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# National Beer Wholesalers Association

*Selected 2014 updates to:  
An analysis of the structure  
and administration of state  
and local taxes on the  
distribution and sale of beer*

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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## Background

KPMG LLP (KPMG) was engaged to evaluate the findings regarding the various structures and mechanisms used for taxing the distribution and sale of beer as presented in the State and Local Taxation on the Distribution and Sale of Beer Report (“2009 Report”) prepared by KPMG in March 2009 for the National Beer Wholesalers Association. KPMG was also asked to review and update, as necessary, the information on the rates imposed on the distribution and sale of beer as presented in Appendix A of the 2009 report. Accordingly, we reviewed state statutory and legislative information as well as various third-party sources regarding certain enacted tax changes.

This report is intended to provide an educational document highlighting structure and administration changes of various state and local taxes that are imposed on the sale and distribution of beer. The use of the report is limited to the examination of administration of different tax structures and offers no opinion as to preferred means or levels of taxation on beer. KPMG has not endorsed any particular public policy regarding the taxation of beer.

### Administration of beer taxes

As discussed in the prior report, there are three general types of taxes imposed on the distribution and sale of beer, including: (1) gallonage taxes imposed on a volumetric basis similar to federal beer excise taxes; (2) general sales taxes applied to retail sales of beer; and (3) special retail taxes that are sometimes levied in lieu of a general retail sales tax. The prior report evaluated these three taxes using several criteria considered important in assessing the administration of the tax: (a) the number of taxpayers involved; (b) the simplicity of the tax; (c) availability of data necessary for compliance; (d) return filing burden; (e) availability of third-party reporting to aid in compliance; (f) necessity of field audits to ensure compliance; (g) opportunities for evasion; and (h) available legal enforcement mechanisms.

Based on these criteria, the prior report concluded that volumetric gallonage taxes imposed on beer wholesalers most closely aligned with the characteristics to evaluate the administration of taxes on beer. In particular, the limited number of taxpayers involved, the simplicity of the tax, and the availability of third-party reports to assist in enforcing compliance, all contribute substantially to the ability to achieve relatively high compliance levels with relatively low compliance costs with gallonage taxes.

In the five years since the prior report, very few changes among tax structures and rates further highlight the principals favoring gallonage taxes within the three-tier system. First, there are relatively few taxpayer-distributors within a state jurisdiction allowing for greater oversight

of the parties involved. Second, the gallonage tax itself is a relatively simple tax to calculate—a flat price per gallon sold. Third, the data necessary to complete the returns is readily available—how much beer was sold and to whom was it sold. Fourth, the compliance burden on distributors is low due to the ease of maintaining and filing monthly reports. Fifth, the availabilities of supplier records for sales to distributors allows for greater state oversight on the distributors and less chance for evasion—thus continued compliance. Finally, noncompliance in reporting of gallonage taxes can result in the revocation of distributor licenses in a market where relatively few licenses exist, along with interest and penalties on tax liabilities, and thus incentives to remain compliant are significant.

KPMG also found in the 2009 Report that certain other features of the regulatory system governing the sale of beer, such as the three-tier distribution system and various controls on the retailing and wholesaling of beer, can facilitate the administration of various taxes on beer. In particular, the three-tier system enables tax and beverage control authorities to establish an effective system of third-party reporting to monitor product flows through the system and to aid in tax compliance. We continue to believe these findings are accurate and relevant. Certain of the state changes adopted since our earlier report have leveraged these attributes to promote compliance.

Outside of general tax rate changes, Tennessee and Texas were the only jurisdictions to substantially modify the beer tax regime since 2009. Tennessee's wholesale tax revision demonstrates further support of the gallonage tax over a flat percentage wholesale tax. Additionally, Tennessee adopted greater enforcement procedures designed to improve compliance by requiring wholesalers to file informational reports so that retailer remittance of sales taxes can be verified. These procedures build on certain of the attributes of the three-tier distribution system enabling third-party reporting as part of the compliance process and aid alcohol enforcement agencies in monitoring all participants in the system. Further, Texas reduced its gross receipts tax in favor of a sales tax passed on to consumers. Both Tennessee and Texas were "outliers" for imposing the taxes that were amended—both state changes result in a greater harmonization with other state laws rather than a divergence—further evidencing the stability of the three-tier system.





## Initial observations and findings

KPMG observed few changes to rates and taxing structures from the findings made in the original report. Primarily, there were a number of minor excise tax rate changes as well as other tax rate changes. Those changes were updated accordingly and are specifically addressed below. In addition to general rate changes, Tennessee revised its wholesale tax scheme.

