Department of Revenue

Gross Receipts Bottlers Tax Manual

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Bottlers Tax

Introduction

Tennessee enacted the bottlers gross receipts tax in 1937. The bottlers gross receipts tax law is found in Tenn. Code Ann. § 67-4-402. Laws specific to the administration of Tennessee gross receipts taxes are found in Tenn. Code Ann. §§ 67-4-301 *et seq.* In addition, the Commissioner of Revenue promulgated a general gross receipts tax rule in 1976, which is found at TENN. COMP. R. & REGS. 1320-4-4-.05.

The Department of Revenue (the "Department") administers the bottlers gross receipts tax, and all bottlers gross receipts tax returns and remittances are filed and paid to the Department. It is a tax that can only be levied by the state.

When the tax was first enacted, it was based on gross receipts, and only local bottlers and manufacturers were subject to the tax. In 1947, the tax was extended to cover out-of-state bottlers and manufacturers as well.

In 1955, the bottlers gross receipts tax statute was substantially rewritten. It was changed from a tax based on gross receipts to a tax based upon the number of cases of beverages sold in Tennessee, according to a fixed schedule.

In 1957, the provision concerning out-of-state enterprises was revised. The previous provision, taxing out-of-state businesses in the same manner as local enterprises, was retained, but a sentence was added levying the full amount of tax upon any person, firm or corporation importing the beverages into this state for sale "when the bottler or manufacturer thereof has not paid the tax herein provided...."

In 1963, the statute was completely rewritten again to convert the tax back to a gross receipts tax. This revision included most of the basic provisions which remain in the statute today. In 1981, the rate was increased by 0.4%, making the total gross receipts tax 1.9%. The revenue from the 0.4% increase is allocated to the highway fund for prevention and collection of litter and trash and is sometimes referred to as a litter tax. In the 2021 General Assembly legislative session, this special allocation to the highway fund was extended until June 30, 2028.

Who is Subject to Bottlers Tax?

Any person or entity manufacturing or producing and selling any bottled soft drinks in Tennessee and any person importing or causing to be imported bottled soft drinks into Tennessee and selling imported bottled soft drinks within this state is subject to the bottlers tax.[1] The statute imposes the bottlers tax on four types of bottled soft drink sales:

- When an in-state manufacturer or an out-of-state manufacturer with nexus sells within the state, the manufacturer is liable for the tax;
- When an out-of-state manufacturer who does not have nexus sells to an in-state importer (*e.g.*, wholesale distributor or retailer) who then re-sells the product, the in-state importer is liable for the tax;
- When an out-of-state distributor directly distributes and sells within the state, the out-of-state distributor is liable for the tax; and
- When an out-of-state distributor directly distributes and sells within the state, but also supplies an in-state importer, the in-state importer is not required to pay the tax if the out-of-state distributor has paid it.

What is Subject to Bottlers Tax?

Bottled Soft Drinks

Any beverage that qualifies as a bottled soft drink is subject to the bottlers tax. A bottled soft drink is any carbonated or noncarbonated nonalcoholic beverage (with a few statutory exceptions) that is enclosed and sealed in any type of container or bottle. There is no limiting factor on the size of the sealed container. A nonalcoholic beverage is one that contains less than one half of one percent (0.5%) alcohol by volume.[2] The term "beverage" is not defined by the statute, but the common meaning of the term is "a drinkable liquid."[3]

Examples of Taxable Bottled Soft Drinks

The following is a non-exhaustive list of taxable bottled soft drinks:

