



An Analysis of the Structure and  
Administration of State and Local  
Taxes Imposed on the Distribution  
and Sale of Beer

Prepared for  
National Beer Wholesalers Association  
Alexandria, Virginia

TAX

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## Foreword

This report was prepared by KPMG LLP for the National Beer Wholesalers Association. It is intended to provide an educational document that examines and analyzes the structure and administration of various state and local taxes that are imposed on the sale and distribution of beer across the states. The report does not make public policy recommendations as to desirable means or levels of taxation of beer, but examines only questions related to the administration of different tax regimes. KPMG has not endorsed any particular public policy regarding the taxation of beer. The report is limited to examining the administration of different tax structures and offers no opinion as to preferred means or levels of taxation on beer.

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# Executive Summary

When state legislatures consider the enactment of tax measures, the attention is focused primarily on the revenue to be raised, the distribution of the burden across taxpayers, the treatment of similar persons and products, the effect on the tax system as a whole, and the impact on local businesses, jobs and the state's economic climate. Little attention is paid to the manner in which different types of taxes are administered, even though the manner in which a tax is structured and administered determines the economic burden that complying with the tax will impose on the private sector as well as the resources the government taxing authority will need to deploy to ensure tax compliance and the overall level of compliance that can be expected.

This report examines the manner in which various state and local taxes imposed on the distribution and sale of beer are administered across the states. The report contains several parts including background on the beer industry, a review of the types of taxes levied on the distribution and sale of beer, a discussion of the manner in which beer taxes are administered, and an evaluation of various beer taxes against criteria that are relevant in determining the resources required of both the private sector and the public sector in complying or achieving compliance with a given tax regime.

The report does not make public policy recommendations as to desirable means or levels of taxation of beer, but examines only questions related to the administration of different tax regimes. KPMG has not endorsed any particular public policy regarding the taxation of beer. The report is limited to examining the administration of different tax structures and offers no opinion as to preferred means or levels of taxation on beer.





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An important source of information for the report was interviews conducted with persons involved in the distribution and taxation of beer, including executives of state beer wholesaler associations, beer distributors and state tax administrators in Alabama, Illinois, Kansas, Kentucky, Mississippi, New York, North Carolina, Tennessee, Texas, and Washington State. Ground rules for the interviews were that comments would not be attributed to specific individuals; instead, information gathered in the interviews is discussed in a general manner only in the report. Interview files have been provided to the National Beer Wholesalers Association for verification.

**Background.** The 21st Amendment to the U.S. Constitution granted to states the authority to regulate the transportation, importation, delivery and use of alcoholic beverages within their borders. Most states require that beer and other alcoholic beverages be sold through a “three-tier distribution system.” The three-tier system requires a legal separation in the ownership and operation of the various levels of the system and requires licensing of all participants in the alcoholic beverage distribution system. While there are variations, the three-tier system generally requires that all sales into a state from licensed suppliers (brewers, vintners and distillers) must be made only to licensed wholesalers in the state, and licensed retailers may purchase their product only from these licensed wholesalers. The three-tier system enables a state to identify and monitor all participants in the alcoholic beverage system as well as maintain a degree of accountability for all alcoholic beverages in the state.

In 2007, total taxable consumption of beer in the U.S. amounted to an estimated 212.6 million barrels, consisting of about 182.9 million barrels produced in the U.S., and 29.7 million barrels of imported product. Since 1989, U.S. consumption has increased at a rate of about 1 percent per year. According to industry sources, there were 1,572 breweries in operation in 2006, of which 20 were classified as “traditional” breweries (i.e., with multiple brands produced for national or regional distribution) and 1,552 were classified as “specialty” brewers with less brand diversification produced primarily for a local market. There were approximately 2,100 beer wholesalers in 2006. There were an estimated 551,000 retail establishments with a license to sell alcoholic beverages of one sort or another for on- or off-premise consumption in the U.S. in 2006.

The U.S. government imposes a federal beer excise tax of \$18 per 31-gallon barrel on beer produced in or imported into the U.S. A reduced tax rate of \$7 per barrel applies to the first 60,000 barrels of production for brewers that produce less than 2 million barrels annually. For the year ending September 30, 2008, the federal government collected about \$3.75 billion in federal beer excise taxes.

**State and Local Taxes on the Distribution and Sale of Beer.** State and local taxes on beer as a commodity are of four general types: (1) gallonage taxes that are imposed on a volumetric basis similar to the federal beer excise tax; (2) general sales taxes applied to retail sales of beer at the same rate as the retail sales tax applied to other products; (3) special retail taxes that are in lieu of or in addition to the general retail sales tax; and (4) additional taxes on beer not elsewhere categorized. Appendix A presents the various taxes imposed on beer across the states.



Every state and the District of Columbia levy a volume-based gallonage tax on beer sold for consumption in the state. Gallonage tax rates range from \$1.07 per gallon in Alaska to \$.02 per gallon in Wyoming

Every state and the District of Columbia levy a volume-based gallonage tax on beer sold for consumption in the state. Gallonage tax rates range from \$1.07 per gallon in Alaska to \$.02 per gallon in Wyoming. A number of states have reduced excise tax rates on small-volume craft breweries. Several states, notably Alabama, Georgia and Louisiana, authorize local governments to impose a gallonage tax.

With few exceptions, beer sold at retail – in both off- and on-premise establishments – is subject to the state and local retail sales tax in the 45 states and D.C. with a sales tax. In several states (Kansas, North Dakota, Texas and Vermont), various categories of beer are exempted from the retail sales tax, but in all cases, these categories are subjected to other retail-level taxes that are higher than the retail sales tax.<sup>1</sup> Other states such as Arkansas, Minnesota, Maine, Oklahoma and D.C. impose retail-level taxes in addition to the sales tax on certain sales of beer.

In addition to gallonage taxes and retail taxes, Kentucky and Tennessee each levy a separate tax on the business of engaging in the wholesale sale of beer in the state. The taxes are 11 percent and 17 percent, respectively, of the gross receipts from the sale of beer at wholesale.

Industry sources estimate that the total state and local tax revenue collected from the sale of beer in 2006 was \$5.6 billion, or about \$1.93 per case of 24, 12 ounce containers. Adding federal beer excise taxes increases the tax total to \$9.3 billion or \$3.20 per case.

***Administering Taxes on the Sale and Distribution of Beer.*** In most states, primary responsibility for collection and remittance of gallonage taxes is imposed on beer distributors. Beer wholesalers include the amount of tax in the price they charge to retailers, and the distributors file a tax return and make a tax remittance to the state. Gallonage tax returns generally start with the distributor's opening inventory, add the amount of product received or removed during the month and subtract any allowable deductions to arrive at the taxable volume of beer for the month. Gallonage taxes allow few deductions since all beer entering the retail chain is taxable; the most common exceptions are sales to the military, sales to other distributors, and beer returned or destroyed because of spoilage or other issues. Application of the tax rate to the taxable volume produces the total tax due. Some states allow distributors to retain a portion of the tax owed as a "collection allowance" to offset the costs of complying with the tax as well as certain amounts of spillage and breakage.

Most states require distributors to list each shipment of beer received from suppliers. State tax administration agencies also regularly receive reports from suppliers on their shipments to distributors. This allows the agency to match the supplier reports to the returns for independent verification of the tax due. Some states also require wholesalers to file reports on sales to their retail accounts to assist in administering various retail level taxes on beer.

<sup>1</sup> Effective April 1, 2009, Kentucky imposes sales tax on the off-premise sale of beer. H.B. 144, 2009 Reg. Sess. (Ky. 2009). Prior to that legislation, off-premise beer sales were exempt from sales tax.



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The distributors interviewed indicated that compliance with the gallonage tax (in terms of compiling the information required, making payments, filing returns and dealing with any post-filing issues) did not impose a significant administrative burden. The few contacts necessary with tax agencies were to resolve discrepancies between shipments reported to the state by a supplier and those recorded on the tax return by the distributor. Commonly, the discrepancies involve timing of the reports, inaccurate invoice or shipment numbers, and similar issues. Distributors indicated that they generally had 1-2 people that were involved in working with the gallonage tax. Completion and filing of the returns generally required fewer than 4 hours per month.

State administrators indicate that relatively few issues arise in administration of gallonage taxes. They consider there to be no serious compliance problems present in the tax, largely because of the relatively small number of taxpayers involved and the availability of the supplier reports as a cross-match to the information reported by distributors. States also rely on information from alcoholic beverage licensing agencies to assist in enforcement of the gallonage tax requirements.

For the retail-level taxes imposed on beer, each retailer must add the applicable sales tax rate to the price of the beer and collect the tax from the customer. The tax is remitted to the state monthly. General retail sales taxes imposed on beer are filed and paid as part of the retail sales tax return process; those returns contain only summary information, providing total sales for the reporting period, total exempt sales, a computation of the tax due and an accounting for any penalty or interest due, tax due on items consumed by the seller and the like. Where local sales taxes are collected along with the state retail sales tax, there are also schedules showing the tax collected in each jurisdiction in which a local sales tax is imposed. Generally, there is no specific information on the tax associated with beer sales except on returns that deal only with a special sales tax on beer.

The primary tool available to the state for ensuring compliance with the retail and special sales taxes is the field audit of the taxpayer to ensure that the books and records of the taxpayer properly reflect all receipts and that all the taxes collected have been remitted to the state. States regularly review their records to ensure that returns and payments from registered taxpayers are received in a timely fashion and are mathematically correct. If a taxpayer is delinquent in payments or returns or has made an error, the state contacts the taxpayer to rectify the situation. The only method to ensure that sales tax returns accurately reflect the total tax due is through field audits because there is no third party reporting that enables verification of the sales tax amounts.

Data from several sources indicates that retail-level taxes involve higher levels of delinquency and required follow-up contacts between the tax agency and the retailers. There are also higher levels of overall non-compliance than is the case with gallonage taxes. This is not unexpected given the greater number of entities involved and the fact that the accuracy of returns can be assessed fully only on audit.

Other features of the regulatory system governing the sale of beer, including the three-tier system of distribution, exclusive territories for beer wholesaling and various controls on the retailing of beer, contribute significantly to the administration of all types of taxes on beer

The wholesale taxes in Kentucky and Tennessee are collected from the retailer by the distributor at the time of the wholesale sale. In Kentucky, the tax is remitted to the state; the Tennessee tax, however, is a local tax, and a beer distributor must file returns and remittances with each local jurisdiction in which it has a retail account. From the standpoint of administration, the wholesale taxes are relatively straightforward in that the information necessary to comply is readily available to the wholesaler and the return requirements are not complex except for the number of returns filed in Tennessee. Since the tax is price-based, final verification of the accuracy of the return is accomplished through audit. Neither state reported significant compliance issues.

The various types of taxes on beer were evaluated against several criteria considered important in assessing the administration of the tax: (a) relative number of taxpayers involved; (b) 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. Of the three types of taxes imposed on the distribution and sale of beer, gallonage taxes are most favorably aligned with the characteristics used here to evaluate the administration of taxes on beer. Several features, including the number of taxpayers, simplicity of the tax and the availability of third party reports to verify compliance, contribute significantly to the ability to ensure compliance with gallonage taxes without an excessive burden being imposed on taxpayers. Because the other types of taxes levied on the sale and distribution of beer are based on the price of the beer, the utility of third party reporting for ensuring compliance is limited. In addition, the large number of taxpayers involved in retail-level taxes necessarily means that the number of delinquencies and level of non-compliance are greater than for the other types of taxes and that efforts required on the part of the state to ensure compliance are greater.

Other principal findings of the research include:

- The persons interviewed for this report do not consider complying with gallonage taxes to be a significant administrative burden or noncompliance to be a significant issue.
- Other features of the regulatory system governing the sale of beer, including the three-tier system of distribution, exclusive territories for beer wholesaling and various controls on the retailing of beer, contribute significantly to the administration of all types of taxes on beer. Without these controls, the level of resources by both state and federal authorities necessary to achieve any given level of compliance would likely be substantially greater than required under the current system.
- Taxes imposed on the distribution and sale of beer are not subject to the level of noncompliance and evasion that exists with respect to cigarette taxes at either the wholesale or the retail level. The three-tier distribution system and related state laws, certain features of federal law and the volume and bulk of beer each contribute to this result. To the extent that beer could be sold into the state outside



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the three-tier system, the potential for evasion would increase and the government resources required to ensure compliance would be greater.

- Information available from beer wholesalers as part of the gallonage tax administration process has proved helpful in promoting compliance with other beer-related taxes.
- The Kentucky and Tennessee wholesale gross receipts taxes were born from unique circumstances in each state, and they tend to reflect those particular environments.
- While some states have made efforts to automate the gallonage tax process, such efforts are limited compared to some other taxes. In our estimation, most wholesalers have in place various automated systems that would interface well with electronic filing requirements used by state governments.

