

# PUBLIC DRAFT

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Comments Due by: **March 19, 2019**

## SC REVENUE RULING #19-x [DRAFT-2-20-2019]

- SUBJECT:** Brewery Tours and Beer Samples  
(Sales Tax and Admissions Tax)
- EFFECTIVE DATE:** July 1, 2019
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-36-90 (2014; Supp. 2018)  
S.C. Code Ann. Section 12-36-910 (2014)  
S.C. Code Ann. Section 12-36-2120 (2014)  
S.C. Code Ann. Section 12-21-2410 (2014)  
S.C. Code Ann. Section 12-21-2420 (2014; Supp. 2018)  
S.C. Code Ann. Section 61-4-1515 (Supp. 2018)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

### **INTRODUCTION:**

A brewery is authorized to offer beer samples and to sell beer to consumers on its permitted premises, provided the beer is brewed on the permitted premises with an alcoholic content of 12% by weight, or less. Code Section 61-4-1515(A). Among other requirements, sales must be held in conjunction with a tour of the permitted premises and the entire brewing process utilized at the permitted premises. Code Section 61-4-1515(A)(1).

Questions have arisen concerning the application of the sales tax and the admissions tax to tours and samples offered by breweries. This document explains how the sales tax and the admissions tax apply to these tours and samples.

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Code Section 61-4-1515 establishes the requirements for beer samples and beer sales by a brewery. This document does not address these requirements.

A discussion of the law is followed by examples.

## **LAW AND DISCUSSION:**

### **I. SALES TAX:**

A brewery may provide beer samples with or without cost. Code Section 61-4-1515(A)(3)(b). However, a brewery's beer sales are subject to the sales and use tax. Code Section 61-4-1515(A)(6) and (E)(6).<sup>1</sup>

Code Section 12-36-910(A) imposes “a sales tax, equal to [six]<sup>2</sup> percent of gross proceeds of sales, ... upon every person engaged ... within this State in the business of selling tangible personal property at retail.”

The measure of the tax is the gross proceeds of the sale. “Gross proceeds of sales” means the proceeds from the sale of tangible personal property without any deduction for the cost of materials, labor, service, or any other expenses. Code Section 12-36-90(1)(b).

In short, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

Code Section 12-36-910(B)(4) also imposes the sales tax on the fair market value of tangible personal property manufactured in South Carolina and used or consumed within South Carolina by the manufacturer.

Breweries may conduct tours and provide samples in different ways. For example, breweries may charge for a tour, which includes samples. Some may conduct a free tour and separately charge for samples, while others may give a free tour and samples. Some may also provide tangible personal property as part of the tour, such as souvenir glasses, t-shirts, etc.

The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property. This test is one of determining the basic purpose of the buyer.<sup>3</sup> In applying the principles of this test with respect to tours and samples, it must be determined whether the buyer is purchasing tangible personal property (beer, t-shirt, glass, etc.) or purchasing the right to enter into a place subject to the admissions tax.

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<sup>1</sup> In addition, while not addressed in this document, Code Section 61-4-1515(A)(6) and (E)(6) provide that brewery sales are subject to local hospitality taxes and the wholesaler beer license taxes in Code Sections 12-21-1020 and 12-21-1030.

<sup>2</sup> Code Section 12-36-1110 increased the general state sales and use tax rate from five percent to six percent effective June 1, 2007.

<sup>3</sup> 9 *Vanderbilt Law Review* 231 (1956).

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If the tangible personal property is the true object of the transaction (e.g., the beer), the tour would be incidental to the sale of the tangible personal property, and the entire charge would be subject to the sales tax. If the true object is to enter into a place subject to the admissions tax, then any tangible personal property provided as part of the charge for the tour would be incidental to the tour itself, and the charge for the tour would not be considered a sale of tangible personal property.<sup>4</sup>

## **II. ADMISSIONS TAX:**

A brewery's beer sales to consumers must be held in conjunction with a tour by the consumer of the permitted premises and the entire brewing process utilized at the permitted premises. Code Section 61-4-1515(A)(1) and (E)(2). As such, the application of the admissions tax must be addressed.

Under the admissions tax law, Code Section 12-21-2410 states:

For the purpose of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;
- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association, or organization of any kind whatsoever.

Code Section 12-21-2420 states: "There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent." (Emphasis added.) Code Section 12-21-2420 further requires that the tax "be paid by the person or persons paying the admission price . . . ."

In summary, the tax is upon "paid admissions" and the person paying the admission is the taxpayer with respect to the tax, whether that person is an individual, a partnership, or corporation. Furthermore, "paid admissions" constitute the amounts paid by patrons to enter into or use a place of amusement.