- cola products, carbonated or not

- soda water, tonic water, gingerale
- orangeade, grapeade, lemonade (less than 100% fruit juice)
- Coca-Cola Products: Barq's Root Beer, Coca-Cola, Coca-Cola with Orange, New Coke, Coca-Cola C2, Coca-Cola Vanilla, Coca-Cola Zero, Sprite Zero, Vault, Vault Red Blitz, Diet Coke, Diet Coke with Lime, Diet Coke Lemon, Coke Lite, Fanta Wild Strawberry, Fanta Strawberry, Fanta Tangerine, Fanta Cream Soda, Fanta Grape, Fresca, Sprite, Tab, Tab Clear, Coca Cola Black Cherry, Pibb Xtra, Surge, Full Throttle.
- Pepsi Products: Mountain Dew, Diet Mountain Dew, Caffeine Free Mountain Dew, Mountain Dew Code Red, Mountain Dew Live Wire, Mountain Dew Baja Blast, Mountain Dew Voltage, MDX, AMP Energy, Mug Root Beer, Pepsi Cola, Pepsi Max, Pepsi Lime, Pepsi Jazz Strawberries &Cream, Pepsi Jazz Black Cherry & Vanilla, Sierra Mist, Diet Pepsi.
- Dr Pepper Snapple Group: 7-Up, A&W Root Beer, Cactus Cooler, Canada Dry, Clamato, Country Time, Crush, Diet Rite, Dr Pepper, Hawaiian Punch, Hires Root Beer, IBC Root Beer, Mott's, Orangina, Royal Crown Cola, Royal Crown Cherry, Schweppes, Snapple, Squirt, Stewart's Fountain Classics, Sunkist, Tropicana Twister Soda, Vernors, Yoo-hoo
- others: Carters Refreshing Root Beer, Cheerwine, Monster Energy, Red Bull, Schweppes Tonic, Nehi, Nitro Cola of St Louis, Shasta, Amp, 5 Hour Energy
- sweet or unsweet tea or iced tea
- coffee based products
- Gatorade, Powerade, Pedialyte, etc.
- non-alcoholic energy drinks
- fruit or vegetable juice drinks with *less than* 100% fruit or vegetable juice
- water with additives (if anything other than fluoride is added)
- non-alcoholic beer (less than 0.5% alcohol by volume)
- milk-based beverages not labeled as milk (*e.g.*, Dannon smoothie drink, Frappuccino)

- hemp-derived or cannabis non-alcoholic beverages

Non-taxable Liquids

The following beverages[4] are specifically excluded from the definition of bottled soft drink and are therefore not subject to the bottlers tax:

- fluid milk (with or without flavoring) – it must be labeled as milk to be exempt
- natural undiluted fruit juice or vegetable juice – it must be labeled as 100% fruit or vegetable juice, but may include additives)
    - The Department looks to the regulations of the U.S. Food and Drug Administration ("FDA") for guidance as to what constitutes exempt fruit or vegetable juice. According to these regulations, food must be labeled in a way that accurately identifies "the basic nature of the food or its characterizing properties or ingredients." 21 C.F.R. § 102.5(a). Under FDA regulations, labels on beverages containing fruit or vegetable juice must state the percentage of juice. 21 C.F.R. § 102.33. If a beverage contains less than 100 percent fruit or vegetable juice, it cannot be labeled as juice without also including a qualifying term such as "beverage," "cocktail," or "drink" (e.g., "diluted grape juice beverage" or "grape juice drink").
    - It is important to note that the FDA regulations still allow beverages to be labeled 100 percent juice with the addition of ingredients that do not result in a diminution of the juice soluble solids or, in the case of expressed juice, in a change in the volume. 21 C.F.R. § 101.3(b)(3). The addition of the ingredients must appear in an ingredient statement on a panel of the label, or the statement of 100 percent juice must be accompanied by the phrase "with added" (such as "ingredient," "preservative," or "sweetener") (e.g., 100% juice with added sweetener).
    - Therefore, if the label claims that the beverage is 100% juice, the Department considers it exempt from bottlers tax, regardless of whether any ingredients have been added, such as sweeteners, vitamins, minerals, or preservatives.
- cider

- pure fruit juice concentrate to which no additive has been made, with only water being necessary to be added to restore the juice to its natural state

Soft drink syrup is not a beverage and, therefore, is not subject to tax.[5]

Milk Products

If a product simply contains milk, it is not automatically exempt from taxation if it is not labelled milk and marketed as such. However, if a milk-substitute, such as soy or almond milk, is labelled as milk, that product would qualify for the exemption.

