

Brewers, Winemakers, and Distillers: Vermont Taxes and the Manufacture and Sale of Alcoholic Beverages

There are a number of Vermont tax types that affect manufacturers of alcoholic beverages. This fact sheet provides information on some of the common issues related to three of those tax types: malt and vinous beverage tax, meals and rooms tax, and sales and use tax.

Summary of Tax Types Related to Alcoholic Beverages

Malt and Vinous Beverage Tax (7 V.S.A. § 421)

Tax is imposed (1) on sales from bottlers and wholesalers to retailers and (2) retail sales by manufacturers and rectifiers. The tax rate is 26.5 cents per gallon of malt beverage containing 6% or less alcohol by volume and 55 cents per gallon for all other malt beverages and for vinous beverages. See our website for information related to the necessary forms and for due dates: tax.vermont.gov/taxes/misc.

The malt and vinous beverage tax is imposed on the distributor, or on a manufacturer if it distributes its own product. When a manufacturer of alcoholic beverages sells to a distributor, the tax is imposed on the distributor. However, the malt and vinous beverage tax is due from the manufacturer for all other sales. Please remember to include all beverages not sold to a distributor on your malt beverage tax return or your vinous beverage tax return.

Keep in mind that malt and vinous beverage tax becomes due when you sell a beverage. If you transfer beverages from your manufacturing facility to a retail store or restaurant under common

ownership, tax is not due for that transfer. Instead, tax becomes due when your retail business conducts the sale because that transaction is considered a retail sale by a manufacturer.

Note: The tax on spirits and fortified wines is not administered by the Department of Taxes. Please contact the Vermont Department of Liquor Control for information related to that tax.

Additional Reporting

Under Vermont law, businesses that sell malt and vinous beverages to retail dealers are required to submit a report of the description, quantity, and price of those beverages. The report is due at the same time as the malt and vinous beverage tax return. Bottlers and wholesalers are required to submit electronically, but manufacturers are allowed to submit electronically or non-electronically. For more information, see the fact sheet "Reporting Malt and Vinous Beverages Sold Direct to Retailers" (Pub. FS-1041). If you have questions, please contact us at (802) 828-2514.

Meals and Rooms Tax (32 V.S.A. chapter 225)

The meals and rooms tax is imposed on the sale of all alcoholic beverages (malt beverages, vinous beverages, spirits, and fortified wines) sold for immediate consumption. The tax rate is 10%. Please see below for changes made in the 2016 legislative session that impact

how the meals and rooms tax should be applied to alcoholic beverages. Alcoholic beverages subject to meals and rooms tax are exempt from sales and use tax. See our website at tax.vermont.gov for information related to the necessary forms and for due dates.

Sales and Use Tax (32 V.S.A. chapter 233)

The sales and use tax is imposed on alcoholic beverages sold at retail that are not for immediate consumption. The sales and use tax is also imposed on many of the items purchased and used by businesses, although some

items are exempt from tax. The tax rate is 6%. The use tax applies when a taxable item is used or consumed by the retailer. See our website at tax.vermont.gov for information related to the necessary forms and for due dates.

Disclaimer: This fact sheet is intended to provide an overview only. Vermont tax statutes, regulations, Vermont Department of Taxes rulings, or court decisions supersede information provided in this fact sheet.

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The Law Changed in 2016—Meals and Rooms Tax Applies to Free Samples of Alcoholic Beverages

All alcoholic beverages provided for immediate consumption are now subject to meals and rooms tax. This means that no tax is due for free samples of alcoholic beverages provided for immediate consumption because the meals and rooms tax is applied to a charge of \$0.00.

The sales and use tax does not apply to alcoholic beverages sold for immediate consumption. Hypothetically, if the sales and use tax were applied, a free sample would be considered a taxable “use” of inventory.

If you provide samples, your business will need to contact the Department to set up a meals and rooms

tax account if it does not have one already. Although no meals and rooms tax is due when a manufacturer provides free samples, keep in mind that the law is applied differently for the malt and vinous beverage tax. The malt and vinous beverage tax applies to retail sales by manufacturers and is calculated based on gallons. You should include the number of gallons given as free samples on your malt and vinous beverage tax returns because free samples are retail sales where the charge was \$0.00.

