages used in the preparation of food, as explained above. If any portion of the contents of a bottle of wine or distilled spirits is sold by the drink for consumption on the premises, the licensee will be liable for the liquor-by-the-drink tax on the total disposition, as if the entire bottle had been sold by the drink.

### 5. Alcoholic Beverage Manufacturers

Certain sales of alcoholic beverages for consumption on the premises of alcoholic beverage manufacturers are specifically exempted from the liquor-by-the-drink tax. The following sales are exempt from the tax:

- Samples and sales of alcoholic beverages sold for consumption on the premises of a licensed distillery.
- Samples of wine for tasting, with or without charge, for consumption on the premises of a licensed winery, farm wine producer, or satellite facility.
- Retail sales in sealed containers for consumption on the premises of a licensed winery, farm wine producer, or satellite facility.<sup>97</sup>

**⚠ Sales of wine by the glass for consumption on the premises of a licensed winery, farm wine producer, or satellite facility are subject to the liquor-by-the-drink tax.**

## 6. Art Galleries

Art galleries that do not sell food or beverages and that receive 90% of their revenue from the sale of artwork may serve wine to patrons without a charge. These art galleries are not required to pay the liquor-by-the-drink tax on the wine they serve.<sup>98</sup>

## 7. Commercial Airlines, Paddlewheel Steamboats, and Passenger Trains

Commercial airlines, paddlewheel steamboat companies, and passenger trains do not pay the 15% liquor-by-the-drink tax on their sales of alcoholic beverage. In lieu of the liquor-by-the-drink tax, these companies pay the wholesale gallonage tax on alcoholic beverages they bring into Tennessee at a unique rate, as described in Chapter 3.<sup>99</sup>

## 8. Special Occasion Licensees

Charitable, nonprofit, or political organizations that hold a special occasion license and sell alcoholic beverages pursuant to that license do not owe the liquor-by-the-drink tax on those sales.<sup>100</sup>

## Notifying Customers of the Tax

Liquor-by-the-drink retailers may include the liquor-by-the-drink tax in the drink's sales price listed on the menu or on the final bill. Retailers must also collect and remit state and local sales tax on their sales of alcoholic beverages for consumption on the premises. They should include state and local sales tax on alcoholic beverages in the same way they include the liquor-by-the-drink tax – either in the listed drink price on the menu or on the final bill.

### 1. Menu Pricing

If a retailer chooses to include the liquor-by-the-drink tax and sales tax in the menu price, it must state on the menu that the drink's sales price includes these taxes.

If a retailer includes the taxes in the menu price, it will need to determine the taxable base, which is the net sales price. The net sales price is determined by backing out the liquor-by-the-drink and sales taxes. This is done by dividing the total sales price by 1.15 plus the applicable state and local sales tax rate.<sup>101</sup>

For example:

- A restaurant menu lists the price of a cocktail at \$12, which includes both the liquor-by-the-drink and sales taxes.
- The net sales price of the cocktail is  $\$12 \div (1.15 + .0925) = \$9.66$ .
- The restaurant would then apply the liquor-by-the-drink tax rate to the net sales price to arrive at the amount of liquor-by-the-drink tax due.
- The restaurant would then apply the applicable sales tax rate to the net sales price to arrive at the amount of sales tax due.

## 2. Final Bill

If a retailer chooses to include the liquor-by-the-drink tax and the sale tax on the customer's final bill and exclude the taxes from the menu pricing, it must state on the menu that a 15% liquor-by-the-drink tax and sales tax will be added to the final bill.<sup>102</sup>

## Recordkeeping Requirements

Licensees must maintain complete records that are sufficient to determine any tax due, including those records listed below. Licensees must retain these records for at least four years unless the Department authorizes earlier destruction. If a licensee uses both guest checks and cash register tapes concurrently, it may destroy guest checks 60 days after the date of sale.