What Products Qualify as Meal Substitutes?

Meal substitutes and baby formula are food rather than beverages. Therefore, they are not subject to the bottlers tax.

Meal substitutes typically contain an adequate amount of carbohydrates, fats, and protein for a meal. Products such as Boost or Ensure can be given in a feeding tube to be used as a meal replacement. Products such as Slim Fast, Boost, Ensure, Glucerna, and Pedialyte are specifically exempt by law.

Protein drinks are considered a nutritional supplement. Protein shakes typically only contain an adequate amount of *protein* for a meal, therefore are not meal substitutes. Products such as Premier Protein, Muscle Milk, and Slate High Protein Milk Shakes are marketed as protein shakes rather than meal replacement shakes.

Premier Protein Nutritional Label:

Nutrition Facts

1 serving per container
Serving size 1 Shake (11 fl oz)

Amount per serving
Calories 160

	% Daily Value*
Total Fat 3g	4%
Saturated Fat 0.5g	3%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 180mg	8%
Total Carbohydrate 5g	2%
Dietary Fiber 3g	11%
Total Sugars 1g	
Incl. 0g Added Sugars	0%
Protein 30g	60%

Vitamin D 6mcg 30%	Calcium 650mg 50%
Iron 2.5mg 15%	Potassium 420mg 8%
Vitamin A 230mcg 25%	Vitamin C 23mg 25%
Vitamin E 3.8mg 25%	Vitamin K 30mcg 25%
Thiamin 0.3mg 25%	Riboflavin 0.3mg 25%
Niacin 4mg 25%	Vitamin B6 0.4mg 25%
Folate 100mcg DFE (59mcg folic acid) 25%	
Vitamin B12 0.6mcg 25%	Biotin 8mcg 25%
Pantothenic Acid 1.3mg 25%	Phosphorus 620mg 50%
Iodine 37mcg 25%	Magnesium 105mg 25%
Zinc 2.8mg 25%	Selenium 14mcg 25%
Copper 0.3mg 35%	Manganese 0.6mg 25%
Chromium 8mcg 25%	Molybdenum 11mcg 25%

* The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Boost Nutritional Label:

Examples of Non-taxable Liquids

The following are examples of non-taxable liquids that do not qualify as bottled soft drinks:

- 100% fruit or vegetable juice – Under FDA regulations, labels on beverages containing fruit or vegetable juice must state the percentage of juice. If a beverage contains less than 100% juice, a qualifying term such as "drink" or "cocktail" must be added.
- alcoholic beverages (equal to or greater than 0.5% alcohol by volume)
- milk (flavored or not) – Product must be labeled as milk and the first and primary ingredient must be milk.
- cider (*e.g.*, apple cider, pear cider, if 100% juice and less than 0.5% alcohol)
- juice concentrates (frozen or unfrozen)
- drink syrup or other concentrates that requires water or another additive before they are deemed drinkable or potable
- baby formula in ready to feed containers or concentrated liquid form
- meal substitutes (*e.g.,* Glucerna, Ensure, PediaSure)
- soy milk and other products labeled as milk that are not dairy products
- natural bottled water

Bottled Water

The Tennessee Court of Appeals, in *English Mountain Spring Water Company v. Chumley,*[6] determined that "natural" bottled water is not taxable. Water altered from its natural state is taxable. Plain water is not taxable, but bottled products that are more than just plain water are taxable such as flavored, sweetened, or artificially carbonated water.