Taxes imposed on the distribution and sale of beer are not subject to the level of noncompliance and evasion that exists with respect to cigarette taxes at either the wholesale or the retail level. The three-tier distribution system, certain features of federal law and the volume and bulk of beer each contribute to this result. To the extent that beer could be sold into the state outside the three-tier system, the potential for evasion would increase and the resources required to ensure compliance would be greater.



# Introduction

When state legislatures consider tax measures, the attention is, for the most part, appropriately placed on such issues as the amount of additional revenue to be raised, the distribution of the additional burden across taxpayer groups, the tax treatment of similar persons and products, the effect on the tax system as a whole, and the impact on local businesses, job creation and the state's economic climate. Less attention is paid to the manner in which different types of taxes are structured and administered, despite the fact that "administration"<sup>2</sup> is commonly included as one of the key criteria for evaluating tax policies and tax systems.<sup>3</sup> The manner in which taxes are administered is important, however, because it determines the steps that private sector entities will be required to undertake to comply with the tax and the economic burden that tax compliance will impose on them. Administration is likewise important to the government taxing authorities because it not only determines the steps they must undertake to implement and enforce the tax, but it also determines to a considerable degree the resources the government will need to expend (and require the private sector to expend) to achieve any given level of compliance and to

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<sup>2</sup> In the context of this report, the term "administration" should be considered to include the steps and costs that a private sector taxpaying/collecting entity must undertake to properly apply the tax, remit the appropriate tax due, file necessary reports and returns, demonstrate compliance to the tax authority, and provide information to customers as necessary to ensure their understanding of the tax. It also includes the steps and costs that the government tax agency must undertake to provide necessary guidance to tax paying and collecting entities, process returns and remittances, enforce and otherwise ensure compliance and provide assistance to taxpayers. It also includes structural elements that facilitate collection and compliance with the tax.

<sup>3</sup> See, e.g., National Conference of State Legislatures, *Tax Policy Handbook for State Legislators* (2nd ed. 2003). Other policy criteria used in this publication include reliability, equity, interstate and international competition, economic neutrality, and accountability.





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avoid evasion of the tax. Put another way, complying with a tax is more efficient and effective under some types of tax structures than others. The resources required on the part of the private sector to effectively comply with a tax and the resources required to be expended by the public sector to ensure compliance should be considered by policymakers as they evaluate various tax instruments.

Perhaps the easiest way to see this is to consider the resources that would be necessary (for both individuals and governments) to administer a personal income tax if employers did not withhold taxes from wages paid to employees or to administer a sales tax by collecting directly from individuals rather than having the tax collected at the time of the sale by retailers. Without employer wage withholding, individuals would be responsible for maintaining records to accumulate their total earnings throughout the year, periodically setting aside the amount of money required to pay the taxes voluntarily, and then filing the requisite return and payment at the end of the year. For its part, the taxing authority would be required to have an extensive program to audit individuals to ensure that the correct income was reported and the appropriate tax was paid. To assist in this matter, the government would probably impose an obligation on employers to file reports on wages paid to provide a cross-check to individual returns. Even with audits and employer reporting, one would expect the level of compliance to be less than with employer wage withholding. There are over 140 million wage earners in this country and each would be responsible for voluntarily providing the correct amount. Research by the Internal Revenue Service shows that the “net misreporting rate” (i.e., the percentage by which the income is underreported on timely filed returns) for income on which there is employer withholding is 1.2 percent.<sup>4</sup> The research also shows that the underreporting rate on income where there is “substantial” third party reporting (but not withholding) is about 4.5 percent, and for income on which there is “some” information reporting the misreporting rate is 8.6 percent.<sup>5</sup> For income on which there is neither reporting nor withholding, the misreporting rate increases to over 50 percent.<sup>6</sup>

Similarly, if states were required to collect sales taxes directly from individuals rather than having the tax collected by retailers, one would expect the burden on taxpayers and the states to be greater and compliance to be less. Each consumer would be required to track each of her/his purchases, compute the tax due, track any exemptions and periodically remit the tax to the state. Tax authorities would be required to conduct extensive and intrusive audits to verify purchases and ensure compliance; they would likely be inclined to require reporting of sales by retailers, credit card companies, banks and others to try to verify the reports of individuals. Here again, there is some ‘real world’ experience with the level of compliance that can be expected in such a situation. The U.S. Supreme Court has held that states may not require a seller that does not have a physical presence in the state to collect

<sup>4</sup> Ed Emblom & Ann Parker, *Latest Compliance Analysis from National Research Program: A Presentation to the Federation of Tax Administrators Compliance Workshop* (Feb. 2008).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

The structure of a tax and the manner in which it is administered can significantly affect the level of compliance as well as what is required on the part of the taxpayer to comply with the tax and what is required of the government to ensure taxpayer compliance

sales or use tax on items sold to in-state residents.<sup>7</sup> So, on Internet or mail order purchases where the seller has not collected tax, the individual consumer is required by state law to report and pay the sales tax directly to the state on her/his individual purchases. There are over 110 million households in the U.S. Data on how many consumers actually pay the tax directly to the state is hard to develop, but the data that is available indicates that most individuals do not voluntarily report the sales tax they owe. A number of states provide taxpayers an opportunity to use their individual income tax returns to report the tax they owe on purchases from out-of-state sellers where tax was not collected. A Minnesota study found that less than 1 percent of taxpayers included an estimated amount of tax due in most states offering such an option, and the highest proportion was only 9 percent of taxpayers in Maine.<sup>8</sup> Similarly, of 18.9 million income tax returns filed in California in 2008, only 44,000 (0.2 percent) voluntarily included sales tax payments.<sup>9</sup>

In short, the structure of a tax and the manner in which it is administered can significantly affect the level of compliance as well as what is required on the part of the taxpayer to comply with the tax and what is required of the government to ensure taxpayer compliance. Structural and administrative factors such as the number of entities involved in collecting and administering the tax, the availability of third party reports, collection of the tax by third parties, and the ability to purchase items without tax from another state all influence tax compliance. Clearly, the manner in which a tax is structured and administered is an important consideration for state policymakers.

This report is intended to provide an educational document that examines and analyzes the structure and administration of various state and local taxes imposed on the sale and distribution of beer across the states.<sup>10</sup> The report does not make public policy recommendations as to desirable means or levels of taxation of beer, but examines only questions related to the administration of different tax regimes. KPMG has not endorsed any particular public policy regarding the taxation of beer. The report is limited to examining the administration of different tax structures and offers no opinion as to preferred means or levels of taxation on beer.

The report contains several parts:

*Background.* The report begins with an overview of the beer industry in the U.S. and the systems by which states generally govern and regulate the manufacture, distribution and sale of beer.

*Types of taxes levied on beer.* This section discusses the various types of taxes that are imposed on the distribution and sale of beer. A detailed listing of the various taxes imposed in each state is presented in the appendix to the report.

<sup>7</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

<sup>8</sup> Nina Manzi, *Use Tax Collection on Income Tax Returns in Other States*, Policy Brief, Minnesota House of Representatives Research Department, at 10 (Dec. 2004).

<sup>9</sup> John Howard, *State to Target Untaxed Goods*, Capitol Weekly, Jan. 9, 2009, <http://www.capitolweekly.net>.

<sup>10</sup> In the report, the discussion of taxes is limited to those taxes imposed specifically on the distribution or sale of beer as opposed to taxes that may be imposed on beer distributors or retailers as general businesses (e.g., income taxes, property taxes, etc.). In nearly all cases, states levy similar taxes on other types of alcoholic beverages. The report focuses, however, only on taxes on the distribution and sale of beer.



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*Administration of taxes imposed on beer.* This section describes the manner in which various types of taxes levied on beer are administered. The discussion includes a description of the activities commonly undertaken by beer distributors and retailers to comply with the various taxes as well as the manner in which the taxes are administered by government taxing authorities.

*Evaluation of the administration of taxes imposed on beer.* This section evaluates the various types of beer taxes based on several criteria considered important in determining the resources required of both the private sector and the public sector in complying with a given tax regime (or achieving compliance with the regime in the case of the public sector). Criteria used include: (a) relative number of taxpayers involved in the tax; (b) simplicity of the tax in terms of breadth of the base (e.g., minimal exemptions, special treatments); (c) availability of data necessary for compliance to the taxpayer; (d) return filing burden in terms of the number and complexity of the returns required to be filed; (e) availability of independent, third party reporting to aid in compliance; (f) necessity for and nature of field examinations of books and records to ensure compliance; (g) potential for evasion of the tax through the purchase or resale of untaxed beer; and (h) nature and availability of legal mechanisms for use in enforcing compliance.

*Findings.* The report concludes with a presentation of the principal findings of the research.

An important source of information for the report is a series of interviews conducted with persons involved in the distribution and taxation of beer in various states. Interviews were conducted with executives of beer wholesaler associations, beer distributors and state tax administrators in Alabama, Illinois, Kansas, Kentucky, Mississippi, New York, North Carolina, Tennessee, Texas, and Washington State. The interviews covered such subjects as the history of beer taxation in the state, the nature of the beer distribution sector in the state, the obligations imposed on beer distributors to comply with the various taxes, and the activities involved at the state government level in administering and enforcing the various taxes. Ground rules for the interviews were that no individual would be quoted directly, and comments would not be attributed to individuals. Instead, information gathered in the interview process would be discussed in a general manner only.



# Background

## Three-Tier Distribution System

In addition to repealing Prohibition, the 21st Amendment to the U.S. Constitution, adopted in 1933, granted to states the authority to regulate the transportation, importation, delivery and use of alcoholic beverages within their borders.<sup>11</sup> In exercising that authority, most states have imposed requirements that beer and other alcoholic beverages be distributed and sold through what is commonly referred to as the “three-tier distribution system.”<sup>12</sup> The three-tier system requires a legal separation in the ownership and operation of the various parts of the alcoholic beverage industry, and it requires that all alcohol sold in the state to flow only through entities licensed by the state to operate at a particular level. While there are variations across states, types of products and types of producers, the three-tier system is generally structured as follows:

Participants at the *supplier level* (brewers, distillers, wineries and importers) must be licensed to manufacture or sell their product into the state, and these entities may distribute their product only through the second *level of licensed wholesalers or distributors* within the state.<sup>13</sup> The intermediate wholesale level is, in turn, responsible for providing all alcoholic beverages to *licensed retailers* with

<sup>11</sup> U.S. Const. amend. XXI. Sec. 2 provides specifically “The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” *Granholm v. Heald*, 544 U.S. 460, 484 (2005) holds that state laws pursuant to this authority may not discriminate against interstate commerce.

<sup>12</sup> In 18 states, the state government itself is a participant at the wholesale and/or off-premise retail level for some types of alcoholic beverages. These are commonly referred to as “control” states; the others are known as “license states” since all parties are private sector entities licensed and regulated by the state.

<sup>13</sup> In the report, the terms “wholesaler” and “distributor” are used interchangeably.



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authority to sell to individual consumers in the state.<sup>14</sup> In short, in the three-tier system, licensed suppliers must distribute only through licensed wholesalers, and licensed retailers may purchase their product from these licensed wholesalers. Retailer-to-retailer sales are prohibited.

An important feature of the beer distribution system in most states is that wholesalers are granted, by virtue of either a state franchising law or the wholesaling agreement with a brewer, the exclusive right to distribute the brands of the suppliers with whom they have agreements within their specified territory. This is true for all states interviewed for this report. In other words, a supplier may contract with only one wholesaler for the distribution of products within a specified territory, and all products from that supplier that is sold at retail in that territory must flow through the appropriate wholesaler. The agreement between the supplier and the wholesaler defines the territory of the wholesaler and often addresses such issues as pricing, inventory control, marketing obligations and the like. State franchising laws also govern reasons for termination of the franchise arrangement and protect distributors from termination for not pursuing acts that would be contrary to state policy, including appropriate tax collection and payment.

In addition, states impose a large number of other requirements on those involved in the supply, distribution and sale of alcoholic beverages, including such matters as days and hours of operation, types of organizations that may own facilities and establishments, number of outlets a single owner may operate, registration of products to be sold in the state, and the like.<sup>15</sup> State laws also establish a system of licensing and fees for all entities involved with alcoholic beverages as well as a series of penalties, including revocation of an entity's license to operate for failure to abide by the rules and laws.

Through the three-tier system and other regulations, states are able to identify and monitor all participants in the alcoholic beverage system as well as maintain a degree of accountability for all alcoholic beverages in the state. Proponents of the three-tier system believe it assists in pursuing several desirable policy goals, including preventing the sale of alcohol to minors and intoxicated persons, fostering responsible competition in a regulated and orderly marketplace, ensuring product safety, preventing the sale of counterfeit products, and promoting efficient tax collection. It is the last item that this report explores in some detail.<sup>16</sup>

<sup>14</sup> The retail level consists of establishments that sell for "off-premise" consumption (e.g., package liquor stores, grocery stores or convenience stores) and for "on-premise" consumption (e.g., bars, taverns, restaurants, and other eating and drinking establishments).