If a licensee does not maintain adequate and accurate records by which the Department may establish the true tax liability, the Department is authorized to determine the tax liability from whatever information is available. An assessment made by the Department is binding and presumed accurate unless adequate records are submitted to prove otherwise.<sup>103</sup>

### 1. Menus

Licensees are required to have menus that clearly indicate the sale prices of all alcoholic beverages and whether the price includes the liquor-by-the-drink and sales taxes. Menus are helpful in verifying the information reported on a licensee's price schedule and establishing selling prices. However, cash register tapes will be the predominate record for determining selling prices, as those tapes show the actual prices charged to customers.

## 2. Sales records

Licensees must maintain a daily record of all sales, clearly distinguishing between regular sales and special price sales. This daily record of sales must be supported by daily cash register tapes, guest checks, or point-of-sale system reports, such as product mix reports. Licensees should ensure that sales of alcoholic beverages at prices other than the regular sales prices listed on the price schedule are clearly recorded on cash register tapes, guest checks, or product mix reports. If the licensee does not adequately substantiate these special price sales, all the sales will be calculated and taxed as though they were made at the regular prices. Summary totals of sales that are not supported by cash register tapes, guest checks, or product mix reports are not sufficient.

Licensees must record sales of alcoholic beverages separately from any other sales, such as food sales, on a guest check. This can be done either by providing a separate check for alcohol sales or recording alcohol sales on the bottom or reverse side of a check. Licensees must also break down sales of alcoholic beverages by separating liquor and wine sales. If the licensee uses a cash register, it must key alcoholic beverage sales separately from food, beer, and other items, and separately key liquor and wine sales.

## 3. Purchase records

Licensees must maintain a record of all merchandise purchased for resale. These records include invoices, delivery tickets, bills of lading, and copies of purchase orders.

## 4. Inventory

Licensees must also maintain an itemized statement of inventory, by brand name, size, and dollar value of alcoholic beverages on hand the last day of each month. This includes a perpetual inventory record of all alcohol and wine used in cooking. Alcohol and wine used for cooking must be stored separately from other alcoholic beverages, used exclusively for cooking purposes, and accounted for as food costs.<sup>104</sup>

## Purchase Markup Audit Procedure

When auditing liquor-by-the-drink licensees, the Department looks first to the licensee's price schedule to determine the average purchase markup on beverages sold based on the cost of the alcohol in the most frequently sold drinks, the amount of alcohol in those drinks, and the selling price. The Department then compares the purchase markup calculated by

using the price schedule to the purchase markup calculated based upon sales reported by the licensee.

The fundamental basis for using a purchase markup audit procedure is found in TENN. COMP. R. & REGS. 1320-04-02-.06(2)(a), which states that “if the sales of liquor and wine, as shown by the books of the licensee, do not bear a markup over purchases approximately the same as the average markup shown by the price schedule, the commissioner will consider the books of the licensee insufficient to show the proper tax liability.”

### **1. Updating the Price Schedule**

Although all liquor-by-the-drink licensees are required to maintain current price schedules with the Department, licensees will be given the opportunity to correct an inaccurate price schedule or submit any additional price schedules that may be required if audited by the Department. It is imperative that the price schedule reflect the drink prices and pour amounts that are sold on a regular basis. Any updated price schedules submitted during an audit should be signed by an authorized representative of the licensee testifying to their accuracy. A bartender cannot sign a price schedule unless he has been authorized to do so by the owner/manager. If a bartender does sign a price schedule, the owner/manager must countersign as well.

If a licensee has two or more price schedules for the audit period, a weighted average markup for each price schedule must be combined to arrive at a weighted average markup for the audit period.

#### *Verification of the Price Schedule*

The Department will verify the accuracy of the information reported in the price schedule, including pour size and sales price. The auditor may verify the pour sizes by observing bartenders pour drinks or by noting the size of the jiggers found at the bar. The auditor may verify the sales price of drinks by looking at guest checks, cash register tapes, or product mix reports. If the prices on the price schedule differ from those on these source documents, the source document prices will prevail.