### Tennessee wholesale tax

In 2013, Tennessee enacted legislation revising its wholesale beer tax from a percentage-based tax to a fixed-dollar-per-barrel tax. Until this change, Tennessee and Kentucky were unique among the states in their taxation of beer as they were the only two states that had adopted a wholesale beer tax that was levied relative to the wholesale value of beer as opposed to the flat-rate gallonage levy employed in all other states. Tennessee previously imposed a wholesale beer tax of 17 percent on the wholesale price of beer. Effective July 1, 2013, the wholesale beer tax was amended from the 17 percent rate on sale price to a flat \$35.60 per barrel of beer sold.<sup>1</sup> The amendment also changed the amount remitted to the Department of Revenue for the administration of the wholesaler beer tax

from a percent to a fixed rate (0.5 percent of the gross tax per barrel to \$0.17 per barrel) and revised the amount retained by the wholesaler to defray the costs of collecting and remitting the tax from a percent to a fixed rate (3 percent of the gross tax per barrel to \$0.92 per barrel).<sup>2</sup>

The legislation did not affect the special remittance aspect of Tennessee's wholesale beer tax, which requires beer wholesalers to remit the wholesale beer tax to the county and municipal governments in which the retailer to whom the product is sold is located rather than the Department of Revenue.<sup>3</sup> Similarly, enforcement and audits will continue to be the responsibility of the Tennessee Department of Revenue.

<sup>1</sup>Tenn. Code Ann. § 57-6-103.

<sup>2</sup>Tenn. Code Ann. § 57-6-103.

<sup>3</sup>Tenn. Code Ann. § 57-6-103.



Additionally, beginning in 2012, the Tennessee Retail Accountability Program was created to require wholesalers of beer and tobacco products to file an information report on sales made to retailers with the Tennessee Department of Revenue. The Retail Accountability Program was created to improve overall tax compliance by retailers selling beer by providing the Department with information by which it can evaluate the sales tax filings of such retailers. The Retail Accountability Program monthly reporting obligation began

in December 2012 and is due on the 25th of each month for the previous month's reporting period. A penalty of up to \$1,000 for every month the report is not provided can be imposed on a wholesaler, with a maximum penalty of \$10,000. According to the Tennessee Department of Revenue, the first Retail Accountability Program assessments were issued in April 2013 and an estimated \$8.2 million in additional sales taxes have been collected as a result of the program.



## General excise tax, sales tax, and other tax revisions



### Excise tax<sup>4</sup>

Since the 2009 report, there have also been a number of excise tax rate changes enacted; they are highlighted in the attached matrix displaying the rates of various taxes imposed on the distribution and sale of beer. Additionally, Illinois and North Carolina were subject to excise tax rate increases. The Illinois tax was increased to \$0.231 per gallon from \$0.185 per gallon, on September 1, 2009. North Carolina's rate increased to \$0.6171 per gallon from \$0.53177 per gallon, also effective on September 1, 2009.

Several revisions were made to account for various rate structures based on the alcohol content of the beer. In Arkansas, it was noted that "malt beverages," those with 5 or more percent alcohol content, were assessed a lower excise tax rate of \$0.20 a gallon. A similar notation was included for Idaho, where beer in excess of 4 percent alcohol content is subject to an excise rate of \$0.45 per gallon, \$0.30 higher than beer of 4 percent or less alcohol content. Finally, Vermont's excise tax rate of \$0.265 a gallon was clarified to include beer with 6 percent alcohol content or less. Malt beverages, those over 6 percent but not more than 16 percent, are taxed at \$0.55 a gallon. One further clarification was included to detail that under Vermont law, beverages with an alcohol content of 6 percent and a "terminal specific gravity" of less than 1.009 are deemed "spirits" and taxed accordingly.

KPMG also conducted a high-level review of small brewer exemptions. One noteworthy development was a taxpayer challenge to New York's small brewer exemption. That exemption provided a \$0.14 per gallon state excise tax for the first 200,000 barrels of beer, or 6.2 million gallons, produced in New York. In a settlement with the taxpayer on March 28, 2012, the New York State Liquor Authority and the Department of Taxation and Finance conceded the law to be unconstitutional because in-state produced beer was treated differently than imported beer.<sup>5</sup> In response to the voiding of the exemption, the New York state legislature enacted a refundable corporate franchise and personal income tax credit for all registered distributors that produce 60 million or fewer gallons of beer in the state, effective for tax years 2012 and after.<sup>6</sup> The credit is equal to \$0.14 per gallon for the first 500,000 gallons and \$0.045 cents per gallon for the each additional gallon up to 15 million gallons produced in the same tax year.