<sup>15</sup> For a review of the types of regulations commonly imposed on the sale and distribution of alcoholic beverages, see National Alcoholic Beverage Control Association, *2008 NABCA Survey Book*, Alexandria, VA: National Alcohol Beverage Control Association (2008). The National Institute of Alcohol Abuse and Alcoholism also provides a wealth of information on these topics in its Web-based Alcohol Policy Information System at <http://www.alcoholpolicy.niaaa.nih.gov>.

<sup>16</sup> Some parties have challenged the economic and competitive effects of the three-tier system. For further discussion of various issues in the three-tier system, see David S. Sibley & Padmanabhan Srinagesh, *Dispelling the Myths of the Three-Tier Distribution System*, Washington, D.C.: Wine and Spirits Wholesalers of America (Fall 2008).

Through the three-tier system and other regulations, states are able to identify and monitor all participants in the alcoholic beverage system as well as maintain a degree of accountability for all alcoholic beverages in the state

Many states make limited exceptions to the three-tier requirements, the most common of which are aimed at fostering development of a small brewing, winemaking and distilling industry. A number of states allow craft and specialty brewers that produce less than a specified volume of beer annually to sell directly to consumers under certain circumstances, such as at the brewing facility or at a microbrewery facility where the beer is brewed on the premises of an eating establishment. Some states also allow small-volume brewers to distribute their own product, and similar privileges are granted to micro-distilleries and wineries in some states. More recently, some states have begun allowing certain in-state and out-of-state wineries to ship wine directly to consumers within their borders.<sup>17</sup>

### Some Beer Industry Metrics

In 2007, total taxable consumption of beer in the U.S. amounted to an estimated 212.6 million barrels, consisting of about 182.9 million barrels produced in the U.S., and 29.7 million barrels of imported product.<sup>18</sup> Since 1989, U.S consumption has increased at a rate of about 1 percent per year, driven primarily by growth in the imported product. Domestic production has remained relatively flat over this period.<sup>19</sup> A barrel is equal to 31 gallons which translates into 13.8 standard cases of 24 containers holding 12 ounces each (24/12 cases), meaning total taxable consumption of more than 2.9 billion 24/12 cases. This translates to about 21.8 gallons (9.7 cases) of taxable consumption on a per capita basis which is roughly the level at which it has been since 1995.<sup>20</sup>

According to industry sources, there were 1,572 breweries in operation in 2006 of which 20 were classified as “traditional” breweries (i.e., with multiple brands produced for national or regional distribution) and 1,552 were classified as “specialty” brewers with less brand diversification produced primarily for a local market. These numbers have changed rather dramatically in the last 25 years with the number of traditional brewers declining by about 50 percent and the number of specialty brewers exploding from only 10 in 1981 to over 1,550 today. From 1986-1996, the number of specialty brewers increased by over 1,200. Every state has at least one brewer in operation as of 2006.<sup>21</sup>

<sup>17</sup> States allowing direct shipment of wine generally require that the wineries be permitted by the states into which they are shipping and that they report and pay the gallonage or excise tax on wine shipped into the state. Data on compliance with the tax reporting requirements is not readily available since the laws are generally of recent vintage. State administrators, however, expressed concern about compliance because there is no record available to them of wine shipped into the state and consumers are not required to report purchases to the state.

<sup>18</sup> Beer Institute, *Brewers Almanac*, at 3 (2008), <http://www.beerinstitute.org>. There were also about 1.1 million barrels of non-alcoholic beer produced domestically or imported and about 4 million barrels of beer exported from the U.S.

<sup>19</sup> *Id.* Preliminary data for 2008 indicates that consumption of domestic beer has increased by about 1 percent and consumption of imported product declined by about 3.4 percent. Beer Institute, *Statistical Update* (2009).

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.* at 1.



## Background

As to the other levels of the beer distribution and sales system, there were approximately 2,800 beer wholesalers in 2006.<sup>22</sup> The wholesaler/distributor industry is undergoing a gradual, but steady, consolidation in each of the states we interviewed for this report. As wholesalers leave the business, their operations are being assumed by existing wholesalers. In 2006, the beer wholesaling industry employed about 106,300 people and paid about \$4.5 billion in wages.<sup>23</sup> At the retail end of the chain, there were an estimated 551,000 establishments licensed to sell alcoholic beverages of one sort or another for on- or off-premise consumption in 2006.<sup>24</sup>

### Federal Beer Excise Tax

In addition to the various state-level taxes, the U.S. government imposes a federal beer excise tax of \$18 per 31-gallon barrel on beer produced in or imported into the U.S.<sup>25</sup> A reduced tax rate of \$7 per barrel is imposed on the first 60,000 barrels of production for brewers that produce less than 2 million barrels annually.<sup>26</sup> In FY 2008 (ending September 30, 2008), the federal government collected about \$3.75 billion in federal beer excise taxes. This was comprised of roughly \$3.2 billion imposed on domestically produced beer and \$547 million on imported beer.<sup>27</sup>

The current federal excise rate was enacted as part of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) and became effective January 1, 1991. That legislation doubled the federal excise tax rate on beer, increased the federal excise taxes on other alcoholic beverages and instituted 'luxury taxes' on certain high-priced autos, boats, airplanes and furs.<sup>28</sup> The federal beer excise tax was at \$9 per barrel from November 1951 through December 1990; historically, the rate had been increased primarily as a means to fund U.S. involvement in World Wars I and II as well as the Korean Conflict.<sup>29</sup>

Brewers and importers are responsible for remittance of the federal beer excise tax. The tax is imposed when the beer is produced or imported, and tax is paid based on when the product is removed from the facility in which it is produced (or upon removal from the first U.S. warehouse in the case of imports).<sup>30</sup> The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Department of Treasury is responsible for administering and collecting the federal beer excise tax. The tax is paid via electronic funds transfer, and returns are filed (TTB Form 5000.24) on a semi-monthly basis for most large brewers. Brewers with an expected liability of less than \$50,000

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<sup>22</sup> *Id.*

<sup>23</sup> U.S. Bureau of the Census, 2006 County Business Patterns, <http://www.census.gov/csd/susb/susb06.htm>.

<sup>24</sup> Beer Institute, *supra* note 19, at 42.

<sup>25</sup> 26 U.S.C. § 5051.

<sup>26</sup> *Id.*

<sup>27</sup> Alcohol and Tobacco Tax and Trade Bureau, Statistical Release – Tax Collections (TTB S 5630-Q4-2008) (December 22, 2008).

<sup>28</sup> The excises on autos, boats, airplanes and furs were subsequently repealed, in part because of concern about the impact of the tax on consumption of the products as the economy entered the recession of 1991-1992.

<sup>29</sup> Data obtained from the Beer Institute, *supra* note 19, at 26.

<sup>30</sup> 26 U.S.C. § 5054.



annually may file on a quarterly basis, and only taxpayers with a liability of \$5 million or more annually are required to make electronic payments. Occasionally, a distributor will serve as the importer for specialized, low volume brands and maintain two separate permits. The federal excise tax is computed on “net taxable removals” which is equivalent to all removals for consumption or sale less any returns of beer previously withdrawn from the same facility. Schedules for adjustments that would increase the tax due (e.g., for an error on a previous return) or decrease the tax due (e.g., for a prepayment which can be required if a taxpayer has been delinquent) are also provided.<sup>31</sup>

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<sup>31</sup> This information was drawn generally from the TTB Web site, <http://www.ttb.gov/beer>; the Code of Federal Regulations governing the federal beer excise tax, 27 C.F.R §§ 25.151 – 25.177; and Joint Committee on Taxation, *The Jurisdiction and Responsibilities of the Alcohol and Tobacco Tax and Trade Bureau*, JCX-43-08 (May 19, 2008), <http://www.house.gov/jct/x-43-08.pdf>.

# State and Local Taxes on the Distribution and Sale of Beer

State and local taxes on the distribution and sale of beer as a commodity are of four general types: (1) Excise or gallonage taxes that are imposed on a volumetric or quantity basis similar to the federal beer excise tax; (2) General sales taxes that are applied to retail sales of beer (i.e., to the ultimate consumer) at the same rate as the general retail sales tax applied to other products and services sold in the state; (3) Special or selected sales taxes that apply to retail sales of beer and that are based on the price of the product. These are levied in lieu of or in addition to the normal retail sales tax, and they result in a higher tax rate being imposed on beer than for other products generally; and (4) Additional taxes on beer not elsewhere categorized that are imposed on the sale or distribution of beer, the two most notable examples of which are the wholesale gross receipts imposed on beer distributors in Kentucky and Tennessee. Appendix A catalogs the various taxes imposed on beer across the states.<sup>32</sup>

## Excise or Gallonage Taxes

Every state and the District of Columbia levy a volume-based excise tax (hereinafter 'gallonage tax') on beer sold for consumption in the state. In Alabama, Georgia, and Louisiana, local governments also impose gallonage taxes on beer; Chicago and

<sup>32</sup> States also impose gallonage taxes on wine and distilled spirits. In addition, the sales tax and certain special taxes may also apply to consumption of wine and spirits. The focus of this report is beer distribution, and no attempt was made to catalog taxes on other alcoholic beverages.

Illinois Department of Revenue  
**RL-26 Liquor Revenue Return**  
Step 1: Identify your business

1 Illinois B/L  
2 Account  
3 Name  
4 Address  
5 Tax point

Step 2:  
9 Inventor  
10 Liquor n  
11 Liquor p  
12 Liquor b  
13 Liquor c  
14 Liquor d  
15 Liquor e  
16 Liquor f  
17 Liquor g  
18 Liquor h  
19 Liquor i  
20 Liquor j  
21 Liquor k  
22 Liquor l  
23 Liquor m  
24 Liquor n  
25 Liquor o  
26 Liquor p  
27 Liquor q  
28 Liquor r  
29 Liquor s  
30 Liquor t  
31 Liquor u  
32 Liquor v  
33 Liquor w  
34 Liquor x  
35 Liquor y  
36 Liquor z

TEXAS  
ALCOHOLIC  
BEVERAGE  
COMMISSION

**DISTRIBUTOR'S REPORT**  
Monthly Report of Beer Received  
and Disposed of During the Month of \_\_\_\_\_  
MONTH FOLLOWING EACH REPORTING PERIOD

**Schedule A - Tax-Free Purchases**  
Purchases on which New York State alcoholic beverages tax was not paid

New York State Department of Taxation and Finance  
**Beer Tax Return**  
Beer Taxed Malt Beverages

MT-50 (3/06)

**Beer Excise Tax Return**  
North Carolina Department of Revenue

Account ID  
FEIN or SSN  
Return for Month of (MM-YY)  
If payment has been made

MAIL TO:  
NYS TAX DEPARTMENT  
ART PROCESSING  
PO BOX 22025  
ALBANY NY 12201



## State and Local Taxes on the Distribution and Sale of Beer

Cook County, Illinois and New York City are also authorized to levy gallonage taxes.<sup>33</sup> Gallonage taxes are levied on a volumetric basis, meaning they are fixed with respect to the volume of beer involved (e.g., \$.20 per gallon).<sup>34</sup> Gallonage tax rates vary widely across the country, ranging from \$1.07 per gallon in Alaska to \$.02 per gallon in Wyoming.<sup>35</sup> Several states have enacted reduced excise tax rates or other tax preferences for small-volume craft breweries and microbrewers.<sup>36</sup>

State gallonage tax rates have remained quite stable in the recent past. Information from the Beer Institute indicates that there were 11 changes in state gallonage tax rates from 1997-2007. The Institute estimates that the average gallonage tax (weighted by consumption) in the U.S. was \$.254 per gallon in 2007; it has fluctuated with in a range of \$.248 to \$.254 since 1993.<sup>37</sup> The impact of difficult state fiscal conditions on gallonage tax rates can be seen, however, in that the average rate increased from \$.165 per gallon to \$.182 per gallon between 1980 and 1984 (about 10 percent) and from \$.205 per gallon in 1990 to \$.254 per gallon in 1994 (about 25 percent). There was little change, however, in the 2001-2002 state fiscal drop-off.<sup>38</sup>

### Retail Sales Taxes

With few exceptions, beer sold at retail – in both off- and on-premise establishments – is subject to the state and local retail sales tax imposed on the sale of products generally in the 45 states and D.C. that have a sales tax. Where exceptions to this rule exist, the state generally imposes a tax in lieu of the sales tax that is higher than the general sales tax. [See discussion of Special Sales Taxes below.]