If a business has a mandatory tip, the drink prices listed on the price schedule should include the tip in the total selling price. If this is not done, the auditor will correct the listed selling prices.

### Calculation of Cost of Inventory

The Department will next determine the cost of the alcohol the licensee purchased for use in making sales of alcoholic beverages. The alcohol purchases will be broken down into categories and weighted, as follows:

	<b>Total Purchases</b>	<b>Percentage of Alcohol Purchased by Type</b>
Beer	\$200	$[200/120,200] = 0.16\%$
Liquor	\$20,000	$[20,000/120,200] = 16.64\%$
Wine	\$100,000	$[100,000/120,200] = 83.20\%$
Total Alcohol Purchased	\$120,200	100%

## 2. Calculating the Record Markup

The auditor begins the purchase markup audit by calculating the record markup. This figure is calculated by dividing the taxpayer's gross sales by the total cost of goods sold. The taxpayer's cost of goods sold is the beginning inventory *plus* purchases, *less* ending inventory, approved inventory deductions, and cooking wine/spirits. When the taxpayer has no record of inventory for the beginning audit period, then the ending inventory amount should be used. However, the beginning inventory for a new business is zero.

## 3. Calculating the Price Schedule Markup

Next, the auditor calculates the price schedule markup. To obtain this figure, the auditor will first calculate separate, weighted average price schedule markups for the taxpayer's liquor and wine sales for the audit period.

Using the taxpayer's price schedules and/or product mix reports, the auditor will determine the most frequently sold drinks along with the pour amounts and price for those drinks. The auditor will use this information to calculate one weighted average price and pour for each of the above alcohol categories.

The auditor first calculates the weighted price by multiplying the price of each of the most frequently sold drinks times the number of those drinks sold. Then, the auditor totals the weighted prices of the most frequently sold drinks and number of most frequently sold

drinks. Finally, the total of the weighted prices is divided by the total number of most frequently sold drinks to arrive at the weighted average price.

The auditor calculates weighted pour by multiplying the pour amount of each of the most frequently sold drinks times the number of those drinks sold. Then, the auditor totals the weighted pour amount of the most frequently sold drinks and number of most frequently sold drinks. Finally, the total of the weighted pour amounts is divided by the total number of most frequently sold drinks to arrive at the weighted average pour.

Then, the auditor will obtain the weighted average price schedule markup for liquor drinks by dividing the weighted average price for liquor drinks by the cost per drink and multiplying the resulting figure by the percentage of liquor purchases for the audit period. The auditor will obtain the markup for glasses of wine in the same manner as liquor drinks. The auditor adds the weighted average percentage markup for liquor drinks to the markup for glasses of wine to obtain the price schedule markup for the audit period.

#### **4. Calculating the Minimum Acceptable Markup**

After obtaining the price schedule markup, the auditor calculates the minimum acceptable markup by multiplying the price schedule markup by a minimum acceptable markup factor, which allows for estimated losses due to spillage, breakage, and theft. Generally, this factor is 85% (representing a 15% allowable deviation in the price schedule markup). However, a factor of 80% may be used in certain circumstances in which the taxpayer is deemed to have good internal controls over its reporting of liquor/wine sales. Examples of good internal controls in this area include the following:

- Drink prices are posted and taxed correctly
- The taxpayer documents losses of spillage, breakage, and theft
- Daily sales records including product mix report, cash register tapes, and/or quest checks are retained
- Happy Hour sales are tracked
- Purchase records are maintained
- Itemized inventory is kept and done frequently



- The storage of wine or spirits for food preparation is separate from that used in the bar
- Sales records appear complete and tie to returns

### **5. Comparing the Markups**

The auditor will then compare the price schedule markup with the taxpayer's record markup to determine the accuracy of the taxpayer's records. If a taxpayer does not have books that evidence a purchase markup that is within 15% of the average purchase markup calculated using the price schedule, the Department will consider the licensee's books insufficient to determine the amount of liquor-by-the-drink tax due.<sup>105</sup> If the licensee's books are insufficient, the Department utilizes the purchase markup calculated using the price schedule to determine the tax due.<sup>106</sup>

