

# PUBLIC DRAFT

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

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

- SUBJECT:** Micro-Distillery Tours and Liquor Tastings  
(Sales Tax, Admissions Tax, and Liquor by the Drink Excise 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 12-33-245 (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 61-6-1140 (Supp. 2018)  
S.C. Code Ann. Section 61-6-1150 (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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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:**

Licensed micro-distilleries in South Carolina are permitted to sell liquor and offer tastings to consumers so long as the sales and tastings are held in conjunction with a tour of the on-site licensed premises.

Questions have arisen concerning the application of the sales tax, admissions tax, and the liquor by the drink tax to tours and tastings conducted by micro-distilleries. This document explains how the sales tax, the admissions tax, and the liquor by the drink tax apply to these tours and tastings. Code Sections 61-6-1140 and 61-6-1150 establish the requirements for liquor tastings and liquor sales by a micro-distillery. This document does not address these requirements.

A discussion of the law is followed by examples.

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## **LAW AND DISCUSSION:**

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

Code Section 12-36-910(A) imposes “a sales tax, equal to [six]<sup>1</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.

Micro-distilleries, which manufacture liquor, may conduct tours and tastings. For example, micro-distilleries may charge for a tour, which includes a tasting. Some may conduct a free tour and separately charge for a tasting, while others may give a free tour and tasting. Some may also provide tangible personal property as part of the tour, such as souvenir shot glasses, t-shirts, etc.

The so-called “true object” test is generally used to delineate sales of tangible personal property from sales of services. This test is one of determining the basic purpose of the buyer.<sup>2</sup> In applying the principles of this test with respect to tours and tastings, it must be determined whether the buyer is purchasing tangible personal property (liquor, t-shirt, shot glass, etc.) or purchasing the right to enter into a place subject to the admissions tax.

If the tangible personal property is the true object of the transaction (e.g., the liquor, shot glass, or t-shirt), 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>3</sup>

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<sup>1</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>2</sup> 9 *Vanderbilt Law Review* 231 (1956).

<sup>3</sup> However, the micro-distillery 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., liquor) and used by the micro-distillery in providing free samples.

# PUBLIC DRAFT

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## **II. ADMISSIONS TAX:**

Under the alcohol liquor laws, tastings by and sales to consumers must be held in conjunction with a tour by the consumer of the on-site licensed premises. Code Section 61-6-1140(1). 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. ALCOHOLIC BEVERAGE LAWS:**

### **A. Liquor by the Drink Excise Tax**

Code Section 61-6-1140(5) provides that a micro-distillery may charge for liquor consumed at a tasting, but it must collect and remit the liquor by the drink excise tax pursuant to Chapter 33, Title 12.<sup>4</sup> Code Section 12-33-245 imposes an excise tax “equal to five percent of the gross proceeds of the sales of alcoholic liquor by the drink for on-premises consumption in an establishment licensed for sales pursuant to Article 5, Chapter 6, Title 61 . . . .”<sup>5</sup>

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<sup>4</sup> In addition, Code Section 61-6-1130(A) provides that “[a] micro-distillery desiring to offer tastings and sales of alcoholic liquors to consumers at its licensed premises shall remit taxes to the department for alcoholic liquors sold and dispensed in an amount equal to taxes paid by wholesalers on alcoholic liquors.” Therefore, while not addressed in this document, micro-distilleries offering tastings and sales of liquor are subject to the same taxes as wholesalers under Chapter 33 of Title 12. See Code Sections 12-33-410, 12-33-420, 12-33-425, and 12-33-460.

<sup>5</sup> See Code Section 61-6-20(1)(a) and (b) for the definitions of “alcoholic liquors” and “alcoholic liquor by the drink.” See also Code Section 61-4-10 for a list of beverages declared to be nonalcoholic and nonintoxicating.

