

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(2)M
Alcoholic Beverage Tax
June 9, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner operates a brewery and asks whether it is responsible for the New York State excise tax on alcoholic beverages (“ABT”) for beer sold to a wholesaler or distributor. It also asks whether the beer it serves in its public tasting room is subject to ABT. We conclude that the ABT generally applies to Petitioner’s sales and uses of beer in the State because it qualifies as a distributor, but that Petitioner’s sales of beer to other distributors of beer will be exempt, provided that Petitioner and the purchasing distributors are registered for ABT purposes. We further conclude that Petitioner must pay ABT on its sales of beer in its tasting room.

Facts

Petitioner is a New York State manufacturer of beer with a manufacturing facility in New York City. Petitioner also subcontracts some of its manufacturing to facilities both in and out of New York State. Petitioner’s entire product is sold to wholesalers, except for quantities that Petitioner sells in its tasting room. Beer is sold by the glass or by the growler in the tasting room.

Analysis

Tax Law § 424 imposes the ABT on alcoholic beverages, including beer, for sale or use within the State, unless otherwise exempt. New York City also imposes an excise tax on beer and liquor pursuant to the authority of Tax Law § 445 that is administered and collected by the Department in like manner as the ABT. *See* NYC Admin. Code § 11-2056. The ABT and NYC excise tax are imposed on distributors and non-commercial importers. For purposes of these taxes, “distributor” includes “any such person who produces, distills, manufactures, brews, compounds, mixes or ferments any such alcoholic beverages within this state for sale.” *See* Tax Law § 420(4)(a). Petitioner, as a manufacturer of beer, qualifies as a distributor for purposes of the ABT and NYC local tax and must pay tax on sales or uses of beer in the State and NYC, as applicable, unless an exemption applies.

Sales of alcoholic beverages between registered distributors are exempt from the ABT provided those distributors are registered with the Department pursuant to Tax Law § 421. *See* Tax Law § 424(1)(g); TB-AB-245; Form MT-50-I. Accordingly, Petitioner may sell beer

exempt from the ABT and NYC local tax to another distributor within the State or NYC, as applicable, provided that both Petitioner and the purchasing distributor are registered pursuant to Tax Law § 421. The beer so sold will be subject to tax in the hands of the purchaser in the same manner as if the purchaser sold or produced the alcoholic beverage. *See* Tax Law § 424(1)(g).

Petitioner must pay the ABT tax on beer that is sold by the glass or growler in the tasting room. *See* Tax Law § 424. However, alcoholic beverages furnished by a licensed producer at no charge to a customer or prospective customer at a tasting held in accordance with Alcoholic Beverage Control (ABC) Law for consumption at such tasting are not subject to the ABT. If Petitioner offers tastings that comply with the ABC Law, and the samples are provided free of charge for consumption at the tasting, the beer provided at those tastings is not subject to the ABT. *See* Tax Law § 424(6).

DATED: June 9, 2020

/S/

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Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.