## Chapter 6: Mixing Bar Tax

The mixing bar tax is a gross receipts privilege tax imposed on sales of setups for mixed drinks. The tax rate is 15% of the gross receipts from all such sales of setups. The following setups for mixed drinks are subject to the mixing bar tax:

- Sales of beverage containing alcohol content;
- Sales of water, soft drinks, ice, or any item capable of being used to prepare a mixed drink at a place of business; and
- Sales of setups for mixed drinks to be consumed by persons supplying alcoholic beverages in their own container on the premises of any business that holds a license to sell alcoholic beverages for consumption on the premises.<sup>107</sup>

The tax is applicable to any such sales of setups, regardless of whether the drinks made with the setups are consumed on or off the premises.

### Who Pays the Tax

Establishments that sell mixed drinks setups and allow patrons to bring their own alcoholic beverages are responsible for pay the mixing bar tax. Examples of facilities that are subject to the tax are:

- Country clubs;
- Private clubs, such as social, dinner, athletic, or sporting clubs; and
- Fraternal societies, orders, or associations.

The mixing bar tax does not apply to:

- Sales of mixed drinks subject to the liquor-by-the-drink tax;
- Sales by licensed liquor wholesalers; or

- Sales of setups made by cafes, cafeterias, or restaurants where such sales are incidental to their primary business of selling prepared meals, and where no bar or separate facility is maintained for the purpose of selling mixed drinks or setups.

### **Payment of the Tax**

The mixing bar tax is due monthly by the 20<sup>th</sup> day of the month following any month in which the taxpayer has gross receipts from any sales of mixed drink setups. Mixing bar tax taxpayers must maintain records of all purchases and gross receipts from the sales of setups.

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<sup>1</sup> Tenn. Code Ann. § 57-5-101(b).

<sup>2</sup> Tenn. Code Ann. § 57-3-101(a)(1)(A).

<sup>3</sup> The Tennessee Code Annotated may be accessed for free at the following link: [HERE](#).

<sup>4</sup> The Department of Revenue's alcoholic beverage and beer tax rules and regulations can be found at the following link: <https://publications.tnsosfiles.com/rules/1320/1320.htm>.

<sup>5</sup> The Alcoholic Beverage Commission's alcoholic beverage rules and regulations can be found at the following link: <https://publications.tnsosfiles.com/rules/0100/0100.htm>.

<sup>6</sup> Tenn. Code Ann. § 57-1-102.

<sup>7</sup> Tenn. Code Ann. §§ 57-3-301, 57-5-102.

<sup>8</sup> Tenn. Code Ann. §§ 57-3-303(b)(1), 57-5-206, 57-6-103(d), and 57-6-201(a).

<sup>9</sup> Tenn. Code Ann. § 57-3-501.

<sup>10</sup> Public Chapter 324 (2021) requires the Department of Revenue to include the following information in the alcoholic beverage brand registration database: manufacturer/importer name, wholesaler name, addresses for both entities, brand names, and distribution territories. This public chapter also requires the Department to notify the applicable manufacturer and wholesaler when a new brand registration contract is processed.

<sup>11</sup> Tenn. Code Ann. § 57-3-301(a).

<sup>12</sup> Tenn. Code Ann. § 57-3-301(c)-(d).

<sup>13</sup> TENN. COMP. R. & REGS. 1320-04-06-.07.

<sup>14</sup> Tenn. Code Ann. § 57-3-301(e).

<sup>15</sup> TENN. COMP. R. & REGS. 1320-04-06-.07(c)(1).

<sup>16</sup> TENN. COMP. R. & REGS. 1320-04-06-.07(c)(2).

<sup>17</sup> Tenn. Code Ann. § 57-3-301(e).