## **III. SALE OF BEER:**

For purposes of the laws regulating beer, wine, and alcoholic liquor, the Department has long held that a sale is considered to take place if:<sup>5</sup>

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<sup>4</sup> However, the brewery would still be subject to the sales tax under Code Section 12-36-910(B)(4) for the fair market value of tangible personal property manufactured in South Carolina (i.e., beer) and used by the brewery in providing free samples.

<sup>5</sup> SC Revenue Ruling #12-3.

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- There is a per drink charge;
- An admissions fee is charged to enter a place or event where these beverages are provided;
- A donation is accepted with respect to the event where these beverages are provided;
- Tickets are sold with respect to the event where these beverages are provided;
- Such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required; or
- Any consideration is accepted or required with respect to the event where these beverages are provided.

## **CONCLUSION:**

Based on the above, when breweries provide beer as part of a paid tour, the true object of the transaction is the sale of beer, and therefore the charge for the tour is not subject to the admissions tax.

The following examples will explain the application of the sales tax and admissions tax to tours and samples offered by breweries. The application of these taxes is determined by the specific facts and circumstances. Other facts and circumstances not addressed in this document must be considered on a case-by-case basis. In addition, there are certain businesses in South Carolina which sell tour packages where customers tour multiple breweries in a day. For purposes of the examples below, the brewery receives payment either directly from a patron or from a tour business.

### **Example 1 – Charge for Tour, No Charge for Samples:**

#### **Facts:**

A brewery conducts a tour and provides samples in accordance with statutory requirements. The cost of the tour is \$10 and the samples are provided for no additional charge.

#### **Answer:**

**Sales Tax:** The true object of the transaction is the sale of beer. The brewery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the beer. In this example, the gross proceeds of sales is \$10.

**Admissions Tax:** Since the true object of the transaction is the sale of beer, the admissions tax is not applicable.

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## **Example 2 – No Charge for Tour, Charge for Samples:**

### **Facts:**

A brewery conducts a tour and provides samples in accordance with statutory requirements. The brewery does not charge for the tour, but charges \$5 for the samples.

### **Answer:**

**Sales Tax:** The brewery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the beer. In this example, the gross proceeds of sales is \$5.

**Admissions Tax:** The admissions tax is not applicable.

## **Example 3 – Charge for Tour, Souvenir Glass Included:**

### **Facts:**

A brewery conducts a tour and provides samples in accordance with statutory requirements. The cost of the tour is \$10 and the samples are provided for no additional charge. The patron may keep the glass used for the tasting.

### **Answer:**

**Sales Tax:** The true object of the transaction is the sale of beer. The brewery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the beer. In this example, the gross proceeds of sales is \$10. The glass is considered a container used incident to the sale and delivery of tangible personal property, and the brewery’s purchase and use of the glass for the samples are exempt under Code Section 12-36-2120(14).<sup>6</sup>

**Admissions Tax:** Since the true object of the transaction is the sale of beer, the admissions tax is not applicable.

## **Example 4 – Charge for Tour, Souvenir T-Shirt Included:**

### **Facts:**

A brewery conducts a tour and provides samples in accordance with statutory requirements. The cost of the tour is \$15. This \$15 includes a t-shirt and beer samples. The retail value of the samples is \$10, and the retail value of the t-shirt is \$5.

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<sup>6</sup> Code Section 12-36-2120(14) specifically exempts from the sales tax “...containers, used incident to the sale and delivery of tangible personal property.” However, if the brewery sells a glass in its gift shop (or other retail outlet), it is not being used incident to the sale and delivery of tangible personal property and is subject to the sales tax.

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## Answer:

Sales Tax: The true object of the transaction is the sale of beer and a t-shirt. The brewery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the beer and the t-shirt. In this example, the gross proceeds of sales is \$15.

Admissions Tax: Since the true object of the transaction is the sale of beer and a t-shirt, the admissions tax is not applicable.

## **Example 5 – No Charge for Tour and Free Samples:**

### **Facts:**

A brewery conducts a tour and provides samples in accordance with statutory requirements. There is no charge for the tour or samples. The retail value of the beer samples is \$10. The retail price of a keg of beer used in providing free samples is \$150.

### **Answer:**

Sales Tax: The State sales tax applies to the fair market value of tangible personal property manufactured in South Carolina and used or consumed within South Carolina by the manufacturer. Code Section 12-36-910(B)(4). The brewery, as the manufacturer of the beer, is liable for the sales tax based on the fair market value of a keg of beer manufactured in South Carolina by the brewery and used by the brewery to provide free samples. The fair market value is the amount for which a keg of beer is sold at retail. In this example, the fair market value of a keg of beer is \$150.

Admissions Tax: The admissions tax is not applicable.

**NOTE: While not addressed in this document, Code Section 61-4-1515(A)(6) and (E)(6) provide that brewery sales are subject to local hospitality taxes and the wholesaler beer license taxes in Code Sections 12-21-1020 and 12-21-1030.**