States in which certain categories of retail beer sales are excluded from the retail sales tax include:<sup>39</sup>

- North Dakota excludes all sales of beer from the sales tax, but imposes a separate gross receipts tax on beer sales;<sup>40</sup>
- Texas and Vermont impose the sales tax on off-premise sales of beer, but exempt on-premise sales and subject them to a special sales tax;<sup>41</sup> and

<sup>33</sup> Ala. Code § 28-3-190; Ga. Code Ann. § 3-5-80; La. Rev. Stat. § 26:492; 65 Ill. Comp. Stat. § 5/8-11-1; N.Y. Tax Law § 445.

<sup>34</sup> In actuality, some states levy the tax in statute on a per barrel basis, while others levy on a per gallon basis. For ease of presentation, we will discuss tax rates on a per gallon basis.

<sup>35</sup> Alaska Stat. § 43.60.010; Wyo. Stat. § 12-3-101.

<sup>36</sup> They include Alaska, Iowa, Kentucky, Michigan, Minnesota, Montana, New Mexico, New York, Ohio, Rhode Island, Pennsylvania, Texas, Washington, Wisconsin and Wyoming. Beer Institute, *supra* note 19 at 29.

<sup>37</sup> Beer Institute, *supra* note 19, at 32.

<sup>38</sup> *Id.*

<sup>39</sup> Kentucky had exempted the off-premise sale of beer from sales tax; however, effective April 1, 2009, off-premise beer sales are subject to retail sales tax. H.B. 144, 2009 Reg. Sess. (Ky. 2009).

<sup>40</sup> N.D. Cent. Code §§ 57-39.2-04(10), 57-39.6-02.

<sup>41</sup> Tex. Tax Code § 183.021; Tex. Alco. Bev. Code § 201.42; and Vt. Stat. tit. 32, § 9241. Texas exempts from sales tax the on-premise sale by Mixed Beverage Permit or Private Club Registration Permit holders and subjects sales by those permit holders to the Mixed Beverage Gross Receipts Tax.



## State and Local Taxes on the Distribution and Sale of Beer

- Kansas imposes the sales tax on off-premise sales of 'cereal malt beverage' (beer containing not more than 3.2 percent alcohol by weight), but all on-premise sales of beer and off-premise sales of beer with more than 3.2 percent alcohol are excluded from the sales tax and subject to a special sales tax.<sup>42</sup>

### Special Sales Taxes

In the "special sales tax" category, we group taxes that are levied at the retail level based on the selling price of beer where the tax is in lieu of or in addition to the state and local retail sales tax. As noted, most of the states that exclude certain categories of beer from the sales tax (listed above) impose some other sort of price-based tax on those sales so excluded. Included in this group is North Dakota where all retail beer sales are subject to a 7 percent gross receipts tax (compared to a 5 percent statewide sales tax).<sup>43</sup> In addition, on-premise sales of beer in Vermont are subject to a 10 percent tax (compared to a 6 percent sales tax), and on-premise sales are generally subject to a 14 percent mixed beverage tax in Texas (where the state sales tax rate is 6.25 percent and local sales tax rates can range up to 2 percent).<sup>44</sup> In Kansas, the substitute retail tax system applied to beer works like this: off-premise sales of beer that is greater than 3.2 percent alcohol by weight (available only in retail liquor stores) are subject to an 8 percent liquor enforcement tax, and all on-premise sales of beer are subject to a 10 percent 'liquor drink' tax.<sup>45</sup> The state sales tax rate in Kansas is 5.3 percent, and local taxes are generally about 2 percent.<sup>46</sup>

Those states imposing a special sales tax on beer in addition to the general retail sales tax include Arkansas (1 percent tax on off-premise sales), Maine (an additional 2 percent tax on on-premise sales), Minnesota (2.5 percent on all sales of beer of more than 3.2 percent alcohol by weight), and Oklahoma (on-premise sales of beer greater than 3.2 percent alcohol are subject to an additional 13.5 percent mixed beverage tax).<sup>47</sup> In addition, the District of Columbia taxes off-premise sales at a 9 percent rate and on-premise sales at 10 percent (compared to a general sales tax rate of 5.75 percent), and New Hampshire which has no general sales tax imposes an 8 percent 'Meals and Rentals' tax on sales of beer in restaurants (whether or not accompanied by food).<sup>48</sup>

<sup>42</sup> Kan. Stat. §§ 79-3606 and 79-4101.

<sup>43</sup> N.D. Cent. Code § 57-39.6-02.

<sup>44</sup> Tex. Tax Code § 183.021 and Tex. Alco. Bev. Code § 201.42. Texas exempts sales by Mixed Beverage Permit and Private Club Registration Permit holders from the retail sales tax and imposes those sales to the Mixed Beverage Gross Receipts Tax. Sales by establishments licensed only for sale/consumption of beer and/or wine for on-premise consumption are subject to retail sales tax, and not the Mixed Beverage Gross Receipts Tax.

<sup>45</sup> Kan. Stat. §§ 79-3606 and 79-4101.

<sup>46</sup> In Kansas, all beer (as well as wine and other spirits) is subject to the 8 percent liquor enforcement tax when purchased from either a retailer or distributor, and then subject to an additional 10 percent liquor by the drink tax when sold at the on-premise establishment.

<sup>47</sup> Ark. Code § 3-7-201; Me. Rev. Stat. tit. 36 § 1811; Minn. Stat. § 295.75; Okla. Stat. tit. 37, § 576.

<sup>48</sup> See D.C. Code §§ 47-2002(3), 47-2002.2; N.H. Rev. Stat. § 54.32B3.

### Revenues from Taxes on Beer

Several states impose other taxes on the sale or distribution of beer that do not fall into the categories outlined above. Primary among these are the “wholesaler tax” imposed on the sale of beer from a wholesaler to a retail outlet in Kentucky and Tennessee. In Kentucky, the wholesale tax is levied at a rate of 11 percent on the “privilege of making ‘wholesale sales’ or ‘sales at wholesale’ of beer.”<sup>49</sup> The Tennessee wholesale tax is levied at a rate of 17 percent on the price of beer sold to retailers.<sup>50</sup> The Tennessee tax is paid by the beer wholesaler to the local government jurisdiction in which the retailer to whom the product is sold is located. The Kentucky and Tennessee taxes generate about \$50 million and \$120 million, respectively from beer sales.<sup>51</sup> In addition, the state of Hawaii imposes a 0.5 percent wholesale excise tax on beer, and Rhode Island imposes a \$.04 per case tax for litter control and environmental purposes.<sup>52</sup>

The Beer Institute estimates that the total revenue collected from state and local taxes levied specifically on the distribution and sale of beer in 2006 was \$5.6 billion. This amounts to an average of \$26.65 per barrel or \$1.93 per case of 24, 12 ounce containers in state and local taxes, based on taxable production of about 209.8 million barrels. In that same year, federal beer excise taxes amounted to \$3.7 billion, resulting in a total of \$9.3 billion in federal, state and local taxes levied specifically on the distribution and sale of beer. That translates an average consumption tax burden of \$44.18 per barrel or \$3.20 per case.<sup>53</sup>

<sup>49</sup> Ky. Rev. Stat. § 243.884.

<sup>50</sup> Tenn. Code § 57-6-103.

<sup>51</sup> See Kentucky Office of the State Budget Director, FY 2009 Detailed Consensus General Fund Revenue Estimate (November 26, 2008), <http://www.osbd.ky.gov/>. See also, Tennessee Malt Beverage Association, *Tennessee Beer Tax Facts*, 2007.

<sup>52</sup> Haw. Rev. Stat. § 237-13 and R.I. Gen. Laws § 44-44-3. A portion of the Tennessee gallonage tax is dedicated to litter control.

<sup>53</sup> Beer Institute, *supra* note 19, at 3, 6.



# Administering Taxes on the Distribution and Sale of Beer

This section of the report discusses the manner in which the various types of taxes on the distribution and sale of beer are administered, including the requirements imposed on the taxpayers involved as well as the procedures they use to comply with the tax. It also discusses the steps that state tax administration agencies employ in promoting compliance with the tax. Unless otherwise noted, the discussion is based on information gathered and observations offered in our interviews with executives of state beer wholesaler associations, beer distributors, and state tax administration personnel.

## Gallongage Taxes

Primary legal responsibility for collection and remittance of beer gallongage taxes is imposed on beer distributors. The actual point of imposition is when the beer is received by the wholesaler in some states and at the point when the beer is removed from the wholesaler's premises in others.<sup>54</sup> Beer is sold to retailers with the gallongage tax included, and the distributors file a tax return and make a tax remittance to the state on a monthly basis.<sup>55</sup> Several states allow limited exceptions for certain craft, specialty, or low-volume brewers to distribute their own beer or to make direct

<sup>54</sup> There is little practical difference between imposing tax on receipt versus removal. Imposing tax on receipt may accelerate collection of tax by the state and will mean that tax is paid on any inventory build up by the wholesaler. The difference is not considered consequential for the issues examined in this report.

<sup>55</sup> States vary in whether the liquor licensing and regulatory agency or a general tax administration (department of revenue) is responsible for administration of the tax.





## Administering Taxes on the Distribution and Sale of Beer

retail sales of their beer. In such cases, the brewer is responsible for remitting the appropriate gallonage tax on the beer it distributes or sells at retail to the state.

In roughly 15 states, at least part of the gallonage tax responsibility is imposed on manufacturers (brewers) and importers with the tax commonly being imposed on the first sale in the state. In these states, brewers and importers are responsible for collecting tax from the distributor and remitting it to the state on at least some sales. Among the states interviewed for this report, only New York imposes the tax at the manufacturer/importer level. Gallonage tax on beer brewed in New York and sold to a New York distributor is collected and remitted by the brewer; a N.Y. distributor, however, is responsible for the gallonage tax on beer brewed outside New York.<sup>56</sup> Several states indicated that gallonage tax collection responsibility was shifted from the manufacturer level to the distributor level in the last 20 years as a means of improving distributor tax compliance and cash flow.

Since the gallonage tax is based on volume, and there are relatively few exemptions from the tax, the information requirements and obligations imposed on wholesalers to comply with the tax are relatively straightforward. Gallonage taxes owed by distributors are remitted to the state, and returns are filed on a monthly basis. In the interview states, the returns were generally due between the 15th and 20th of the month following the month in which the transaction occurred. Payments must usually be made by electronic funds transfer (EFT), and returns are generally filed on paper as opposed to electronically. [See further discussion below.]

Gallonage tax returns generally have two parts. The tax computation section begins with the distributor's inventory at the beginning of the reporting period (particularly where tax is imposed at the point of receipt), adds the amount of product received or removed during the month (denoted in the manner in which the tax is imposed in statute (e.g., gallons or barrels)) and subtracts any allowable deductions to arrive at a taxable volume of beer received or removed during the month and an ending inventory. Unlike retail sales taxes, gallonage taxes have few allowable deductions since all beer entering the retail chain is taxable. Allowable deductions commonly include sales to the military,<sup>57</sup> sales to other distributors, and beer returned to the brewer/importer or destroyed because of spoilage or other issues.

Application of the gallonage tax rate to the taxable volume produces the total tax due. Some states allow distributors to retain a portion of the tax owed as a "collection allowance" to offset the costs of complying with the tax as well as covering the cost associated with the tax paid on certain amounts of product that is lost to spillage or breakage but is still taxable. Of the 11 interview states, five of them – Alabama, Illinois, North Carolina, South Carolina and Texas – provide a collection allowance

<sup>56</sup> N.Y. Tax Law §§ 420(4), 424.

<sup>57</sup> Department of Defense policy requires that beer purchases for consumption on a military base are to be made from a licensed distributor in the state in which the base is located. Since they are purchases by the U.S. government, state taxes cannot be applied to them, and they are excluded from the gallonage tax base.



## Administering Taxes on the Distribution and Sale of Beer

ranging from 1.5 percent to 2.5 percent of the tax collected.<sup>58</sup> The allowances are contingent on timely filing and payment of the tax due. The Illinois allowance is capped at \$2,000 per month and is contingent on electronic filing of the return and payment of the tax.<sup>59</sup> Such collection allowances are customary for sales and excise taxes. They are intended to promote compliance by compensating for the incremental costs sellers incur in complying with state obligations.

The second part of the gallonage tax return is commonly a set of schedules aimed at providing a level of accountability for the flow of beer in the state. Most states, including all interview states, require a distributor to list each shipment of beer received from its suppliers (by product and (sometimes) container size). The returns also commonly call for schedules documenting deductions such as sales to the military, sales to other distributors and spoilage. State agencies administering gallonage taxes also regularly receive reports from suppliers (brewers and importers) on their shipments to distributors. This allows the supplier reports to be matched to the distributor's return, providing independent verification of the amount of tax due. The various deduction schedules are used to identify possible areas to be pursued on audit if necessary.