<sup>18</sup> Tenn. Code Ann. § 4-5-317.

<sup>19</sup> Tenn. Code Ann. § 4-5-322.

<sup>20</sup> Tenn. Code Ann. § 57-3-101(a)(1)(A).

<sup>21</sup> Tenn. Code Ann. § 57-3-101(a)(24).

<sup>22</sup> Tenn. Code Ann. § 57-3-101(a)(8).

<sup>23</sup> Tenn. Code Ann. § 57-3-202.

<sup>24</sup> Tenn. Code Ann. § 57-3-207.

<sup>25</sup> Tenn. Code Ann. § 57-3-217.

<sup>26</sup> Tenn. Code Ann. § 57-3-217(d).

<sup>27</sup> Public Chapter 331 (2021).

<sup>28</sup> Tenn. Code Ann. § 57-2-102 and Public Chapter 301 (2019).

<sup>29</sup> Tenn. Code Ann. § 57-3-305.

<sup>30</sup> Tenn. Code Ann. § 57-3-303(l).

<sup>31</sup> Tenn. Code Ann. § 57-3-308.

<sup>32</sup> Tenn. Code Ann. § 57-3-302(b).

<sup>33</sup> Tenn. Code Ann. § 57-3-303(a).

<sup>34</sup> Tenn. Code Ann. § 57-3-207(r)(6)(A).

<sup>35</sup> Tenn. Code Ann. § 57-3-303(a).

<sup>36</sup> Tenn. Code Ann. § 57-3-217(e)(1).

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- <sup>37</sup> [Important Notice # 21-04.](#)
- <sup>38</sup> Tenn. Code Ann. § 57-3-207.
- <sup>39</sup> Tenn. Code Ann. § 57-3-220.
- <sup>40</sup> Tenn. Code Ann. § 57-3-303.
- <sup>41</sup> Tenn. Code Ann. § 57-3-302(a) and TENN. COMP. R. & REGS. 1320-04-06-.02(4)(d).
- <sup>42</sup> Tenn. Code Ann. § 57-3-303(k).
- <sup>43</sup> Tenn. Code Ann. § 57-3-303(f).
- <sup>44</sup> Tenn. Code Ann. § 57-6-201.
- <sup>45</sup> Tenn. Code Ann. § 57-5-101.
- <sup>46</sup> Tenn. Code Ann. § 57-5-101(c)(1)(A).
- <sup>47</sup> Effective October 1, 2021. Public Chapter 432 (2021).
- <sup>48</sup> *Id.*
- <sup>49</sup> Tenn. Code Ann. § 57-5-101(c)(1)(B)(i).
- <sup>50</sup> Tenn. Code Ann. § 57-5-101(c)(1)(B)(ii).
- <sup>51</sup> Tenn. Code Ann. § 57-5-103.
- <sup>52</sup> Tenn. Code Ann. § 57-5-104.
- <sup>53</sup> Tenn. Code Ann. § 57-5-104(b)(1).
- <sup>54</sup> Tenn. Code Ann. § 57-5-201.
- <sup>55</sup> Tenn. Code Ann. § 57-5-203.
- <sup>56</sup> Tenn. Code Ann. § 57-5-110.
- <sup>57</sup> Tenn. Code Ann. § 57-6-103.
- <sup>58</sup> Tenn. Code Ann. § 57-5-203.
- <sup>59</sup> Tenn. Code Ann. § 57-5-101(c)(2).
- <sup>60</sup> TENN. COMP. R. & REGS. 1320-04-01-.03(1).
- <sup>61</sup> TENN. COMP. R. & REGS. 1320-04-01-.03(1).
- <sup>62</sup> Tenn. Code Ann. § 57-6-109(a).
- <sup>63</sup> Tenn. Code Ann. § 57-6-109(b).
- <sup>64</sup> Tenn. Code Ann. § 57-6-110.
- <sup>65</sup> Tenn. Code Ann. § 57-6-104(f).
- <sup>66</sup> Tenn. Code Ann. § 57-6-104(e).
- <sup>67</sup> Tenn. Code Ann. § 57-6-104(f).
- <sup>68</sup> Tenn. Code Ann. § 57-6-104(d).
- <sup>69</sup> Tenn. Code Ann. § 57-6-104(a)-(b).
- <sup>70</sup> Tenn. Code Ann. § 57-6-104(c).
- <sup>71</sup> Tenn. Code Ann. § 57-6-104(c).
- <sup>72</sup> Tenn. Code Ann. § 57-6-104(c)(4).
- <sup>73</sup> Tenn. Code Ann. § 57-6-107.
- <sup>74</sup> Tenn. Code Ann. § 57-6-105.
- <sup>75</sup> Tenn. Code Ann. § 57-6-106.
- <sup>76</sup> Tenn. Code Ann. § 57-6-107(b).
- <sup>77</sup> Tenn. Code Ann. § 57-5-402.
- <sup>78</sup> Tenn. Code Ann. § 57-5-404.
- <sup>79</sup> Tenn. Code Ann. § 57-5-401.