# PUBLIC DRAFT

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For purposes of the liquor by the drink excise tax, “gross proceeds of sales” has the same meaning as Code Section 12-36-90, except that the sales tax imposed by Chapter 36 of Title 12 is not included. Code Section 12-36-90 provides that gross proceeds is the value proceeding or accruing from the sale of tangible personal property. It includes the proceeds from the sale of tangible personal property without any deduction for the cost of goods sold, cost of materials, labor, or service, transportation costs, or any other expenses. Gross proceeds of sales, for purposes of the liquor by the drink excise tax, also includes “the retail value of a complimentary or discounted beverage containing alcoholic liquor, an amount charged for ice for a drink containing alcoholic liquor, and an amount charged for a nonalcoholic beverage that is sold or used as a mixer for a drink containing alcoholic liquor.” Code Section 12-33-245(A).

## **B. Sale of Alcoholic Liquors**

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>6</sup>

- 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 micro-distilleries provide liquor as part of a paid tour, the true object of the transaction is the sale of alcoholic liquor, 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, admissions tax, and the liquor by the drink tax to tours and tastings conducted by micro-distilleries. 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 micro-distilleries in a day. For purposes of the examples below, the micro-distillery receives payment either directly from a patron or from a tour business.

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<sup>6</sup> SC Revenue Ruling #12-3.

# PUBLIC DRAFT

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

### **Facts:**

A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The cost of the tour is \$10 and the tasting is provided for no additional charge.

### **Answer:**

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

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

**Liquor by the Drink Tax:** The micro-distillery is liable for the liquor by the drink tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$10.

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

### **Facts:**

A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The micro-distillery does not charge for the tour, but charges \$5 for the tasting.

### **Answer:**

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

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

**Liquor by the Drink Tax:** The micro-distillery is liable for the liquor by the drink tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$5.

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

### **Facts:**

A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The cost of the tour is \$10 and the tasting is provided for no additional charge. The patron may keep the shot glass used for the tasting.

# PUBLIC DRAFT

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## Answer:

Sales Tax: The true object of the transaction is the sale of liquor. The micro-distillery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$10. The shot glass is considered a container used incident to the sale and delivery of tangible personal property, and the micro-distillery’s purchase and use of the shot glass for the tasting are exempt under Code Section 12-36-2120(14).<sup>7</sup>

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

Liquor by the Drink Tax: The micro-distillery is liable for the liquor by the drink tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$10.

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

### **Facts:**

A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The cost of the tour is \$15. This \$15 includes a t-shirt and a liquor tasting. The retail value of the tasting is \$10, and the retail value of the t-shirt is \$5.

### **Answer:**

Sales Tax: The true object of the transaction is the sale of liquor and a t-shirt. The micro-distillery, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of the liquor 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 liquor and a t-shirt, the admissions tax is not applicable.

Liquor by the Drink Tax: The micro-distillery is liable for the liquor by the drink tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$10; i.e., the retail value of the liquor under Code Section 12-33-245.

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<sup>7</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 micro-distillery sells a shot 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.

# PUBLIC DRAFT

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

### **Facts:**

A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. There is no charge for the tour or tasting. The retail value of the liquor tasting is \$10. The retail price of a bottle of liquor used in providing free tastings is \$75.

### **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 micro-distillery, as the manufacturer of the liquor, is liable for the sales tax based on the fair market value of a bottle of liquor manufactured in South Carolina by the micro-distillery and used by the micro-distillery to provide free tastings. The fair market value is the amount for which a bottle of liquor is sold at retail by the micro-distillery. In this example, the fair market value of a bottle of liquor is \$75.

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

**Liquor by the Drink Tax:** The micro-distillery is liable for the liquor by the drink tax on the “gross proceeds of sales” of the liquor. In this example, the gross proceeds of sales is \$10; i.e., the retail value of the liquor under Code Section 12-33-245.

**NOTE:** Code Section 61-6-1130(A) provides that “[a] micro-distillery desiring to offer tastings and sales of alcoholic liquors to consumers at its licensed premises shall remit taxes to the department for alcoholic liquors sold and dispensed in an amount equal to taxes paid by wholesalers on alcoholic liquors.” Therefore, while not addressed in this document, micro-distilleries offering tastings and sales of liquor are subject to the same taxes as wholesalers under Chapter 33 of Title 12. See Code Sections 12-33-410, 12-33-420, 12-33-425, and 12-33-460.