In addition to reporting shipments from suppliers, some states require wholesalers to file reports indicating the amount of beer they have sold to each retail account during the reporting period. States use these reports to assist in ensuring compliance with various retail level taxes. The reports are used to identify possible candidates for retail-level audits and in verifying the reports and records of the retailer during an audit. Among the interview states, distributors in Kansas, Illinois, Mississippi and Texas regularly file reports on sales to retailers.<sup>60</sup> The Texas legislature in 2007 imposed a new reporting requirement on wholesalers and distributors of alcohol and tobacco products. The new reporting requirement is aimed at addressing tax fraud in the areas of sales and use taxes on alcohol and tobacco. This new requirement is expected to "tighten tax reporting and discourage fraud while adding \$289 million to state general revenue through fiscal 2012."<sup>61</sup>

States have a variety of mechanisms available to them to aid in enforcing the gallonage tax requirements in the event a distributor is delinquent in filing a return or paying the tax due. As with other taxes, there are usually a variety of penalties that can be assessed. In addition, states generally have the authority to revoke a distributor's authority to operate in the state under certain conditions such as chronic delinquency and failure to otherwise abide by state laws and requirements. Revocation of an alcoholic beverage license effectively puts a licensee 'out of business' because the suppliers and customers of the licensee would be made aware of the revocation and be unable to engage in business with the revoked entity or otherwise risk their license to operate.<sup>62</sup>

<sup>58</sup> Ala. Code § 28-3-190(6); 235 Ill. Comp. Stat. § 5/8-2; N.C. Gen. Stat. § 105-113.85; S.C. Code § 12-21-1060; Tex. Alco. Bev. Code § 203.10.

<sup>59</sup> 235 Ill. Comp. Stat. § 5/8-2.

<sup>60</sup> Tennessee wholesalers report to the state on sales by local jurisdiction as opposed to by retailer. This reporting assists with enforcement of the 17 percent wholesale tax in the state.

<sup>61</sup> Tex. Tax Code § 151.433; Tex. Comptroller of Public Accounts, *Fiscal Notes* (Sept. 2007).

<sup>62</sup> See also 27 U.S.C. § 204(e) and 27 C.F.R. § 1.50 that also permit suspension of federal permit for failure to comply with state laws.

Without exception, the distributors interviewed indicated that compliance with the gallonage tax...did not impose a significant administrative burden on them.

In Mississippi, the gallonage tax collection process is used to pre-collect the sales tax on retail sales of beer.<sup>63</sup> This is accomplished by requiring beer wholesalers to add a 7 percent tax to the price (including the gallonage tax) for which they sell beer to retail outlets.<sup>64</sup> The tax amounts to a pre-collection of a portion of the retail sales tax – also 7 percent – in that retailers take a credit on their retail sales tax return for tax that they have prepaid to the wholesaler.<sup>65</sup> Distributors file and remit the prepaid sales tax on a return that is separate from the gallonage tax; the prepaid sales tax return includes a schedule showing the amount of sales tax pre-collected from each retailer so that the credit taken by the retailer can be verified against the amounts reported by the distributor.

Taken together, the separation of ownership and operation among the brewer, wholesaler and retailer levels along with requirements for exclusive territories, franchise agreements and other requirements create a framework upon which states can build an efficient and effective tax administration system as discussed further below.

*Distributor Observations.* We interviewed 10 wholesalers from six states for the report. Those interviewed range from a distributor with 50 employees handling about 700,000 cases annually to a distributor with 225 employees handling about 6.9 million cases of product each year. On average, the distributors interviewed have about 100 employees and handle 2-3 million cases per year. With one exception, the distributors represented one of the two major brewing companies operating in the U.S. – MillerCoors or Anheuser–Busch Inbev.

Without exception, the distributors interviewed indicated that compliance with the gallonage tax (in terms of compiling the information required for returns, making payments, filing returns and dealing with any post-filing contacts with the tax administration agency) did not impose a significant administrative burden on them. The information required to comply with the tax and file the return is readily available to the distributors from the accounting, delivery routing and inventory systems generally used in the industry. In addition, given the relatively small number of exemptions/ deductions allowed under the tax, the distributors considered compliance with the tax to be a straightforward process that relied on information readily available to them in the normal course of business.

The major differentiating factor among the distributors is the degree to which the tax filing and compliance is automated within the distributorship. One distributor indicated that the company had developed a gallonage tax application that worked in conjunction with the accounting system to extract all information necessary for the tax return (including schedules of shipments from suppliers and shipments to retailers) with only minimal manual intervention. For the most part, however, the distributors interviewed extract the information necessary for the gallonage tax

<sup>63</sup> Miss. Code § 27-65-25.

<sup>64</sup> *Id.*

<sup>65</sup> Mississippi, the first state to enact a broad-based sales tax in the 1930's, previously used wholesalers in other sectors to pre-collect the sales tax, but currently, it is pre-collected only on beer sales at wholesale.





## Administering Taxes on the Distribution and Sale of Beer

return from their systems and then must manually enter that information into a paper state tax return or other vehicle to transmit the data to the state. In addition, most distributors indicated they manually verified information extracted from the accounting system on shipments received from their suppliers with actual invoices in order to minimize the opportunity for discrepancies with information available to the state from the supplier reports. Other distributors described the tax return preparation process as essentially a manual process in which information obtained from the company's systems is manually transcribed to a state paper return and schedules.

Distributors indicated that there was relatively little need for contact with the tax administration agency in regard to the gallonage tax. While there are occasional audits, the bulk of contact between distributors and tax administration agencies with respect to the gallonage tax is by telephone to resolve discrepancies between shipments reported to the state by a supplier and those recorded on the tax return by the distributor. Commonly, the discrepancies involve timing of the reports, inaccurate invoice or shipment numbers, and similar issues as opposed to actual noncompliance. Both distributors and association executives indicated that there were few, if any, compliance issues in the gallonage tax except an occasional delinquency.

Distributors indicated to us that they generally had 1-2 people that were involved in working with the gallonage tax. They also indicated that dealing with gallonage tax issues, including completion and filing of the return, generally required fewer than 4 hours per month.

*State observations.* We interviewed administrators responsible for beer gallonage taxes in seven states. As with distributors, state administrators generally consider gallonage tax administration to be a straightforward matter. They indicate that relatively few issues arise in administration of the tax, and they consider there to be no serious compliance problems present in the tax.

One of the reasons there are minimal compliance issues is the relatively small number of taxpayers involved in the gallonage tax process. The number of gallonage tax accounts in the states interviewed varies from about 40 in some states to about 300 in states with larger numbers of craft and specialty brewers. While large in number, craft brewers account for a relatively small proportion of total sales and tax revenue. In most states, the vast majority of sales would be accounted for by fewer than 25 wholesalers representing the major brands of beer consumed in the U.S.

The primary compliance tool available to the states is matching the information received from the suppliers with the distributor returns. Most states interviewed match the supplier information to the distributor returns on a comprehensive basis. Some, however, match the supplier reports and distributor returns on a sample or random basis only because of the volume of information involved and what is considered to be an insufficient number of employees. Most states interviewed have the capacity to conduct field audits of the gallonage tax (i.e., an on-site inspection of the books and records of the wholesaler), and most states conduct such field



audits on a periodic basis.<sup>66</sup> Field audits, however, are not a major component of the enforcement programs for gallonage taxes. States rely much more on information matching for that purpose.

As noted, gallonage tax returns are in most cases still submitted on paper. Among the interview states, two – Illinois and Kansas – have developed applications that allow the electronic filing of the gallonage tax returns and related schedules. In addition, Mississippi provides distributors with a spreadsheet into which they make their tax return entries (including pre-collected sales tax by retailer) and then upload the file to the state.<sup>67</sup> In Illinois and Kansas, there are several firms that offer software that interfaces with standard industry accounting packages to extract the information necessary for the gallonage tax returns and files the returns electronically.<sup>68</sup> In addition, Kansas has developed a Web application that allows distributors to enter the information for the return online, and this option is reportedly the most widely used by distributors in the state. Supplier reports are also generally received on paper, but some states (notably Illinois) are moving to receive such reports electronically. Kansas will soon release an electronic version of the supplier report that will capture less information as a means of encouraging electronic reporting.

Electronic filing and reporting can be beneficial to state tax administration agencies because it allows the agency to automate at least parts of the information matching process. Otherwise, the state must data enter the supplier and distributor information before any computer-assisted matching can take place. Discussions with state administrators indicate that the small number of taxpayers, the relatively modest amount of revenue (in the overall state revenue system) received from the gallonage tax, and the perceived high compliance with the gallonage tax make it difficult to allocate technology resources to administration of the gallonage tax.

Agencies involved in gallonage tax administration also rely on state agencies responsible for alcoholic beverage regulatory and licensing matters to assist in ensuring compliance with the gallonage tax.<sup>69</sup> The liquor regulatory agencies regularly provide a list of licensed suppliers and wholesalers to the tax administration agency (as well as information on licenses suspended or revoked), so the tax agency has knowledge of those entities that should be filing and which may have been suspended from operation. In addition, being current in tax filings and payments (i.e., no outstanding delinquencies, assessments or returns) is made a condition of the annual renewal of the alcoholic beverage licenses for distributors and others in some states such as Kansas and Kentucky.

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<sup>66</sup> Other laws such as those requiring beer to come to rest in a distributor warehouse, prohibitions on central warehousing and prohibitions on retail-to-retail sales also assist state auditing efforts track taxable product and prevent a “moving target” aspect to calculation of beer taxes.

<sup>67</sup> This is largely to accommodate the reporting of sales tax pre-collected from retailers.

<sup>68</sup> The Associated Beer Distributors of Illinois (state trade association) developed the first filing software for the state and continues to license software to its members through a service subsidiary.

<sup>69</sup> Among the interview states, gallonage tax administration and alcoholic beverage regulation are in separate agencies in six states and within the same agency in four states. Where the functions are within the same agency, they are usually handled by separate units.



## Administering Taxes on the Distribution and Sale of Beer

Finally, most states indicated to us that the ultimate compliance tool was the ability of the state (either through the tax or alcoholic beverage regulatory agency) to suspend or revoke the distributor's or supplier's license to engage in the distribution and sale of beer. While there are relatively few revocations (particularly at the distributor level), the threat of revocation is considered to be a real deterrent to noncompliance or other illegal behavior. Unlike the suspension of some other licenses necessary to engage in business (e.g., a retail sales tax permit), there are real 'teeth' if an alcoholic beverage license is revoked. Other parties in the alcoholic beverage industry with whom the licensee does business (i.e., suppliers and retailers in the case of distributors) would be on notice of the license suspension or revocation, and they would be violating the law and jeopardizing their own licenses if they continued to do business with the revoked licensee.<sup>70</sup>

If an out-of-state entity were permitted to sell directly into a state outside of the three-tier system, revocation or threat of revoking the license to sell into the state would possibly have less impact on the out-of-state seller because the in-state activities would likely constitute a minor proportion of their overall activities. In addition, some other procedures available to states, such as property seizures, on-site examinations of books and records and the like, are more problematic to deploy for a market participant not physically present in the state.

Because of the relatively small number of taxpayers, administration of the gallonage tax requires a modest amount of resources on the part of the state. Precise numbers were not available in some states because personnel working beer gallonage taxes are also used to work other taxes (particularly gallonage taxes on other alcoholic beverages), but available data indicate that two or fewer employees would be required in a smaller state, with up to five being used in a larger state that may conduct more audits. These personnel would be involved in providing guidance and assistance to taxpayers, ensuring tax returns and payments are made timely, pursuing any delinquent accounts, and desk auditing the returns by matching the gallonage tax return to supplier reports.

In short, the individuals interviewed for this report, including both beer wholesalers and tax administrators, consider the beer gallonage tax to be a straightforward tax with which to comply and to administer. From the distributor perspective, the fact that the tax is volume-based, contains relatively few exemptions, and relies on information readily available to the distributor make the tax efficient and easy to comply with. From the state perspective, compliance with the gallonage tax is facilitated by the small number of taxpayers, the availability of third party reports to verify the tax due, and the availability of other information, laws, and enforcement procedures to ensure compliance if necessary.

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<sup>70</sup> Similarly, receipt and retention of a federal wholesaler permit is conditioned upon compliances with state laws. 27 U.S.C. § 204.

...both beer wholesalers and tax administrators consider the beer gallonage tax to be a straightforward tax with which to comply and to administer.

### Retail and Special Sales Taxes

The administration of the general sales tax and the administration of special sales taxes are considered together here since the process is the same in all important regards. The discussion is based on a general understanding and research of retail sales tax administration rather than interviews with retailers. We did interview Kansas officials about the administration of the two special sales taxes – liquor enforcement and liquor drink – imposed on certain sales of beer.