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- <sup>80</sup> Tenn. Code Ann. § 57-4-405.
- <sup>81</sup> Tenn. Code Ann. § 57-5-407.
- <sup>82</sup> Tenn. Code Ann. § 57-5-409(c).
- <sup>83</sup> Tenn. Code Ann. § 57-5-410.
- <sup>84</sup> Tenn. Code Ann. § 57-4-102.
- <sup>85</sup> Public Chapter 185 (2021).
- <sup>86</sup> Important Notice 21-09.
- <sup>87</sup> TENN. COMP. R. & REGS. 1320-04-02-.02.
- <sup>88</sup> TENN. COMP. R. & REGS. 1320-04-02-.02.
- <sup>89</sup> TENN. COMP. R. & REGS. 1320-04-02-.08.
- <sup>90</sup> Tenn. Code Ann. § 57-4-303.
- <sup>91</sup> Public Chapter 76 (2021). Tenn. Code Ann. §§ 57-3-204, 57-3-803, and 57-4-101.
- <sup>92</sup> TENN. COMP. R. & REGS. 1320-04-02-.01(7).
- <sup>93</sup> *Memphis County Club v. Tidwell*, 503 S.W.2d 919 (Tenn. 1973).
- <sup>94</sup> Tenn. Code Ann. § 57-4-304(a).
- <sup>95</sup> Tenn. Code Ann. § 57-4-304(b).
- <sup>96</sup> Tenn. Code Ann. § 57-4-305.
- <sup>97</sup> Tenn. Code Ann. §§ 57-3-202(i)(5), 57-3-207(r)(6)(C), and 57-3-207(t)(2).
- <sup>98</sup> Tenn. Code Ann. § 57-4-105.
- <sup>99</sup> Tenn. Code Ann. § 57-4-301(d).
- <sup>100</sup> Tenn. Code Ann. § 57-4-301(e).
- <sup>101</sup> Important Notice 18-02.
- <sup>102</sup> Tenn. Code Ann. § 57-4-301(c)(2).
- <sup>103</sup> TENN. COMP. R. & REGS. 1320-04-02-.06(5).
- <sup>104</sup> TENN. COMP. R. & REGS. 1320-04-02-.04(3).
- <sup>105</sup> TENN. COMP. R. & REGS. 1320-04-02-.06(2)(a).
- <sup>106</sup> *Benevolent Protective Order of Elks, Lodge No. 1279 v. Olsen*, 669 S.W.2d 654 (Tenn. 1984); *Benevolent Protective Order of Elks, Lodge No. 1279 v. Olsen*, 669 S.W.2d 654 (Tenn. 1984); *Ace of Clubs v. Huddleston*, 872 S.W.2d 679 (Tenn. Ct. App. Aug. 4, 1993).
- <sup>107</sup> Tenn. Code Ann. § 67-4-410.