Additionally, the Kentucky legislature recently clarified the authority for small brewery on-premise sales of malt beverages. Those sales can be made without transferring physical possession to a distributor.<sup>7</sup> The small brewery must collect the 11 percent wholesale tax on the value of the beverages sold and provide the tax to a licensed distributor for remittance to the state each month. Kentucky also enacted

<sup>4</sup> A revision was made to Arkansas to add \$0.001 to account for a rounding discrepancy in the listed rate from the prior report—there was no change in the statutory imposition of the rate at \$7.50 per gallon or \$0.234 per gallon, rounded.

<sup>5</sup> See *Shelton v. N.Y.S. Liquor Authority*, Index No 7893-06 (Sup. Ct. Albany Cty. Mar. 28, 2012) and State of New York Liquor Authority, Brand label registration fees and excise tax exemptions for beer, Advisory #2012-2, Apr. 10, 2012.

<sup>6</sup> N.Y. Tax Law § 37.

<sup>7</sup> Ky. Rev. Stat. Ann. § 243.157, effective June 25, 2013.



a reduction of the wholesale tax on beer from 11 percent to 10 percent by reducing the rate by a quarter of one percent per year over a four-year period beginning on July 1, 2015.<sup>8</sup>

On June 13, 2013, the Governor of Texas signed legislation reducing the tax rate of the Mixed Beverage Gross Receipts Tax and implemented a new Mixed Beverages Sales Tax. Effective January 1, 2014, the Mixed Beverage Gross Receipts Tax was reduced from 14 percent to 6.7 percent. The corresponding Mixed Beverages Sales Tax imposes a tax of 8.25 percent upon the same transactions subject to the Mixed Beverage Gross Receipts Tax. Texas's Mixed Beverage Gross Receipts Tax is imposed on a business's gross receipts for the "sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises" of a business permitted to make such sales.<sup>9</sup> Note that the Mixed Beverage Gross Receipts Tax and Mixed Beverage Sales Tax only apply to sales from those businesses with a mixed beverage permit or other qualifying permit.<sup>10</sup> The new legislation does not impose the gross receipts tax on the sale of beer from establishments which hold only a wine and beer permit.<sup>11</sup> Sales from those establishments remain subject to the sales tax.

## Sales taxes

A review of the imposition of sales taxes found no significant changes to whether a state generally imposes sales taxes on beer. While specific state and local tax rates were not discussed in the prior report or this current update, it is notable that state and local sales tax rates change fairly often and are likely not at the same rate as 2009 in most local and many state jurisdictions.

Additionally, revisions to on- and off-premise tax rates were catalogued in Maine and the District of Columbia. Maine increased its on-premise rate to 8 percent from 7 percent. The District of Columbia increased its off-premise rate to 10 percent from 9 percent, making it identical to the on-premise tax rate.

Two final notations were made regarding sales taxes. In Pennsylvania, beer is generally taxable in the state when sold by a manufacturer to a distributor, but sales by retail dispensers are exempt. However, Philadelphia and Allegheny counties impose certain local taxes on retail sales. In Rhode Island, the current local meals and beverage tax is 1 percent. Effective July 1, 2013, the state passed legislation that will increase the meals and beverages tax to 1.5 percent upon passage of any federal law which authorizes states to require remote sellers to collect and remits sales and use taxes, such as the Marketplace Fairness Act of 2013.

## Other taxes<sup>12</sup>

KPMG noted changes to the "other taxes" category that were not squarely a sales or excise-related tax. In Kansas, the 10 percent liquor drink tax on the gross receipts from the sale of alcoholic liquor by retail establishments was extended to the acquisition costs of any alcoholic liquor served as "samples" by those retail establishments, effective July 1, 2013. A beer sample is considered a serving of two or more ounces.