Examples of non-taxable bottled water include:

- artesian water
- artesian well water

- mineral water
- purified water (may be called demineralized water, deionized water, distilled water, and reverse osmosis water)
- sparkling bottled water
- spring water
- carbonated mineral water (*e.g.,* Perrier, San Pellegrino, Gerolsteiner, and Ferrarelle)

Examples of taxable bottled water include:

- flavored or sweetened water (*e.g.,* glucose water)
- artificially carbonated water (*e.g.,* soda water)
- "natural" water with additional ingredients

Self-Service Water

Sales of water from a self-service dispenser where customers fill their own bottles whether the bottles are purchased from a store or brought from a customer's home to fill, are not subject to bottlers tax. The bottlers tax is imposed on bottled soft drinks sold in closed and sealed containers.

Application of Bottlers Tax

The bottlers gross receipts tax is 1.9% of the taxpayer's gross receipts derived from sales of bottled soft drinks.

The tax is imposed only once, at the time of the first sale in Tennessee or first importation for resale in this state. If an out-of-state bottler or manufacturer voluntarily pays the tax, the in-state dealer (*i.e.,* importer) is not liable. Therefore, a person importing or causing to be imported bottled soft drinks into the state from outside the state and selling imported soft drinks within the state is not required to pay the tax if the person's out-of-state supplier of bottled soft drinks has paid the tax.[7]

Manufacturers and producers pay tax on their sales to Tennessee customers. Importers pay tax on their cost of taxable products when imported. A person or entity located outside the

state that has nexus and distributes bottled soft drinks in the state, pays the tax on gross receipts derived from the distribution in this state in the same manner as a person located in this state.[8]

A soft drink manufacturer and distributor cannot deduct its distribution costs from its gross receipts prior to calculating its tax.[9]

An in-state manufacturer or producer of bottled soft drinks bears the tax burden imposed by the bottlers tax when it sells bottled soft drinks to a customer within this state.[10]

Exemption – Out-of-State Sales

A manufacturer or bottler who is subject to and pays bottlers tax is not liable for the tax on gross receipts derived from the person's sales of bottled soft drinks outside this state. An importer is not liable for the tax on any bottled soft drinks imported into the state that are then sold out of state.[11]

Exemption - Tennessee Business Tax

There is a business tax exemption for anyone who is subject to any gross receipts tax.[12] Therefore, anyone who pays bottlers tax may exclude the amount on which bottlers tax was paid from their business tax base. Please see the Department's Business Tax Manual for more information.

Credit – Franchise and Excise Taxes

Businesses are allowed a credit against the bottlers tax liability for any franchise and excise taxes paid on their bottled soft drink sales. Franchise and excise taxes paid on any business other than the business of manufacturing, bottling, or importing and selling bottled soft drinks cannot be credited against the bottlers tax.[13]

The bottlers tax credit cannot exceed 78.95% of the total tax liability due on the return. This correlates to the 1.5% bottlers tax portion of the liability. The 0.4% litter portion cannot be reduced or eliminated by the credit. Additionally, the credit is for taxes only. No credit is allowed for penalty and interest.[14]

The entity taxed for bottlers tax may only receive a credit for franchise and excise taxes paid by the same entity.[15] Furthermore, the credit is allowed only for franchise and excise taxes paid during the period in which the bottlers tax was paid. For example:

- For an entity to take a credit for franchise and excise taxes, the entity (1) must be required to pay Tennessee franchise and excise tax and (2) must have filed a franchise and excise tax return for the same fiscal or calendar year period as the bottlers tax return.

The steps for calculating the credit for franchise and excise tax paid can be found in the instructions to the bottler's tax return (GRO 200) and in Important Notice # 16-07. All the information needed to calculate the credit can be found on the taxpayer's franchise and excise return and gross receipts bottlers tax return. Additionally, the Department has an excel spreadsheet that can be used to calculate the credit for franchise and excise tax paid available here on the Department's website.

Any taxpayer that is granted an extension of time in which to file its franchise and excise tax return to a date subsequent to the August 1st bottlers tax return due date will not be allowed the credit for franchise and excise tax until payment has been made.[16]

Please see the Department's Franchise & Excise Tax Manual for more information.

