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The Tax Man Cometh — Breweries to Start Paying Use Tax on Certain Sales of Beer Starting October 1

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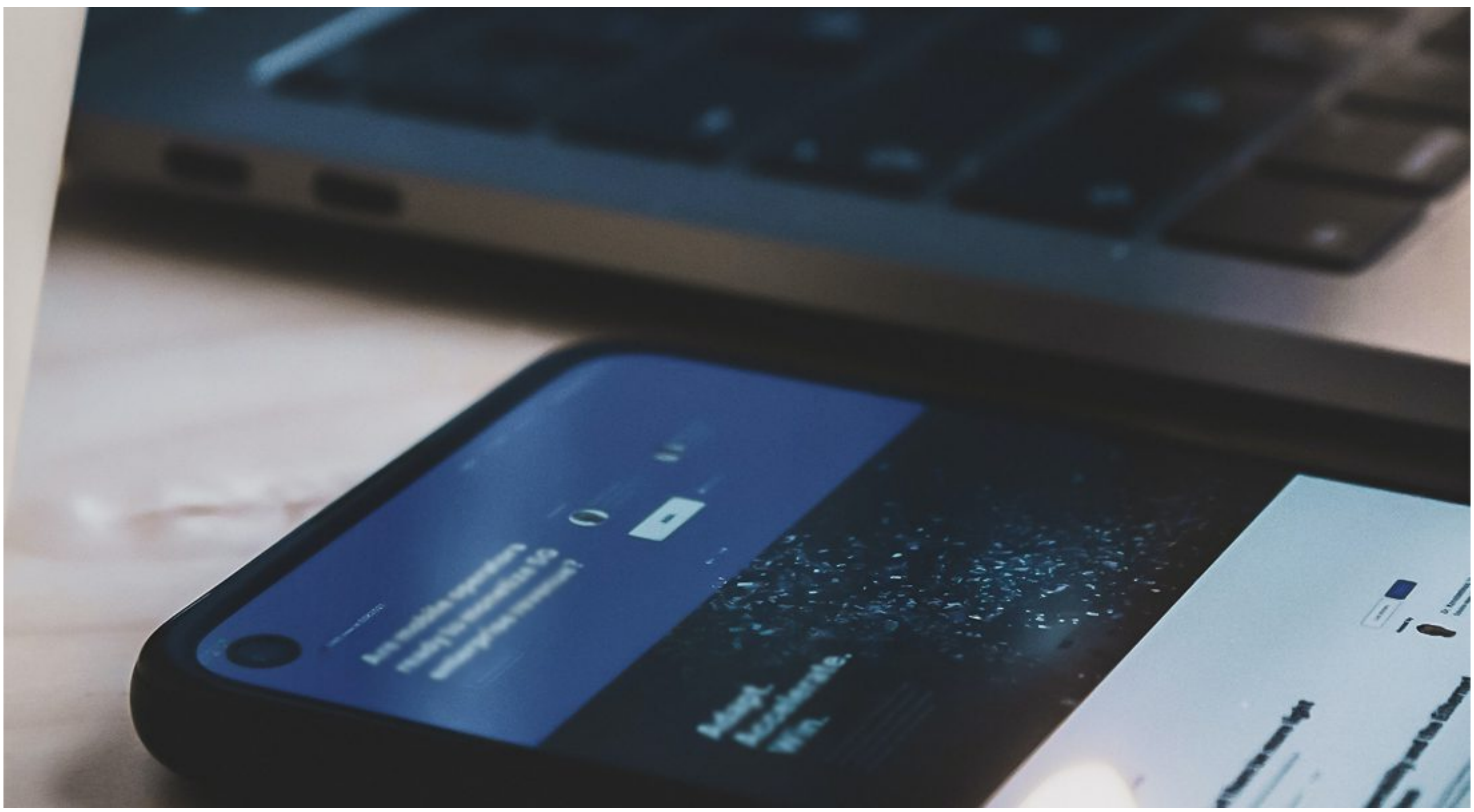

The Pennsylvania Department of Revenue has locked in its new policy which takes effect October 1 and requires breweries to remit a use tax of 6% on 25% of the total retail price of their own beer sold to consumers at their premises. After some delay and several revisions, the final policy is substantially different than what was originally proposed and represents an attempt to provide tax parity among the various licensees that sell beer to consumers.

The Difference Between Sales Tax and Use Tax

The process and rationale for this tax is complicated, and the guidance to date has been sparse. The Pennsylvania Legislature has chosen to classify this tax as a use tax meaning that the tax cannot be passed directly onto a customer. The tax is imposed upon and to be paid by the brewery.