Note: It is not always legal to provide free samples of alcoholic beverages. Please consult with the Department of Liquor Control before taking action.

Bundled Transactions—Combining Alcoholic Beverages with Other Items in a Retail Transaction

The Department of Taxes suggests that you itemize on a receipt all items sold together and apply the appropriate type of tax individually to each item. If you sell items bundled together, however, please follow the instructions below.

You should apply the highest applicable tax rate to the entire transaction when bundling non-itemized products together. For example, if you sell a pint of beer and an unopened growler of beer together and do not itemize, you should apply the 10% meals and rooms tax rate to the entire transaction. If you itemized that transaction, the unopened growler would be subject to sales and use tax because it is not for immediate consumption. However, because the transaction in this example is not itemized, the entire transaction is subject to meals

and rooms tax because the growler was part of a non-itemized bundle transaction with a pint of beer that is subject to meals and rooms tax.

Caution: Structuring Non-Itemized Transactions

The Department of Taxes requests that you be cautious when structuring transactions in a nontraditional way. For instance, if a business sells tangible personal property subject to sales and use tax, such as a mug, at an increased price but offers “free samples” with the purchase of the mug, the business is actually charging for the free samples but shifting that charge into the price of the mug. The Department will consider transactions like this one as subject to the meals and rooms tax because an indirect charge is being made for alcoholic beverages for immediate consumption.

Tours Are Subject to Sales and Use Tax

Charges for admission to places of amusement are subject to sales and use tax. Tours of manufacturing facilities are expressly identified by the Sales and Use Tax Regulations as taxable. Sometimes taxpayers overlook the collection of sales tax for a tour because they believe its educational nature makes it tax exempt. Please be aware that tours by for-profit

entities are almost always taxable, even when they are at traditionally educational facilities, such as zoos, museums, and observatories. Also be aware that if alcoholic beverages are bundled with the admission price for a tour, and the charges are not itemized, you are required to apply the 10% meals and rooms tax rate to the entire charge.

Sales and Use Tax Exemptions for Manufacturing

Breweries, wineries, and distilleries are manufacturers because they conduct food processing. Some tangible personal property purchased by manufacturers of alcoholic beverages is exempt from sales and use tax. Apply the following tests to determine whether a particular item may qualify. See the explanations after the test to learn how to apply the tests.

Failing to meet one part of the test means that the item is subject to tax.

Manufacturing Supplies Test

To qualify, an item must be (1) tangible personal property, (2) used in the manufacturing process, (3) have a useful life of less than one year, and (4a) become an ingredient or component part of tangible personal property for sale, or (4b) be consumed or destroyed or lose its identity in the manufacture of tangible personal property for sale.

Manufacturing Machinery and Equipment Test

To qualify, the item must be: (1) machinery or equipment, (2) used or consumed directly in manufacture, (3) used or consumed exclusively in manufacture, (4) used to manufacture tangible personal property, machinery, equipment, parts, or supplies for use in the manufacturing process, and (5) used during the manufacturing process.

Manufacturing Monitoring Device Test

To qualify, an item must be: (1) used during the manufacturing process and (2a) used to monitor manufacturing machinery and equipment, or (2b) used to monitor the product.

Information helpful to applying each of the three tests follows The Manufacturing Process section below.

The Manufacturing Process

The manufacturing exemption only applies to supplies, machinery, equipment, and monitoring devices used in the manufacturing process. The manufacturing process is defined as **beginning with the first production process and ending with the initial packaging** of the product. Anything used outside of that process is subject to tax. Any storing, collecting, weighing, testing, or cleaning that occurs before the first production cycle is not part of the manufacturing process. Likewise, any cleaning, secondary packaging, loading, delivery, or transportation of finished goods that follows initial packaging is not part of the

manufacturing process. Initial packaging is the stage in the process where the product is in the form in which retail consumption occurs. **For alcoholic beverages, initial packaging concludes when the beverage is sealed in a bottle, can, keg, barrel, or similar container used for retail consumption.**

Quality Control Testing

Quality control testing is generally considered part of the manufacturing process even if it appears to take place outside of what is normally considered the manufacturing process.

Supplies: Refer to this information when applying the Manufacturing Supplies Test

A supply must either (1) be an ingredient or component part or (2) be consumed or destroyed in manufacturing. It must also have a useful life of less than one year. For alcoholic beverages, supplies are usually limited to the ingredients that go into the beverage.