"Stadium taxes" were included in the prior report for Michigan and Ohio. In Michigan, a municipal stadia and convention facility tax is imposed at 1 percent of the gross receipts on the sale of alcoholic beverages. Similarly, Ohio once authorized a county liquor sales tax and a convention facilities tax by voter approval, although that authorization was repealed in 2008, except for those taxes levied before September 22, 2008, and still in effect.<sup>13</sup> Currently, Cuyahoga County is the only county in Ohio that imposes such a tax on the sale of beer. That tax was originally enacted in 1990 and is imposed at the rate of \$0.16 per gallon to fund the construction and improvements to Progressive Field and Quicken Loans Arena.<sup>14</sup>

A local option tax was included for Vermont as the state has conditionally authorized that tax as an alternative method for raising municipal revenues required by certain reforms in 1997. That tax may only be levied by the municipality under limited conditions.<sup>15</sup>

<sup>8</sup> H.B. 445, 2014 Gen. Assemb., Reg. Sess. (Ky. 2014) (enacted)

<sup>9</sup> Tex. Tax Code § 183.021(2013).

<sup>10</sup> See Texas Mixed Beverage Gross Receipts Tax Report and Mixed Beverage Sales Tax Report, Forms 67-100 and 67-103, respectively.

<sup>11</sup> Tex. Tax Code § 183.001, definition of "Permittee."

<sup>12</sup> A revision was made to R.I. by removing the "Alcoholic Beverage Floor Stock Tax," which was imposed for beer held by licensees in the state on June 30, 1989, and not applicable to any other periods.

<sup>13</sup> Ohio Rev. Code Ann. §§ 4301.421 and 4301.424.

<sup>14</sup> See *Alcoholic Beverage Taxes – County*, Ohio Dep't of Revenue, [http://www.tax.ohio.gov/portals/0/communications/publications/brief\\_summaries/2010\\_brief\\_summary/alcoholic\\_beverage\\_taxes\\_county.pdf](http://www.tax.ohio.gov/portals/0/communications/publications/brief_summaries/2010_brief_summary/alcoholic_beverage_taxes_county.pdf).

<sup>15</sup> Vt. Stat. Ann. tit. 24, § 138.



## Conclusion

State taxes imposed on the distribution and sale of beer have remained quite steady since the release of the 2009 Report, with only two general excise tax rate increases and a relative handful of special excise rate increases. The most significant changes, namely in Tennessee and Texas, brought those states' beer taxing structures more in-line with the imposition of gallonage taxes and administration among all the states.



# National Beer Wholesalers Association

## State excise tax on beer chart

Current as of January 1, 2014

State	State excise tax rates (\$ per gallon)	General sales taxes applied on retail sale	Special taxes applied on retail sale	Comments/ on-premise tax	Other taxes	Comments
Alabama	\$0.533	Yes	No		\$0.52/gal	Local gallonage tax
Alaska	\$1.070	N/A	No			
Arizona	\$0.160	Yes	No			
Arkansas	\$0.234	Yes	Yes	1% special tax on off-premise beer sales (special alcoholic beverages excise tax)	\$0.0078/gal	Consumer enforcement tax collected by beer wholesaler
California	\$0.200	Yes	No			
Colorado	\$0.080	Yes	No			
Connecticut	\$0.240	Yes	No			
Delaware	\$0.156	N/A	No			
Florida	\$0.480	Yes	No	Effective July 1, 2008, on-premise surcharge tax repealed, 2006 Fla. Sess. Law Serv. Ch. 2006-162		
Georgia	\$0.322	Yes	No		\$0.387/gal per 15-1/2 gal. container; \$0.533/gal per 12oz. container	Local gallonage tax
Hawaii	\$0.930	Yes	No		0.5% wholesale excise tax	
Idaho	\$0.150	Yes	No		Local option on-premise beer tax	
Illinois	\$0.231	Yes	No		Local tax varies	Local gallonage taxes are permitted in Chicago and Cook County
Indiana	\$0.115	Yes	No			
Iowa	\$0.190	Yes	No			
Kansas	\$0.180	Yes	Yes	Off-premise sale of beer less than 3.2% alcohol subject to retail sales tax. All other off-premise sales of beer and all sales of beer to on-premise retailers subject to 8% liquor enforcement tax in lieu of sales tax.; On-premise liquor drink tax of 10%	10% Liquor Drink Tax	Imposed on all on-premise sales of beer (and other alcoholic beverages) and upon the acquisition costs of any alcoholic liquor served as samples by clubs and drinking
Kentucky	\$0.081	Yes	No	Off-premise sales of beer subject to retail sales tax effective April 1, 2009. Ky. H.B. 144	11% wholesale gross receipts tax, to be reduced by 0.25% per year for four years beginning July 1, 2015; Local Option Tax	Wholesale gross receipts tax