Unlike a sales tax, breweries cannot add a separate line item to a receipt showing this use tax. Breweries can, however, adjust their prices to reflect any increased costs associated with the use tax or decide to absorb the additional cost without changing their prices.

The use tax applies to sales of a brewery's beer from the brewery to a consumer (regardless of whether the sale is for on-premise or off-premise consumption). Sales tax applies to beer sold to retail licensees and other Pennsylvania alcohol manufacturers. This new policy does not change how breweries administer and pay their sales tax:

- Sales of merchandise such as glassware, bottle openers, and stickers are still subject to sales tax
- Sales of beer to retail licensees, such as restaurants, hotels and bars are subject to sales tax
- Sales of beer to distributors are still exempt from sales tax

How to Calculate the Use Tax

The use tax rate, like the sales tax rate, is 6%. However, in order to achieve the goal of leveling the playing field amongst the various licensees who sell beer, the Legislature has modified the tax to only apply to 25% of the total retail price of a brewery's beer sold by the brewery directly to a customer.

For example, if the total retail sales of beer to customers for a given month amounts to $1,000, the brewery will first calculate 25% of $1,000, which is $250. The $250 is the tax base and is the amount that the use tax will be imposed against. The brewery will then multiply the $250 by the 6% use tax to arrive at a total tax to be paid of $15.

Breweries in Allegheny and Philadelphia Counties will also need to account for the additional sales/use tax imposed by those counties.

Completing Sales and Use Tax Returns

When it comes time to submit the brewery's sales and use tax return, the brewery will report all taxable sales in line 1, including the sales of its own beer it made directly to consumers. Line 1 is the total of all taxable transactions including sales and use tax transactions.

On line 2, the brewery will subtract the amount of its sales of its own beer made directly to consumers from the amount in line 1 and enter the remaining amount here. Essentially, line 2 asks a brewery to remove from the total amount of taxable sales those sales that are subject to the use tax. The amount remaining is the amount that will be subject to the sales tax and should be entered on line 2. For line 6, a brewery will multiply the total sales of its beer it made directly to consumers by .25 (25%), which will then be multiplied by 6% to determine the use tax amount.

For example, if a brewery has $1,000 of total taxable sales (sales of merchandise, beer directly to consumer, etc.) it will enter $1,000 on line 1. If $400 of the $1,000 total taxable sales was for sales of its own beer directly to its customers, then the brewery would subtract $400 from the $1,000 and enter $600 on line 2. The $600 amount is the total sales subject to sales tax. The remaining $400 represents the total amount of sales the brewery made of its own beer to consumers and will be multiplied by .25 (25%), which equals $100. The $100 is the amount that is subject to the 6% use tax for a total use tax due of $6.

Multiple Locations and Sales Records

Breweries that have storage license locations, brew pub licenses, or couplets will calculate the use tax based upon all sales of the brewery's own beer to consumers across all locations – assuming that each location is owned by the same entity.

The use tax is only applied to a brewery's sales of its own beer to consumers. If a brewery sells beer made by another brewery, wine from a limited winery, or spirits from a limited distillery, those sales are not subject to the use tax. Therefore, breweries will need to set up their point of sale (POS) systems or cash registers with a specific key to code sales of its own beer versus sales of other manufacturers' products. Sales records and tax returns are subject to audit which makes accuracy necessary so that the calculations for sales and use tax can be verified through the records.

Stay Informed

Saxton & Stump attorney Ken McDermott is available to discuss how the final use tax policy may affect your brewery and how our Hospitality and Liquor Licensing and Alcohol groups can help you devise an appropriate plan to navigate this complex issue.

The Department of Revenue has started collecting questions it has received regarding the application of this tax. Links to those questions and the Department of Revenue's responses are included below. You can expect additional updates from Saxton & Stump's team as more questions and issues are addressed. Stay informed by signing up for our e-alerts and following Ken McDermott on Twitter @PA_Alcohol_Law.

Pennsylvania Department of Revenue Q&A Links

Is the tax imposed under Act 13 of 2019 a sales tax or use tax, and can the brewery "pass on" the tax to the ultimate consumer on the sales receipt at retail?

Are there any miscellaneous recommendations from the department on record keeping or compliance with the tax imposed under Act 13 of 2019?

Does the reporting of this tax require the brewery taxpayer to change the frequency of its sales and use tax filings, i.e. will it change whether the taxpayer is a monthly or quarterly filer?

Can you please describe in detail what records are to be maintained for audits to verify that a brewery has collected the appropriate amount of tax, i.e. are records required to reflect the calculation of 25% of the retail sale multiplied by 6% sales/use tax plus any additional taxes due Philadelphia and Allegheny Counties?

Can you clarify whether I should report the amount of taxable sale on Line 2 or as a use tax on Line 6 of the form PA-3?

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