Generally, cleaning supplies and maintenance supplies are not ingredients, component parts, consumed, or destroyed in manufacturing. One exception is when bottles or cans are cleaned immediately prior to initial packaging. In that instance, cleaning is part of manufacturing because it preserves the quality of the product and it is done during the manufacturing process. In that limited case, cleaning supplies are

considered “consumed in manufacturing.” Most other instances of cleaning occur outside of the “manufacturing process,” as defined by the sales and use tax regulations.

Bottles and cans are not manufacturing supplies but they are exempt as packaging materials. Sales of packing, packaging, or shipping materials to manufacturers or distributors who use the materials for the packing, packaging, or shipping of tangible personal property for sale are exempt. Boxes and similar packaging are also exempt from tax under the packaging exemption.

Machinery and Equipment: Refer to this information when applying the Manufacturing Machinery and Equipment Test

“Machinery and Equipment” is defined by the regulations as “tangible personal property, capital in nature, with a useful life of one year or more, and does not include real property or supplies.” To be considered machinery or equipment, and therefore eligible for an exemption, an item must: (1) be tangible personal property (not real property and not intangible), (2) be capital in nature (it must be used or consumed to produce other goods) and (3) have a useful life of one year or more (although it may be a supply if it has a useful life of less than one year). An item is not required to be depreciated to be considered “machinery and equipment” for purposes of the exemption.

The exemption for manufacturing machinery and equipment is a “use based” exemption. This means that the way a particular item is used may determine whether it is taxable. It can be difficult to determine how the law applies to a particular use and the Department of Taxes understands that. We encourage any business to contact the Department if it is unsure about the taxability of a purchase. You may also request a formal ruling if you would like a definitive answer. A formal ruling is binding on the taxpayer and the Department.

Machinery and equipment may be exempt if it is used to manufacture tangible personal property, machinery, equipment, parts, or supplies used in manufacturing. It may also be exempt if it is for monitoring (see below). Machinery and equipment that is used for any other purpose is not exempt under the manufacturing exemption.

Direct and Exclusive Use—Machinery and Equipment

To be exempt, machinery and equipment must be used directly and exclusively in manufacturing.

Direct Use: The Department of Taxes has to consider on a case-by-case basis whether machinery and equipment is used directly in manufacturing. The factors we will consider include:

- The active causal relationship between the use of the machinery and equipment and the production of a product;
- Whether the machinery and equipment is part of an integrated and synchronized system that qualifies as exempt; and
- Whether the machinery and equipment guarantees the integrity or quality of the manufactured product.

The Department may also consider other factors, including all the facts and circumstances related to the machinery or equipment in question. Please keep in mind that all the factors are considered, so one single factor is not by itself determinative as to whether the exemption applies. Also be aware that some machinery that is required by law or is required to produce the product may not meet all the requirements and therefore may be taxable.

The production of alcoholic beverages often involves waste by-products. Machinery and equipment used to remove waste by-products are not directly used in manufacturing. Please be sure to pay sales and use tax when purchasing machinery and equipment used for waste removal.

Exclusive Use: Machinery and equipment must be used exclusively for manufacturing during the manufacturing process. The Sales and Use Tax Regulations define “exclusively” to be 96% of the time the machinery and equipment is operated.

Monitoring Devices: Refer to this information when applying the Manufacturing Monitoring Device Test

Monitoring devices are exempt if they monitor machinery or equipment or monitor the product. The monitoring must occur during the manufacturing process.

Tangible Personal Property Not Used for Manufacturing

Tangible personal property used for office administration, retail sales, tasting rooms, or a restaurant associated with your business is subject to tax under the manufacturing exemption. Please make sure you do not claim the exemption for property used for those purposes.

Exemption Certificates

Use a Vermont S-3M exemption certificate when claiming a manufacturing or packaging exemption during a purchase.

Resources

See the Sales and Use Tax Regulations at tax.vermont.gov/regulations for more detailed information relating to exemptions. Regulation § 1.9741(14) specifically describes the manufacturing exemption. The regulations include many examples to help understand how the law should be applied.

Also see our website at tax.vermont.gov for general information for businesses and for information relating to exemption certificates.