General and special sales taxes on beer are generally administered as follows: Each retailer of beer must apply the applicable sales tax rate to the price of the beer and collect the tax from the customer. The tax is generally remitted to the state on a monthly basis. General retail sales taxes imposed on beer will be filed and paid as part of the retail sales tax return process. Retail sales tax returns generally contain only summary information such as total sales during the reporting period, total exempt sales (either exempt products or sales to exempt entities) that are deducted from the total, a computation of the tax due and an accounting for any penalty or interest due, tax due on items consumed by the seller and the like. Where local sales taxes are collected along with the state retail sales tax, there are also schedules showing the tax collected in each jurisdiction in which a local sales tax is imposed.<sup>71</sup> Unless there is a special sales tax on beer that is administered along with the general retail sales tax (as in Minnesota), there is unlikely to be any information on the retail sales tax return that is specific to the amount of tax related to the sale of beer (or any other specific product for that matter). A number of states have moved in recent years to require or promote the electronic filing of sales tax returns. This is done primarily to ease the processing burden on the tax administration agency and to allow it to quickly deposit funds, update the taxpayer's accounts and distribute funds to local governments as opposed to collecting greater information from retailers for compliance purposes.

The two special sales taxes on beer in our interview state of Kansas are administered using separate returns. Similar to a general sales tax return, they provide only summary information on total sales and a calculation of the tax due using the applicable tax rate. No detail on the type of product sold is contained on the return.

From a retailer's perspective, the primary issue in complying with a general or special sales tax on beer is that it effectively requires a point of sale system that is capable of accurately recording the amount of the sale and the product being sold and then calculating the appropriate tax due. It also requires that the transaction be recorded in an accounting system so that the information necessary for the tax return is available and the information can be retained for audit purposes if requested by the state for what is generally a 3-4 year statute of limitations period. Most retailers now use electronic cash registers as their point of sale system. For retailers involved in

<sup>71</sup> Approximately 30 states authorize certain local governments to impose "local option sales taxes" which would be levied on the same base as the state tax, including beer in most cases. In all states except Alabama, Arizona, Colorado and Louisiana, the local sales tax is administered as part of and along with the state sales tax. In these four states, many local governments administer their own sales tax, meaning that payments and returns must be filed with each locality separately.



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selling products other than beer or alcoholic beverages, the host of exempt items and exempt purchasers, among other things, presents significant complexity. For beer and alcoholic beverages, there are few, if any exemptions, so that part of the complexity does not pertain to beer sales.

State compliance efforts generally fall into two categories – ensuring that returns and payments are received from all taxpayers and ensuring the accuracy of the tax return. For beer-related taxes, most state efforts are directed at ensuring that taxpayers are not delinquent in filing returns or making payments. If a taxpayer is delinquent in payments or return filing, the state can, and does, contact the taxpayer to secure the appropriate returns and payments. Failure to pay or file can lead to successive actions such as penalties, license suspension and the like. The primary tool available to the state for ensuring the accuracy of the general and special sales tax returns is a field audit of the taxpayer to ensure that the systems used by the taxpayer and the books and records of the taxpayer properly reflect all receipts, including those from the sale of beer if a separate tax rate is applied, and that all the taxes collected have been remitted to the state. Ensuring accuracy can only be accomplished through field audits because there is no third party reporting that enables verification of the sales tax amounts as there is with the gallonage tax. Indeed, there can be no such third party reports because the key determinant of the taxpayer's liability is the price charged by the seller which is known only to that seller.

As noted, some states require beer wholesalers to file reports displaying the volume of beer sold to various retailers. These can aid in evaluating the accuracy of retailer returns and in developing models (as in Texas) to assess potential audit candidates. Similarly, some states have “price posting” laws that require distributors to provide notice of the price they charge retailers for beer and limit the frequency with which prices may be changed. This can assist state retail-level audits by providing a benchmark against which to evaluate retailer receipts. These mechanisms are not, however, a substitute for field audits as far as ensuring compliance.

Field audits are a significant part of the compliance process in every sales tax state. Retailers involved in the sale of beer and the actual tax on the sale of beer will be a relatively modest proportion of all taxpayers and all sales tax receipts. Therefore, it should not be expected that a sales tax audit program is going to ensure that all beer retailers are audited on a regular cycle. State audit resources will be allocated at least in part on the basis of risk and identified noncompliance which in many cases will mean larger taxpayers. The most common outcome with respect to the audit of taxpayers selling beer at retail would be that a modest number would be audited on an annual basis, but there would be no program to ensure complete audit coverage of all beer retailers over a given period of time. Instead, it is more likely that states would focus on controlling delinquencies among beer retailers, ensuring that all licensed retailers are registered for collection of the tax and using the license renewal process to ensure that those involved in selling beer at retail are current in their obligations for all taxes. A retailer's failure to pay taxes may lead to suspension of an alcohol permit; in such a case, a beer distributor would be barred from providing any more supply to the retailer which would help assist the state in achieving tax compliance.

Given the greater number of entities involved and the fact that the accuracy of returns can be assessed fully only on audit, one would expect some degree of noncompliance with the retail sales tax and special sales taxes

The number of taxpayers involved in collecting and remitting retail-level taxes is, of course, significantly larger than for the gallonage tax. Data from the Beer Institute indicates that there are roughly 550,000 retail outlets for beer in the U.S., compared to about 2,000 wholesalers.<sup>72</sup> In Kansas, there are over 2,000 taxpayers remitting the liquor drink tax, and about 740 retail package liquor stores remitting the liquor enforcement, compared to 25 wholesalers involved in the gallonage tax. Kansas has about four employees involved in administering the two special taxes with their primary job responsibilities being to pursue returns and payments from delinquent taxpayers and reconciling returns where there are mathematical inaccuracies.

Given the greater number of entities involved and the fact that the accuracy of returns can be assessed fully only on audit, one would expect some degree of noncompliance with the retail sales tax and special sales taxes. Complete data is difficult to come by, but information from several sources is instructive.<sup>73</sup>

- A Minnesota study conducted in 2000 found about a 10 percent noncompliance with the state sales tax. The total was comprised of 7.6 percent under-reporting by registered taxpayers and 2.3 percent from nonfiling by unregistered taxpayers.<sup>74</sup>
- A Washington State study conducted in 2008 estimated about 2.5 percent noncompliance with the state's sales tax among registered taxpayers. Smaller taxpayers (with gross sales of \$500,000 or less) had a noncompliance rate of 7 percent or more.<sup>75</sup>
- A review of activity in Minnesota in 2001 and 2002 found that 12 percent of licensed retailers of alcoholic beverages were delinquent in paying the retail sales tax and the 2.5 percent gross receipts tax at least once, thus creating a need for the department to contact the taxpayer and undertake various steps to collect the tax due.<sup>76</sup>
- Kansas administrators estimate that for the liquor enforcement tax they have, on average, about 40 taxpayers that do not file returns and 10 that pay less than the full amount due each month. For the liquor drink tax, there are about 90 nonfilers and 40 balance due returns in an average month. This amounts to about 6 percent of the total taxpayer population that requires contact by the agency to pursue compliance on a monthly basis.
- Over the last several years, field audits of the two special Kansas taxes have generally resulted in assessments that average \$10,000 or more per audit.

<sup>72</sup> Beer Institute, *supra* note 19, at 42.

<sup>73</sup> See also the IRS data cited in the Introduction of this report indicating that underreporting of income on which there is no information reporting or withholding exceeds 50 percent in the U.S. income tax system.

<sup>74</sup> American Economics Group, Inc., *Minnesota Sales and Use Tax Gap Project: Final Report*, at 15 (November 2002), [http://www.taxes.state.mn.us/taxes/legal\\_policy/research\\_reports/content/taxgap\\_full\\_1102.pdf](http://www.taxes.state.mn.us/taxes/legal_policy/research_reports/content/taxgap_full_1102.pdf).

<sup>75</sup> Washington Department of Revenue, *2008 Compliance Study*, Research Report #2008-5, at 9 (July 2002), <http://www.dor.wa.gov>.

<sup>76</sup> Minnesota Department of Revenue, *Taxation of Beverage Alcohol in Minnesota*, at 9 (January 2003), <http://www.taxes.state.mn.us/taxes/special/alcoholic/index.shtml>.





## Administering Taxes on the Distribution and Sale of Beer

### Additional Taxes on Beer

The two additional taxes on beer of interest here are the wholesale gross receipts taxes levied in Kentucky and Tennessee. The Kentucky tax is an 11 percent tax on receipts from the sale of beer at wholesale.<sup>77</sup> It is collected by the wholesaler from the retailer and remitted to the state as part of the gallonage tax return. In Tennessee, the tax rate is 17 percent of receipts from the sale of beer at wholesale. It, too, is collected from the retailer, but the tax is remitted to the local government in which the retailer is located, instead of to the state.<sup>78</sup> Thus, a Tennessee wholesaler files a separate return showing the gross receipts from the local jurisdiction and the total wholesale tax owed with each local government in which it does business. While the tax is remitted directly to the local government, any enforcement or audit is the responsibility of the Tennessee Department of Revenue that also has responsibility for administration of the gallonage tax. Wholesalers file a schedule of their wholesale receipts by local jurisdiction with the Department of Revenue to aid in enforcement.

From the standpoint of administration, the wholesale taxes are relatively straightforward in that the information necessary to comply is readily available to the wholesaler and the return requirements are not complex. They are gross receipts taxes, meaning there are no exemptions from the tax other than sales to the military.<sup>79</sup> However, wholesalers in Tennessee must file returns and remit tax to each local jurisdiction in which they do business, and information available to us indicates that wholesalers commonly make from ten to forty payments monthly. Since the tax is price-based, final verification of the accuracy of the return is accomplished through audit. Given the rates involved, the assessments could be substantial for any systematic, long-term underreporting of liability. Neither state, however, reported significant compliance issues with the tax.

These wholesale gross receipts taxes are unique. Each has a different history which leads to some of the differences in the structure and operation of the tax. The Tennessee wholesale tax was enacted in 1954 to replace a variety of local retail taxes that were imposed on beer throughout the state. To arrest the proliferation and escalation of the local taxes, a statewide wholesale level tax was enacted; the tax, however, is paid to the locality to ensure they receive their funds directly. Local governments are now prohibited from imposing a retail tax on beer sales if they wish to continue to receive funds from the wholesale tax. To minimize any downward fluctuation in revenues flowing to local governments from the tax, the state has also passed a 360-day posting requirement that provides that if a wholesaler reduces the price of beer to its retailers, it must maintain the price at the reduced level for 360 days.<sup>80</sup> This significantly limits the pricing flexibility of wholesalers, but it does stabilize local revenue flows and contribute to stability in the market for alcohol.

<sup>77</sup> Ky. Rev. Stat. § 243.994.

<sup>78</sup> Tenn. Code § 57-6-103.

<sup>79</sup> In Tennessee, the base to which the wholesale rate is applied is the price charged to the retailer less the equivalent of \$9 of the \$18 per barrel federal beer excise tax and \$3.90 of the \$4.29 per barrel gallonage tax. In Kentucky, the wholesale tax base includes all receipts including federal and state gallonage taxes.

<sup>80</sup> Tenn. Code § 57-6-104(c).

In Kentucky, the wholesale gross receipts tax started in 1982 as a pre-collection of the state sales tax on beer (as is done in Mississippi). Pre-collection was instituted because of concerns about compliance with the retail sales tax among certain taxpayers and the bootlegging of beer into dry counties in the state. Later that decade, the retail tax was reapplied to on-premise sales of beer. Effective April 1, 2009, Kentucky imposed its retail sales tax on the off-premise sale of beer, which was formerly exempt from retail sales tax.<sup>81</sup> The wholesale tax also remains in place.

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<sup>81</sup> H.B. 144, 2009 Reg. Sess. (Ky. 2009).

# Evaluating the Administration of Taxes on Beer

This section of the report evaluates the various forms of beer taxes based on several criteria considered to be important in determining the resources required of both the private sector and the public sector in complying with a given tax regime (or achieving compliance with the regime in the case of the public sector). The purpose is to compare the taxes one to another and to identify characteristics important to administration that should be considered as policymakers consider alcoholic beverage tax changes. The results of the evaluation are summarized in the accompanying table. The criteria used in the evaluation include:

- Number of taxpayers – The number of taxpayers is a key determinant of the resources the state will have to expend to control the risks of noncompliance and the degree to which the state can approach universal coverage with its various compliance approaches. The number of taxpayers is also an indicator of the relative size and sophistication of the taxpayers. Taxes with large numbers of taxpayers will include a number of small taxpayers with potentially limited compliance abilities.
- Simplicity of tax/Breadth of base – Compliance tends to be more complex and prone to error for taxes that have numerous exempt items or purchasers because of the recordkeeping involved and the opportunity for evasion. Such taxes are also more burdensome to taxpayers in terms of recordkeeping and audits. Exempt transactions and exempt entities also present avenues for possible evasion of the tax, i.e., recording a transaction as exempt when it is not.