Franchise Tax Credit – Property Measure Refunds

On May 10, 2024, Governor Lee signed Pub. Ch. 950 (2024) that changes how the Tennessee franchise tax is calculated. This legislation eliminates the property measure from the franchise tax calculation and authorizes the Department of Revenue to issue franchise tax refunds to eligible taxpayers. Taxpayers who paid the franchise tax on the property measure using Schedule G (Form FAE170) for tax years ending on or after March 31, 2020, for which a return was filed with the department on or after January 1, 2021, are eligible for a refund.

Taxpayers that claimed a credit on their bottlers gross receipts tax return for franchise tax paid for a tax period that is included in their franchise tax refund claim must amend the bottlers gross receipts tax return to reflect the change in the franchise tax credit. After the taxpayer receives its franchise tax property measure (Schedule G) refund, it should amend the impacted bottlers gross receipts tax return(s) to reflect the adjusted credit for franchise tax paid.

Bottlers Tax Return

The return for the bottlers tax is due annually on or before August 1. The tax is imposed on the privilege of doing business during the period beginning with July 1 (immediately preceding the August 1 due date) through the next June 30, but it is measured by the taxpayer's total receipts from sales (or purchases in the case of an importer) of bottled soft drinks during its most recent fiscal year ending before that July 1. For example:

- A calendar year taxpayer with a reporting period of January 1, 2019, through December 31, 2019, would have a filing due date of August 1, 2020, for the taxable period of July 1, 2020, through June 30, 2021.

- A fiscal year taxpayer with a reporting period of July 1, 2019, through June 30, 2020, also would have a filing due date of August 1, 2020, for the taxable period of July 1, 2020, through June 30, 2021.

See the chart below for guidance:

Bottlers Tax Reporting Period and Taxable Period					
If taxpayer's Bottlers Tax **Reporting Period** is:			If taxpayer's Bottlers Tax **Taxable Period** is:		
8/1/2019	through	7/31/2020	8/1/2018	through	7/31/2019
9/1/2019	through	8/31/2020	9/1/2018	through	8/31/2019
10/1/2019	through	9/30/2020	10/1/2018	through	9/30/2019
11/1/2019	through	10/31/2020	11/1/2018	through	10/31/2019
12/1/2019	through	11/30/2020	12/1/2018	through	11/30/2019
1/1/2020	through	12/31/2020	1/1/2019	through	12/31/2019
2/1/2020	through	1/31/2021	2/1/2019	through	1/31/2020
3/1/2020	through	2/28/2021	3/1/2019	through	2/29/2020
4/1/2020	through	3/31/2021	4/1/2019	through	3/31/2020
5/1/2020	through	4/30/2021	5/1/2019	through	4/30/2020
6/1/2020	through	5/31/2021	6/1/2019	through	5/31/2020
7/1/2020	through	6/30/2021	7/1/2019	through	6/30/2020

Then the **Tax Period** is:	Then the **Tax Period** is:
7/1/2021 through 6/30/2022	7/1/2020 through 6/30/2021
Return **Due Date** is:	Return **Due Date** is:
8/1/2021	8/1/2020

For this tax, "gross receipts/purchases" means before anything is deducted. A person cannot deduct any cost from the total gross receipts to arrive at a taxable total.

When a taxpayer begins business at any time other than July 1 (i.e., operates a business for less than one year), the taxpayer must file monthly returns through the next June 30.[17] The due date for these monthly returns is the 10th of the following month. Beginning the next July 1, the taxpayer will begin filing and paying the tax on an annual basis. The total gross receipts to be reported and used to establish the tax base for this first year's tax must be annualized [*i.e.*, total gross receipts (or purchases, in the case of an importer) from the first year divided by the number of months in business, then multiplied by 12]. Tax reported on all subsequent annual returns will be based on actual receipts derived during the previous year's business, as described above. For example, a bottler beginning business on April 1, 2020, should report its gross receipts as follows:

Month Start	Month End	Return Due	Tax Amount
April 1, 2020	April 30, 2020	5/10/2020	$4000
May 1, 2020	May 31, 2020	6/10/2020	$5000
June 1, 2020	June 30, 2020	7/10/2020	$6000
			$15000
Annualized receipts for 3 months are: $15,000 / 3 * 12 = $60,000			
4/1/2020 - 6/30/2020	7/1/2020 - 6/30/2021	8/1/2020	$60000

Quarterly Payments

Taxpayers have the option of paying the tax in quarterly installment payments. The initial installment amount will be paid with the return by August 1 and reflected on Line 15. The subsequent installment payments will be due no later than November 1, February 1, and May 1 and will be reflected on Line 14 of the return. However, interest will begin running on August 1, so any payments made after that initial due date must also include interest

calculated at the effective rate from August 1 until the date of payment.[18] Anyone electing the installment payment option will receive quarterly installment coupons by separate mailing.

Following is an example of how a taxpayer should calculate quarterly payments:

Calendar Year	Tax Year	Return Due Date	Total Tax Liability
1/1/2019 - 12/31/2019	7/1/2020 - 6/30/2021	8/1/2020	$100,000

Quarterly installment payments:

Installment	Payment Date	Amount	Penalty	Interest @ 7.25%	Total
1	08/01/20	$25,000	-	-	$25,000
2	11/01/20	$25,000	-	$457	$25,457
3	02/01/21	$25,000	-	$913	$25,913
4	05/01/21	$25,000	-	$1,355	$26,355
Total		$100,000	-	$2,724	$102,724
Interest is calculated from date due (8/1/2020) to date paid.					

If quarterly installment payments are not paid by the due date, penalty will be assessed for late payments at the rate of 5% of the installment for each 30 days (or portion thereof) that the installment remains unpaid subsequent to the due date, up to a maximum of 25%.[19]

If the ownership of a business is transferred and quarterly payments are due, the new owner is liable for the remaining quarterly payments. However, if the total tax is paid on August 1, no additional tax will be due from the purchaser.[20]

⚠ **Note that if a fourth of the amount owed is not paid by August 1, the taxpayer will no longer have the option of paying quarterly. The full amount will be due, and penalty and interest will accrue on any unpaid amount until fully paid. TENN. COMP. R & REGS. 1320-04-04-.02.**

[1] Tenn. Code Ann. § 67-4-402(b).
[2] Tenn. Code Ann. § 67-4-402(a).
[3] WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 146 (Merriam- Webster Inc. ed., 1989).
[4] Tenn. Code Ann. § 67-4-402(a)(1).
[5] Letter Ruling 94-04.
[6] 196 S.W.3d 144 (Tenn. Ct. App. 2005).
[7] Tenn. Code Ann. § 67-4-402(b).
[8] *Kroger Co. v. Tollett*, 608 S.W.2d 846 (Tenn. 1980).
[9] *Beaman Bottling Co. v. Huddleston*, 1996 WL 417100 (Tenn. Ct. App. 1996).
[10] *Dr. Pepper Pepsi-Cola Bottling Co. v. Farr*, 393 S.W.3d 201 (Tenn. Ct. App. 2011).
[11] Tenn. Code Ann. § 67-4-402(c).
[12] Tenn. Code Ann. § 67-4-712(b)(3).
[13] Atty. Gen. Op. 82-140.
[14] Tenn. Code Ann. § 67-4-402(d).
[15] *Dr. Pepper*, 393 S.W.3d 201.
[16] TENN. COMP. R. & REGS. 1320-4-4-.05.
[17] Tenn. Code Ann. § 67-4-309.
[18] Tenn. Code Ann. § 67-4-308(a).
[19] Tenn. Code Ann. § 67-4-308(a)(2).
[20] Tenn. Code Ann. § 67-4-308(b).