



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

8/21/2023 8:34:35 AM

Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Tax

RULE TYPE: Legislative

TITLE-SERIES: 110-49

RULE NAME: ADMINISTRATION OF TAX ON
PURCHASES OF WINE AND LIQUOR
INSIDE AND OUTSIDE OF
MUNICIPALITIES

CITE AUTHORITY: W. Va. Code §§60-3-9d(a)(3) and 60-3A-
21

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SERIES 49
ADMINISTRATION OF TAX ON PURCHASES OF WINE AND LIQUOR
INSIDE AND OUTSIDE OF MUNICIPALITIES

§110-49-1. General.

- 1.1. Scope. – This legislative rule clarifies implementation of collection procedures for the tax on purchases of intoxicating liquor and wine inside and outside corporate limits of municipalities under W. Va. Code §60-3-9d.
- 1.2. Authority. -- W. Va. Code §§60-3-9d(a)(3) and 60-3A-21.
- 1.3. Filing Date. -- ~~April 9, 2019.~~
- 1.4. Effective Date. -- ~~May 9, 2019.~~
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon ~~May 9, 2024~~August 1, 2029.

§110-49-2. Definitions.

2.1. “Beer” means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

2.2. “Direct shipper” means any winery, farm winery, supplier or retailer of wine that is licensed and in good standing in its domicile state who sells and ships wine up to a maximum of two (2) cases of wine per month directly to an adult West Virginia resident who is twenty-one years of age or over for such resident’s personal use and consumption and not for resale. A “direct shipper” must obtain a direct shipper’s license from the State of West Virginia and meet the requirements in West Virginia Code §60-8-1 et seq. and this rule.

~~2.23.~~ “Distiller” or “distillery” means an establishment where intoxicating liquor, but not beer or wine, is manufactured or in any way prepared. The definition of distiller and distillery includes mini-distilleries as defined in W. Va. Code §60-1-5b.

~~2.34.~~ “Distributor” means any person who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs or retailers under authority of W. Va. Code §60-8-1, et seq. and maintains a warehouse in this state for the distribution of wine. For the sole purpose of defining a distributor in this Rule, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its

beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in W. Va. Code §44-10-1, et seq.

2.45. "Intoxicating liquor" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes, but is not limited to, beer, brandy, rum, whiskey, cordials and gin, but does not include nonintoxicating beer or wine.

2.56. "Municipality" is a word of art and shall mean and include any Class I, Class II and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this State.

2.67. "Person" means an individual, partnership, corporation, or any business organization or form of business enterprise approved by the Commissioner of the Alcohol Beverage Control Administration, provided, that this provision shall not prevent imposition of liability on any person or entity that is liable for tax or that has accrued any liability for the tax.

2.78. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

2.89. "Winery" means an establishment where wine is manufactured or in any way prepared. The definition of winery includes farm wineries as defined in W. Va. Code §60-1-5a.

2.910. "Tax Commissioner" or "commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

§110-49-3. Tax Base.

3.1. The tax under §8-13-7, §60-3-9d and §60-3A-21 of the West Virginia Code, is imposed upon the following entities, as defined under this Rule, the West Virginia Code and the rules and regulations of the West Virginia Alcohol Beverage Control Administration, that make sales of ~~sales of~~ intoxicating liquors and wine:

3.1.a. Retailers, including wine specialty shops;

3.1.b. Wineries and farm wineries;

3.1.d. Direct shippers;

3.1.e. Distributors; and

3.1.f. Distillers and mini-distillers.

3.2. The tax base does not include purchases of intoxicating liquors or wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such intoxicating liquors or wine is subject to the tax imposed by W. Va. Code §60-3-9d, §8-13-7 or §60-3A-21. For purposes of this section, the term "original sealed package" means an original sealed package as defined in §8-13-7 of the West Virginia code.

3.3. The tax base does not include intoxicating liquors sold by or purchased from holders of a license issued pursuant to the provisions of W. Va. Code §60-7-1, *et seq.*

3.4. The tax shall be levied on the purchase and shall be added to and collected with the price of purchase.

§110-49-4. Collection of tax.

4.1. Retailers -- On a return designed by the Tax Commissioner, any person making sales of wine and liquor at retail, including retailers, wineries, and distilleries, must provide the following information:

4.1.a. The retailer's physical street address, city and zip code, or, if the retailer has multiple business registration locations, a physical street address, city and zip code for each location where sales are made; and

4.1.b. The retailer must separately report for each location the amount of sales for:

4.1.b.1. Intoxicating liquor;

4.1.b.2. Wine; and

4.1.b.2. Sales of intoxicating liquor and wine to private clubs.

4.1.c. Such other information as the Tax Commissioner may require.

4.2. Direct Shippers and Distributors -- On a Return designed by the Tax Commissioner, any person making sales of wine in distribution or direct shipment for final consumption, including wineries, farm wineries, direct shippers and distributors must provide the following information:

4.2.a. A physical street address, city and zip code for each sale made; and

4.2.b. The amount of each sale.

4.2.c. Such other information as the Tax Commissioner may require.

4.3. Wineries and farm wineries -- Wineries and farm wineries may have retailer, direct shipper or distributor sales. If a winery or farm winery makes retail sales of wine, it must comply with Section 4.1. If a winery or farm winery makes direct shipments or distributes wine subject to the tax, it must comply with Section 4.2.

4.4. Distilleries and mini-distilleries - If a distillery or mini-distillery makes retail sales of intoxicating liquor, it must comply with Section 4.1.

4.5. Based upon the information provided on the return, the Tax Department will determine which county or municipality taxing jurisdiction will receive the tax revenues generated from the sale, using the best information available to the Department, municipality and county boundaries, and the sourcing rules provided in §11-15B-1, *et seq.*, of the West Virginia Code.

§110-49-5. Remittance to Tax Commissioner.

5.1. In recognition of:

The experience, knowledge, and technical, and legal expertise of the Tax Department;

The computer and logistical systems currently operated and maintained by the Tax Department;

The auditing and revenue processing resources of the Tax Department; and

The obvious cost efficiency and operational efficiencies of placing administration of the tax imposed by §8-13-7, §60-3-9d and §60-3A-21 of the West Virginia Code under the exclusive authority of the Tax Department --

The Legislature has determined that the preeminent interest of all municipal and county tax jurisdictions is best served by empowerment of the Tax Commissioner, by law, to hold, maintain and exercise sole authority to administer the tax imposed by §8-13-7, §60-3-9d and §60-3A-21 of the West Virginia Code.

5.2. Accordingly, remittance of the tax imposed by §8-13-7, §60-3-9d and §60-3A-21 of the West Virginia Code shall be made to the Tax Commissioner accompanied by Return forms designed by the Tax Commissioner.

§110-49-6. Quarterly Distribution of Collections.

The Tax Commissioner shall distribute allocable revenues collected during each calendar quarter to each revenue generating municipality or county no later than the 15th day of the month following the close of the quarter in which the tax was remitted to the Tax Department. Timely distribution has occurred when the Tax Department issues the request for transfer to the State Treasurer. The Tax Commissioner has fulfilled the responsibility for distribution of allocable revenues upon issuance of the request for transfer to the State Treasurer.