State	State excise tax rates (\$ per gallon)	General sales taxes applied on retail sale	Special taxes applied on retail sale	Comments/ on-premise tax	Other taxes	Comments
Louisiana	\$0.323	Yes	No		Local option tax, not more than \$0.048 per gallon	
Maine	\$0.350	Yes	Yes	Off-premise sales of beer subject to retail sales tax of 5.5%; on-premise sales subject to 8% tax		
Maryland	\$0.090	Yes	No			
Massachusetts	\$0.106	No	Yes	Beverages subject to excise tax are not also subject to the sales and use tax. On-premise sale subject to tax "Meals Tax"—same rate as general sales tax, 830 Mass. Code Regs. 64H.6.5 & Mass. L.R. 96-2; Also, where applicable, a 0.75% local option sales tax	0.57% (gross receipts tax)	Corporations subject to corporate excise tax not subject to this tax
Michigan	\$0.203	Yes	No		Stadium tax	municipal stadia and convention facility development excise tax – 1% on the gross receipts of beverages including alcohol
Minnesota	\$0.148/\$0.077	Yes	Yes	All sales subject to an additional 2.5% Liquor Gross Receipts Tax		Minneapolis and St. Cloud also impose a local liquor tax
Mississippi	\$0.42684	Yes	No	Local option on-premise tax	Prepaid sales tax	Mississippi requires beer wholesalers to collect prepaid retail sales tax on sales to retailers
Missouri	\$0.060	Yes	No			
Montana	\$0.139	N/A	No			
Nebraska	\$0.310	Yes	No			
Nevada	\$0.160	Yes	No			
New Hampshire	\$0.300	N/A	Yes	Beer sold in restaurant subject to 8% meals and rentals tax		
New Jersey	\$0.120	Yes	No		Local option tax	Localities may also impose an additional tax
New Mexico	\$0.410	Yes	No			
New York	\$0.140	Yes	No		\$0.12/gal. NYC tax	Collected with New York State tax; other localities may also impose similar tax

State	State excise tax rates (\$ per gallon)	General sales taxes applied on retail sale	Special taxes applied on retail sale	Comments/ on-premise tax	Other taxes	Comments
North Carolina	\$0.6171	Yes	No			
North Dakota	\$0.160	No	Yes	All sales subject to 7% gross receipts tax in lieu of sales tax		
Ohio	\$0.180	Yes	No		Cuyahoga County beer tax	Only authorized county to impose an additional tax on beer
Oklahoma	\$0.403/\$0.363	Yes	Yes	On-premise tax sales of beer (other than beer of less than 3.2% alcohol by weight) subject to 13.5% mixed beverage tax in addition to retail sales tax		
Oregon	\$0.084	N/A	No			
Pennsylvania	\$0.080	Yes	No	Philadelphia and Allegheny Counties (Pittsburgh) impose local beverage taxes		
Rhode Island	\$0.106	Yes	No	Local meals/beverage tax – 1%, R.I. Gen. Laws § 44-18-18.1, upon passage of remote seller legislation, rate will be increased to 1.5%	\$0.04/case	Beverage container tax
South Carolina	\$0.768	Yes	No			
South Dakota	\$0.274	Yes	No		Local option tax	Municipality may enact additional 1% gross receipts tax
Tennessee	\$0.138	Yes	No		\$1.148/gal	Wholesale Beer Tax
Texas	\$0.194	Yes	Yes	Off- and on- premise sales of beer and wine are subject to retail sales tax except on-premise sales by mixed beverage and private club permits which are subject to a 6.7% gross receipts tax paid by the permittee and an 8.25% sales tax paid by the consumer	\$0.198/gal	Ale and malt liquor (more than 4% alcohol by weight)
Utah	\$0.413	Yes	No		Local option tax	Up to 1% local option tax on alcoholic beverages

State	State excise tax rates (\$ per gallon)	General sales taxes applied on retail sale	Special taxes applied on retail sale	Comments/ on-premise tax	Other taxes	Comments
Vermont	\$0.265	Yes	Yes	Off-premise sales subject to retail sales tax; sales from hotels subject to Meals and Room Tax of 10%	Local option tax	
Virginia	\$0.2565	Yes				
Washington	\$0.261	Yes				
West Virginia	\$0.177	Yes				
Wisconsin	\$0.065	Yes				
Wyoming	\$0.019	Yes				
District of Columbia	\$0.090	Yes	Yes	Off-premise sales subject to tax of 10%; on-premise sales subject to tax of 10%		

Yellow Highlight Indicates Revision from 2009 Report







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