## Evaluating the Administration of Taxes on Beer

- Availability of data – Taxes that rely on data that is not readily available to a taxpayer or that must be computed and obtained from multiple sources are more complex for taxpayers. Such taxes complicate compliance and increase the burden associated with audits of the taxpayer's books and records.
- Return filing burdens – Taxes that require multiple filings impose greater burdens on taxpayers, are more prone to error, and impose increased burdens on the state.
- Third party reports – The availability of third party reports that can be used to verify a taxpayer's return and payment are a significant aid in ensuring compliance. They can reduce the burden imposed by other compliance tools and reduce the demands imposed on the state to ensure compliance.
- Field audits – The necessity and nature of field audits influences compliance and administration in at least two ways. Audits are burdensome for taxpayers in that they consume resources, and to the extent that states must rely on audits as a primary compliance tool, some noncompliance must be expected since limited resources will prevent states from achieving 100 percent audit rates.
- Opportunities for evasion – A general concern in tax administration is the degree to which the structure and complexity of the tax contribute to compliance or create opportunities for evasion. When taxes on particular commodities are involved, the ability of consumers to shift purchases to out-of-state sellers and the potential for the tax to foster illegal sales of untaxed or otherwise illegal products in the state must be considered.
- Enforcement mechanisms – The effectiveness of the enforcement mechanisms available to the state can ultimately be determinant of the ability to achieve compliance. Ineffective or cumbersome mechanisms can increase the burden on the state and on taxpayers and leave compliance gaps.

### Number of Taxpayers

For both gallonage taxes and the Kentucky and Tennessee wholesale taxes, the vast majority of the revenue is remitted by quite a small number of taxpayers (at most 40 in our interview states), thus improving the likelihood that taxpayers commonly use accounting and inventory control systems that facilitate compliance with the taxes and providing opportunities for the states to focus their compliance efforts. General and special retail taxes on sales of beer necessarily involve significantly more taxpayers. National data indicate that there are as many as 550,000 retail outlets selling beer, compared to about 2,000 wholesalers (including craft brewers).<sup>82</sup> In Kansas, the population of taxpayers for the two special taxes on various types of beer sales is about 2,800 compared to 25 wholesalers dealing with the gallonage tax. Kansas tax authorities indicate that, on average, about six percent of the taxpayers for the two special taxes either do not file returns or make full payment of the tax due each month. Retail-level taxes also necessarily involve taxpayers with large variations in size and sophistication. One internal Tennessee Department of Revenue study

<sup>82</sup> Beer Institute, *supra* note 19, at 42.

When taxes on particular commodities are involved, the ability of consumers to shift purchases to out-of-state sellers and the potential for the tax to foster illegal sales of untaxed or otherwise illegal products in the state must be considered

indicated that as many as 30 percent of the retailers in that state did not have access to computers for use in their operations.<sup>83</sup> The lack of automated processes and records obviously can lead to mistakes and noncompliance, particularly if the state's tax system imposed a tax on beer that was different from the general retail sales tax.

### **Simplicity of the Tax**

Taxes on alcoholic beverages are viewed as a way of promoting temperance and providing for an orderly market in alcoholic beverages;<sup>84</sup> therefore, they contain few exemptions because it is generally believed that anyone consuming the product should be subject to the tax. The only 'true' exemption in the gallonage and wholesale taxes is for sales to the military to avoid a situation in which the state would be imposing tax on a sale to the U.S. government. While wholesalers also exclude sales to other wholesalers when computing the tax due, those sales will ultimately be taxed when they enter the retail chain, and thus are not really exempt from tax. Similarly, there are no exemptions for taxes imposed on the sale of beer at the retail level under either the retail sales tax or a special sales tax. The general retail sales tax, however, has many exemptions in each state, and if a retailer of beer sells a wide variety of products, these general exemptions will likely complicate the compliance process for that retailer. In addition, special sales taxes complicate matters and create risks of noncompliance because they require a seller's point of sale equipment (if any) to be able to separate beer from other products and to apply the higher rate to the beer. Failure to properly compute the sales tax due will reduce the price of the errant seller below that of the compliant competition.

### **Availability of Data**

None of the types of beer taxes appear to present issues that make it difficult for the seller/taxpayer to be in possession of the information and data necessary to compute the tax properly at the time of the transaction or when the tax is computed. In addition, the filing of the various tax returns requires only information that appears to be readily available from normal accounting systems. To the extent that retail and special sales taxes on beer involve small retailers without automated point of sale or accounting systems, however, there are risks of noncompliance.

### **Return Filing Burden**

With the exception of the Tennessee wholesale tax, the various taxes imposed on the distribution and sale of beer generally require the filing of only one tax return for each type of tax for each reporting period.<sup>85</sup> The Tennessee wholesale tax requires the filing of a monthly return and payment in each jurisdiction where the wholesaler does business; in addition, retailers in the four states where many local governments

<sup>83</sup> The study was conducted in 2003 as part of the state's involvement in the Streamlined Sales Tax Agreement. The data is available from the authors of this report.

<sup>84</sup> There are contrasting views and extensive literature regarding the 'appropriate' level of alcohol pricing and the impact of taxation on consumption that are beyond the scope of this report. See, e.g., <http://pubs.niaaa.nih.gov/publications/arh26-1/22-34.htm>.

<sup>85</sup> Local gallonage taxes in Cook County and Chicago, Illinois both require the filing of a separate return with those entities. The New York City gallonage tax is filed on the same return as the New York State gallonage tax.





## Evaluating the Administration of Taxes on Beer

administer their retail sales taxes individually may well be responsible for multiple returns depending on the extent of their business operations. Gallonage tax returns do, however, require a fairly extensive set of information as a means of tracking the flow and disposition of beer in the state. They commonly call for a shipment-by-shipment listing of beer received from each supplier, and several states require that wholesalers also provide information on the amount of product sold to each retail account. While extensive, these reporting requirements can be met from information readily available to the wholesaler.

### Third Party Reports

It is only with respect to gallonage taxes that third party reporting enables a state to verify the amount of tax reported as due and owing by the taxpayers – beer wholesalers in this case. Since gallonage taxes are based solely on the volume sold, states are able to match the information shown on the wholesaler return with reports from suppliers to ensure that the total inventory of the wholesaler is accurately reported. This enables the states to verify compliance primarily by relying on desk audits of the returns as opposed to more costly, time-consuming and intrusive field audits. Nearly every state relies on such desk audits as the primary compliance tool for gallonage taxes with field audits being performed on a limited basis when other entries on the return indicate potential issues. Because all other taxes on beer are price-based, third party reporting alone cannot assure compliance to the extent that it can with gallonage taxes. Full verification for the other taxes is dependent on field audits.<sup>86</sup>

### Field Audits

Because retail and special sales taxes and the wholesale gross receipts taxes are based on price, the primary compliance tool available to the state is field audits of taxpayers. Such audits can be time consuming and are generally considered burdensome by taxpayers. Given the resources they consume and the large number of taxpayers involved in the entire array of state taxes on all products and entities, states must allocate their resources to minimize their noncompliance exposure and cannot expect to achieve 100 percent coverage or 100 percent compliance. The extent of noncompliance is dependent on the structure of the tax as well as the other factors considered here. For gallonage taxes, on the other hand, field audits are clearly a secondary compliance tool because of the utility of the third party reporting and the reduced number of taxpayers.

### Opportunities for Evasion

One issue of particular concern for state and local taxes on specific products is the potential for evasion when there are significant differences in tax rates between jurisdictions because in-state consumers may try to avoid the tax by shifting to

<sup>86</sup> The issue of sales outside the current state-based licensee to licensee system presents additional challenges for compliance. Sales to non-licensees would break the chain of reporting that allows supplier records to be matched with distributors. It would require states to rely on self-reporting by the purchaser. As mentioned earlier *Supra* at pp1-3 in this report, requiring individual taxpayers to self report is problematic.

It is only with respect to gallonage taxes that third party reporting enables a state to verify the amount of tax reported as due and owing by the taxpayers – beer wholesalers in this case

out-of-state sellers, and the tax differential may foster illegal sales of the taxed product. Reference is often made to state cigarette taxes where the federal Alcohol and Tobacco Tax and Trade Bureau estimates that the state tax revenue lost to evasion is about \$4.5 billion annually, a figure approaching 25 percent of the total tax collected.<sup>87</sup> Several factors contribute to the level of cigarette tax evasion, including;

- The entry of cigarettes into the retail distribution chain is not controlled as it is with beer. Cigarette retailers are legally required to purchase cigarettes from a licensed wholesaler with a stamp affixed to show payment of the proper tax. Wholesalers, however, are not granted an exclusive territory as with beer, and there is no systematic reporting of the flow of cigarettes into the state and through the distribution system. The lack of controls makes it difficult to control the organized smuggling of untaxed, contraband cigarettes into the sales system.<sup>88</sup>
- Individual consumers are able to purchase cigarettes from out-of-state wholesalers via mail order or the Internet without tax being collected. The wholesaler is obligated under federal law (the Jenkins Act)<sup>89</sup> to file written reports with the tax authority in the state to which the cigarettes are shipped indicating the name of the purchaser and the amount of cigarettes they received, thus allowing the state tax authority to bill and collect the requisite tax from the individual consumer. Enforcement of the Jenkins Act reporting requirement is sporadic, as highlighted earlier at page 2, collection of tax directly from the individual consumers is inordinately expensive compared to collection by the wholesaler.<sup>90</sup>
- Federal law and various court cases prevent states from collecting state taxes on cigarettes sold to members of an Indian tribe when the sale is made by a tribal seller on tribal lands. It has proved difficult and impractical, however, to limit this privilege only to sales to tribal members, resulting in another avenue by which individuals can obtain cigarettes without the proper tax being paid.<sup>91</sup>

The cigarette tax differentials across states create incentives for individual and organized efforts to evade the tax. Avoiding tax on a carton (10 packs) could reduce the cost \$20 or more in a number of cases.<sup>92</sup> Similarly, the tax evaded on a single case (600 packs) of contraband cigarettes that were purchased tax paid in Virginia at

<sup>87</sup> See Delores W. Gregory, *Higher State Cigarette Taxes Can Discourage Smoking But Also Contribute to Growing Black Market, Officials Say*, Tax Management Multistate Tax Report, Vol. 15, No. 9, Sept. 26, 2008 at 593-597.

<sup>88</sup> For discussion of organized smuggling of cigarettes into the retail distribution system, see Michael LaFaive, Patrick Fleenor & Todd Nesbit, *Cigarette Taxes and Smuggling: A Statistical and Historical Review*, Mackinac Center for Public Policy, 2008. See also Tom Jackman, *Scam, Like a Nesting Doll, Hid Even More*, Washington Post, Jan. 11, 2009, at C1.

<sup>89</sup> 5 U.S.C. §§ 375-378.

<sup>90</sup> See also *Rowe v. N.H. Motor Transp. Ass'n*, 128 S.Ct. 989 (2008) holding that states were preempted by federal law from imposing additional shipping requirements to prevent illegal sale and delivery of tobacco to minors.

<sup>91</sup> See, e.g., *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980) and *Oklahoma Tax Comm'n v. Citizen Band, Potawatamoti Tribe*, 498 U.S. 505 (1991). While the Court has held that sales to nontribal members may be taxed, it has also held that the sovereign immunity of the tribe limits state actions to enforce collection of the tax.

<sup>92</sup> There are seven states where the tax exceeds \$2.00 per pack of 20 cigarettes. See Federation of Tax Administrators Web site at <http://www.taxadmin.org/fta/rate/cigarett.html>.



## Evaluating the Administration of Taxes on Beer

\$ .30 per pack, but sold in the New York City where the combined state and city tax is \$3.00 per pack market would exceed \$1,600. Similar financial incentives exist for the evasion of gallonage taxes on beer as well. A trailer of contraband beer that entered Tennessee without the state gallonage or wholesale tax would result in a revenue loss of about \$3,700.

Our research indicates that excise taxes on beer are significantly less subject to evasion. First, the three-tier distribution system, coupled with exclusive wholesaling territories and substantial reporting on the movement of beer through the distribution system with items such as an “at rest” law, enables states to maintain a high degree of accountability over beer in the state. This makes the organized smuggling of contraband, untaxed beer into the retail distribution system more difficult than is the case with cigarettes. In addition, the ability of licensing authorities to revoke a retailer’s license for selling contraband product also acts as a substantial deterrent to such illegal behavior.

