



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC REVENUE RULING #22-1

SUBJECT: Micro-Distillery and Manufacturing Facility Tours and Liquor Tastings
(Liquor by the Drink Tax, Admissions Tax, and Sales Tax)

EFFECTIVE DATE: For Tours and Tastings¹ on or after May 17, 2021

SUPERSEDES: SC Revenue Ruling #19-3 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 61-6-1140 (Act No. 60 of 2021) (enacted May 17, 2021)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 offer tastings to consumers that are held in conjunction with a tour of the on-site licensed premises. During the 2021 Legislative Session, Code Section 61-6-1140, concerning tours, tastings, and retail sales at micro-distilleries and manufacturing facilities, was amended effective May 17, 2021. Applicable changes to a micro-distillery of alcoholic liquors offering tours and tastings include:

- The micro-distillery may not charge for alcoholic liquors consumed at a tasting.

¹ 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.

- The micro-distillery may charge for the tour that is required in conjunction with the tasting.
- Liquor by the drink tax is not applicable to the tour or the tasting of alcoholic liquors in conjunction with the tour.
- The amount charged for a tour must be on a scale that accords with the amount of alcoholic liquors for on-premises consumption that is dispensed to consumers, beginning with a base tour price that corresponds with a tasting of one ounce of alcoholic liquor and increases incrementally by one-half ounce.

Prior to these amendments, a micro-distillery was permitted to charge for alcoholic liquors consumed at a tasting and was required to collect and remit the liquor by the drink tax.

The purpose of this document is to address questions concerning changes in the application of the liquor by the drink tax and the sales tax to micro-distilleries and manufacturing facilities² conducting tours and tastings on or after May 17, 2021.

QUESTIONS AND ANSWERS

1. Q. Are charges for a tour of a micro-distillery, during which the micro-distillery provides a tasting of the alcoholic liquor it manufactures, subject to the liquor by the drink tax under Code Section 12-33-245?

A. No. The liquor by the drink tax does not apply to a micro-distillery providing tours authorized under Code Section 61-6-1140, whether or not there is a charge for such tours.

Note: Code Section 61-6-1130(A) provides that a micro-distillery or manufacturer 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. While not discussed in this advisory opinion, 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.

2. Q. Are charges for the tour of a micro-distillery subject to admissions tax under Code Section 12-21-2410 or sales tax under Chapter 36 of Title 12?

A. No. Neither the admissions tax nor the sales tax is applicable to charges for the tour of a micro-distillery.

² For simplicity, this document refers only to micro-distilleries providing tours and tastings, however, it also applies to manufacturing facilities conducting tours and tastings.

3. Q. What is the application of the sales tax to the use of alcoholic liquor manufactured in South Carolina by the micro-distillery and used by the micro-distillery to provide tastings during a tour?
- A. The 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 tastings during a tour. The fair market value is the amount for which a bottle of liquor is sold at retail by the micro-distillery.³
4. Q. What is the application of the sales tax to promotional items provided for no charge (e.g., shot glasses) with the micro-distillery tasting tour?
- A. The application of the sales tax to promotional items provided as part of a tour of a micro-distillery is as follows:
- a. When a micro-distillery provides tangible personal property (e.g., a shot glass) to patrons as part of a tour and also customarily sells the item, then the micro-distillery will owe sales tax when the item is withdrawn from inventory. The sales tax amount is based on the fair market value of the item. The fair market value is the amount for which the tangible personal property (e.g., a shot glass) is sold at retail by the micro-distillery.⁴ See Example 1 below.
- b. When a micro-distillery provides tangible personal property (e.g., a shot glass) to patrons as part of a tour but does not customarily sell the item, then the micro-distillery will owe sales or use tax when the micro-distillery purchases the item from its supplier. The micro-distillery does not owe sales or use tax when the item is provided to the tour patron. See Example 2 below.

EXAMPLES

Example 1 – Tangible Personal Property Provided for Free as Part of Tour; Items Also Sold Separately

Facts: A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The micro-distillery sells shot glasses in the gift shop for \$5 and also allows any patron participating in a tour and tasting to keep the shot glass used for the tasting as a souvenir at no charge.

³ The definition of fair market value is defined in Regulation 117-309.17 for purposes of Code Section 12-36-90(1)(c) as: “the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.” It is the opinion of the Department that the definition of fair market value in Regulation 117-309.17 also applies to Code Sections 12-36-910(B)(4) and 12-36-1310(B)(4).

⁴ See footnote 3 and Regulation 117-309.17 for the definition of fair market value.

Conclusion: The micro-distillery is to purchase all shot glasses at wholesale (tax free) from its suppliers. The micro-distillery, as a retailer of shot glasses (and other items) in its gift shop must remit the sales tax when it withdraws the shot glasses from inventory to provide free of charge as part of a tour and must remit the sales tax when it sells shot glasses in its gift shop. With respect to the shot glasses in this example that are provided free of charge as part of a tour, the micro-distillery is liable for the sales tax based on the fair market value of the shot glasses used by the micro-distillery to provide tastings. The fair market value is the amount for which a shot glass is sold at retail by the micro-distillery in its gift shop. In this example, the fair market value of each shot glass is \$5.

Example 2 – Tangible Personal Property Only Provided for Free as Part of Tour; Items Not Sold Separately

Facts: A micro-distillery conducts a tour and tasting in accordance with alcoholic beverage laws. The micro-distillery does not sell shot glasses separate from the tour, e.g., at its gift shop or online. The micro-distillery provides a shot glass for use in the tasting. The patron may keep the shot glass used for the tasting.

Conclusion: The purchase of the shot glasses by the micro-distillery from its suppliers is subject to sales tax or use tax. The micro-distillery does not owe sales tax when the shot glass is used by, and given to, the tour patron. The answer is the same whether there is or is not a charge for the tour.

EFFECTIVE DATE - FILING AND PAYMENT OF LIQUOR BY THE DRINK TAX AND SALES TAX

This advisory opinion is applicable to micro-distillery and manufacturing facility tours and liquor tastings on or after May 17, 2021. The guidance issued by the Department in SC Revenue Ruling #19-3, “Micro-Distillery Tours and Liquor Tastings,” applies to tours and tastings conducted prior to May 17, 2021. Taxpayers who followed the guidance in SC Revenue Ruling #19-3 after the effective date of the amended law, should review their liquor by the drink returns and sales tax returns for tours and liquor tastings conducted on or after May 17, 2021. As discussed above, for tours and tastings conducted on or after May 17, 2021, the liquor by the drink tax does not apply and charges for the tour are not subject to sales tax, however, sales tax applies to the fair market value of tangible personal property manufactured in South Carolina by the manufacturer and used in providing tastings as part of the tour.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

March 3, 2022
Columbia, South Carolina