Similarly, it is more difficult for individuals to acquire untaxed beer through interstate purchases or by purchasing beer from an outlet on tribal lands. In addition, federal law supports the imposition and collection of taxes on beer sold on Indian reservations. Alcoholic beverages may be sold on tribal lands only if the sale is authorized by the tribal government with jurisdiction over the lands and the sale conforms to the laws of the state in which the tribal land is located.<sup>93</sup> The U.S. Supreme Court has held that states have concurrent jurisdiction with the tribes regarding the regulation of alcoholic beverages on Indian reservations and that state licensing and taxation laws do apply to sales of alcoholic beverages on Indian lands.<sup>94</sup> As a result, beer sold on Indian lands must come from a state licensed wholesaler with the state gallonage tax applied at the time of the wholesale sale, thus foreclosing one source of evasion present in the cigarette tax arena.

This is not to say there are not some opportunities for evasion with respect to beer taxes. Individuals can travel interstate and purchase beer to take advantage of tax differentials.<sup>95</sup> All in all, however, the legal environment surrounding the distribution and sale of beer contains several features that work against the widespread, organized evasion of excise taxes that occurs with respect to cigarette taxes.<sup>96</sup>

### Enforcement Mechanisms

Each of the three types of taxes on beer relies on essentially the same set of enforcement mechanisms for ultimately ensuring compliance with the tax. In addition to the normal vehicles of penalties, garnishments, legal judgments and the like, agencies responsible for administration of taxes on alcoholic beverages can in various ways use potential action against a taxpayer’s license to sell alcoholic beverages as a

<sup>93</sup> 18 U.S.C. § 1161.

<sup>94</sup> See *Rice v. Rehner*, 463 U.S. 713 (1983).

<sup>95</sup> For a discussion, see Patrick Fleenor, *How Excise Tax Differentials Affect Cross-Border Sales of Beer in the United States*, Tax Foundation (1999). A similar issue arises with bottle bill redemption differences. See [http://www.mlive.com/news/grandrapids/index.ssf/2008/12/michigan\\_aims\\_to\\_end\\_bottleret.html](http://www.mlive.com/news/grandrapids/index.ssf/2008/12/michigan_aims_to_end_bottleret.html)

<sup>96</sup> In addition to the control and tax collection aspects of the alcohol regulatory system in the U.S., there are product quality issues as well. Counterfeit and adulterated alcohol is a significant issue in some other countries where a number of deaths have been reported. The introduction of counterfeit alcohol into the U.S. market is difficult with the three-tier system, wholesalers stocking shelves, etc. See <http://www.fluidtrade.co.uk/forum/messages.aspx?TopicID=55> and <http://www.nabca.org/Meetings/Files/200929113052.ppt#783,1,Slide 1> for a review of these issues.

vehicle to enforce compliance. In some cases, failure to comply with tax obligations can be used as a reason to suspend or revoke an alcoholic beverage license which effectively terminates the ability of the licensee to engage in business. While most people interviewed for this report indicated that instances of actual suspension or revocation were few, the potential for losing the license to operate is a significant deterrent to noncompliant behavior. In addition, several states ensure that all distributors and retailers of alcoholic beverages are current in their tax obligations before a license is renewed. In addition, if a retail license is suspended or revoked for failure to pay taxes, distributors would be prevented from providing further product to that retailer – a significant aid in achieving compliance.

Summary Evaluation of Administration of State Taxes on Distribution and Sale of Beer			
Criteria	Gallonage Taxes	Retail and Special Sales	Wholesale Taxes
Number of Taxpayers	Minimal – Dependent on number of craft brewers. Bulk of revenue from fewer than 40 wholesalers.	Substantially more than gallonage. Ratio of 250 retailers to 1 wholesaler.	Same as for gallonage taxes.
Simplicity of Tax	Minimal exemptions. Limited to sales to military and other distributors.	Minimal exemptions for beer. General retail taxes have large number that may complicate beer taxes also. Point of sale system must handle multiple rates for special taxes.	Exemptions the same as gallonage tax.
Availability of Data	Data available from wholesaler accounting and inventory systems. Requires only volume information.	Data available from taxpayer accounting system. Requires volume and price information.	Data available from taxpayer accounting system. Requires volume and price information and location in Tennessee.
Return Filing Burden	Single return per month required. Requires listing of shipments received and (in some cases) sales by retailer.	Single return per state in most states. Limited information on return.	Single monthly return in Kentucky. Multiple monthly returns and report on sales by locality in Tennessee.
Third Party Reports	Supplier reports available to match to wholesaler return. Sufficient to verify compliance.	Reports from wholesalers can aid in identifying possible audits. Not sufficient for verifying compliance.	Supplier reports can verify volume, but not gross receipts or location of sale (necessary in Tennessee.)
Field Audits	Used on periodic basis and when compliance issues suspected.	Necessary to verify compliance.	Necessary to verify compliance.
Opportunities for Evasion	Opportunity for individual or organized smuggling limited by three-tier system, franchising rules and support of federal law.	Opportunity for individual or organized smuggling limited by three-tier system, franchising rules and support of federal law.	Opportunity for individual or organized smuggling limited by three-tier system, franchising rules and support of federal law.
Enforcement Actions	Minimal enforcement issues. Authority over license is significant deterrent.	Authority over license is significant deterrent.	Authority over license is significant deterrent.

# Findings

Our review of the various taxes imposed on the distribution and sale of beer and the legal structure surrounding alcoholic beverages along with the interviews we conducted yields a number of findings regarding the administration of various types of taxes on beer.

- Of the three types of taxes on the distribution and sale of beer, gallonage taxes are most closely aligned with the characteristics used here to evaluate the administration of taxes on beer. Several features, including the number of taxpayers, simplicity of the tax and the availability of third party reports to verify compliance, contribute significantly to the ability to ensure compliance with gallonage taxes without an excessive burden being imposed on taxpayers. Of these, the most important are the limited number of taxpayers and the use of third party reports in ensuring compliance.
- The persons interviewed for this report do not consider complying with gallonage taxes to be a significant burden. Similarly, no one interviewed for the report considered noncompliance with the gallonage tax to be a significant issue. They find compliance to be straightforward and relatively simple. Retail and special sales taxes, on the other hand, necessarily involve more compliance and administrative issues because of the large number of sellers involved, many of whom are smaller and less technologically sophisticated.
- Other features of the regulatory system governing the sale of alcoholic beverages, including the three-tier system of distribution, exclusive territories for beer wholesaling and various controls on the retailing of beer, significantly contribute to the administration of all types of taxes on beer. These regulations, taken together,







## Findings

create the opportunity to monitor the flow of alcoholic beverages in the state, provide state regulators and tax administrators with a limited number of points to tax and/or exercise control over the flow of alcoholic beverages, limit opportunities for contraband (i.e., untaxed) alcoholic beverages to enter the distribution chain and ensure compliance with the various tax systems. In particular, requirements that suppliers must sell only to licensed wholesalers and that retailers may purchase product only from certain licensed wholesalers is fundamental to ensuring compliance with beer taxes in an efficient manner. Without these controls, the level of resources necessary to achieve any given level of compliance would be substantially greater than at present.

- Taxes imposed on the distribution and sale of beer are not subject to the level of noncompliance and evasion that exists with respect to cigarette taxes at either the wholesale or the retail level. The principal reasons for this are: (a) The three-tier system effectively limits the sources from which beer may enter the retail market to that provided by licensed wholesalers where tax compliance can be effectively controlled; (b) Federal law provides that the sale of beer and other alcoholic beverages on lands under the jurisdiction of Indian tribal governments (when authorized by the tribal government) is subject to state taxation and regulation as well as tribal regulation and taxation; and (c) The volume and bulk associated with large quantities of beer make it a less likely product for contraband sales.
- Information available from beer wholesalers as part of the gallonage tax administration process has proved helpful in promoting compliance with other beer-related taxes. The most visible of these examples is the program for reporting sales to off-premise retailers in Texas that has allowed the tax administration agency to model off-premise retailer sales and improve compliance significantly among such entities.
- The Kentucky and Tennessee wholesale gross receipts taxes were born from unique circumstances in each state, and they tend to reflect those particular environments. A gallonage tax can achieve a similar incidence as the gross receipts tax albeit the price-based feature of the gross receipts tax means that revenues will increase as prices increase which is not the case with a gallonage tax. Receipts from the wholesale tax would be diminished and compliance made more difficult if beer could be distributed without going through licensed wholesalers because of direct sales to consumers or retailers from suppliers. The price posting law in Tennessee is important to maintaining local revenue in that state.
- While some states have made efforts to automate the gallonage tax process, such efforts are quite limited compared to some other taxes. In our estimation, most wholesalers have in place various automated systems that would interface well with electronic filing requirements. Electronic filing would, in our estimation, enable states to more effectively use both gallonage tax returns and supplier reports. The current paper-based system requires wholesalers to devote resources to manually transcribing otherwise electronic records.

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# Appendix A – State and Local Taxes on the Distribution And Sale of Beer

## National Beer Wholesalers Association

### State Excise Tax on Beer Chart

Current as of Jan. 14, 2009

State	State Gallonage Tax Rates (\$ per gallon)	General Sales Tax Applied on Retail Sale	Special Sales Taxes Applied on Retail Sale	Sales Tax Comments	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	\$0.233	Yes	Yes	1% special tax on off-premise beer sales		
California	\$0.200	Yes	No			
Colorado	\$0.080	Yes	No			
Connecticut	\$0.194	Yes	No			
Delaware	\$0.156	N/A	No			
Florida	\$0.480	Yes	No			
Georgia	\$0.322	Yes	No		\$0.387/gal per 15 1/2 gal. container; \$0.53/gal per 12oz. container	Local gallonage tax
Hawaii	\$0.930	Yes	No		0.5% wholesale excise tax	
Idaho	\$0.150	Yes	No			
Illinois	\$0.185	Yes	No			Local gallonage taxes 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.	10% Liquor Drink Tax	Imposed on all on-premise sales of beer (and other alcoholic beverages.)
Kentucky*	\$0.081	Yes	No	Off-premise sales of beer subject to retail sales tax effective April 1, 2009	11%; Local Option Tax	Wholesale gross receipts tax
Louisiana	\$0.323	Yes	No		Local Option Tax	
Maine	\$0.350	Yes	Yes	Off-premise sales of beer subject to retail sales tax of 5%; on-premise sales subject to 7% tax		
Maryland	\$0.090	Yes	No			
Massachusetts	\$0.106	No	Yes	Off-premise sales not subject to retail sales tax; on-premise sales subject to "Meals Tax" of 5% -- same rate as general sales tax	0.57% (gross receipts tax)	Corporations subject to corporate excise tax not subject to this tax
Michigan*	\$0.203	Yes	No			
Minnesota*	\$ .148/\$.077	Yes	Yes	All sales subject to an additional 2.5% Liquor Gross Receipts Tax		Lower gallonage tax rate applies to beer of less than 3.2% alcohol by weight; Minneapolis & St. Cloud also impose a local liquor tax
Mississippi	\$0.427	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	
New Mexico*	\$0.410	Yes	No			
New York*	\$0.140	Yes	No	Effective May 1, 2009, N.Y. has increased its gallonage tax to \$.0140/gallon	\$ .12 per gallon New York City tax levied	Collected with New York State tax
North Carolina	\$0.532	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		Local Option Tax	
Oklahoma	\$ .403/\$.363	Yes	Yes	On-premise 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		Lower gallonage rate applies to beer of less than 3.2% alcohol by weight.
Oregon	\$0.084	N/A	No			
Pennsylvania*	\$0.080	Yes	No			
Rhode Island*	\$0.097	Yes	No		\$0.032/gallon & \$0.04/case	Beverage container tax
South Carolina	\$0.768	Yes	No			
South Dakota	\$0.274	Yes	No		Local Option Tax	
Tennessee	\$0.138	Yes	No	Beer less than 5% alcohol by weight not subject to on-premise tax	17%	Wholesale Beer Tax
Texas*	\$0.194	Yes	Yes	Off- and on-premise sales of beer subject to retail sales tax except on-premise sales by mixed beverage and private club licensees which is subject to 14% mixed beverage tax in lieu of sales tax.	\$0.198/gal.	Ale & Malt Liquor (more than 4% alcohol by weight)
Utah	\$0.413	Yes	No			
Vermont	\$0.265	Yes	Yes	Off-premise sales subject to retail sales tax; on-premise sales subject to Meals and Room Tax of 10%		
Virginia	\$0.267	Yes	No			
Washington*	\$0.261	Yes	No			
West Virginia	\$0.177	Yes	No			
Wisconsin*	\$0.065	Yes	No			
Wyoming*	\$0.019	Yes	No			
District of Columbia	\$0.090	Yes	Yes	Off-premise sales subject to tax of 9%; on-premise sales subject to tax of 10%		

\* Reduced tax rate, exemption or credit for small brewer

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