

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 13-01**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

**SUBJECT**

Whether a restaurant may separately itemize on its customers' receipts the Tennessee alcoholic beverage tax, TENN. CODE ANN. § 57-4-301(a) (Supp. 2012), and Tennessee sales tax on beverages containing alcohol.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[ENTITY 1] is a [STATE – NOT TENNESSEE] [ENTITY TYPE] that operates numerous [NAME] restaurants across the United States, including [NUMBER] located in Tennessee. [ENTITY 2] is a [STATE – NOT TENNESSEE] [ENTITY TYPE] that operates a [NAME]

restaurant in [CITY], Tennessee. [ENTITY 3] is a [STATE – NOT TENNESSEE] [ENTITY TYPE] that operates a [NAME] restaurant in [CITY], Tennessee. All three companies are affiliated entities (collectively, the “Taxpayers”). In addition to the service of food and non-alcoholic beverages, the Taxpayers serve beer, wine, and other beverages containing alcohol (except for two locations that serve only beer and wine).

Currently, when the Taxpayers provide a receipt to a customer, the receipt lists each item purchased and then has a line for the Tennessee sales tax charged on food and beer only. All Tennessee alcoholic beverage taxes are included in the drink prices and are not separately stated on the receipt. For example, a current receipt might look like the following:

<u>Current Practice</u>	
Food Item	10.00
Food Item	15.00
Beer	5.00
Wine	12.00
Subtotal	42.00
Sales tax (9.25%)	2.78
Total	44.78

In the above example, the 24.25% tax charged on the wine (*i.e.*, the combined sales tax and alcoholic beverage tax) is not listed under “Sales tax” but is included in the \$12 price for the wine. The “Sales tax” line item only includes the sales tax charged on the food and beer items. The Taxpayers have indicated that all taxes, including the taxes incorporated into the price of an alcoholic beverage, are reported and paid to the Department of Revenue in a timely manner.

The Taxpayers would like to separately list the alcoholic beverage taxes on customers’ receipts. For example, the Taxpayers may want the receipt to look like one of the following:

<u>Alternative #1</u>	
Food Item	10.00
Food Item	15.00
Beer	5.00
Wine	9.66
Subtotal	39.66
Sales tax (9.25%)	3.67
LBD tax (15%)	1.45
Total	44.78

or

	<u>Alternative #2</u>
Food Item	10.00
Food Item	15.00
Beer	5.00
Wine	9.66
Subtotal	39.66
Sales tax-food	2.78
Sales tax-alcohol	0.89
LBD tax (15%)	1.45
Total	44.78

As is current practice, the full amount of taxes will be reported and paid to the state, but they will be more thoroughly disclosed to the customer. It is this more detailed receipt that the Taxpayers seek to confirm is permitted under Tennessee laws and regulations.

The Taxpayers assert that they will continue to fully, completely and timely report and pay to the Department of Revenue all proper amounts due for sales tax and liquor by the drink tax.

### **RULINGS**

1. May the Taxpayers separately itemize the Tennessee alcoholic beverage tax, TENN. CODE ANN. § 57-4-301(a) (Supp. 2012), charged on alcoholic beverages on the receipts they provide to their customers?

Ruling: Yes, but note that the menus provided to customers must include the alcoholic beverage tax and the sales tax in the listed price of alcoholic beverages.

2. May the Taxpayers separately itemize the Tennessee sales tax charged on alcoholic beverages on the receipts they provide to their customers?

Ruling: Yes, but note that the menus provided to customers must include the alcoholic beverage tax and the sales tax in the listed price of alcoholic beverages.

### **ANALYSIS**

#### **1. ALCOHOLIC BEVERAGE TAX**

In Tennessee, it is a taxable privilege to “engage[] in the business of selling at retail in this state alcoholic beverages for consumption on the premises.”<sup>1</sup> The alcoholic beverage tax is imposed at the rate of fifteen percent (15%) of the sales price on each alcoholic beverage sold for consumption on the premises.<sup>2</sup>

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<sup>1</sup> TENN. CODE ANN. § 57-4-301(a) (Supp. 2012).

<sup>2</sup> TENN. CODE ANN. § 57-4-301(c). Note that there is also a flat rate tax based on the type of establishment, *see* TENN. CODE ANN. § 57-4-301(b)(1), and that counties or municipalities are authorized to levy a tax on the same, *see* TENN. CODE ANN. § 57-4-301(b)(2), but those taxes are not at issue in this ruling.

“Alcoholic beverages” generally include “alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight, or less.”<sup>3</sup> The Taxpayers have indicated that they sell beer, wine, and other beverages containing alcohol at their locations. The alcoholic beverage tax applies to any of the beverages that meet the aforementioned definition.<sup>4</sup>

The “sales price” of an alcoholic beverage is

the total price for which an alcoholic beverage is sold and shall include, but not be limited to, the alcoholic beverage tax, applicable sales tax, both State and Local, and the cost of any services required to process the beverage for sale without any deductions therefrom on account of the cost of the beverage, the cost of the materials used, losses, or any other expenses whatsoever.<sup>5</sup>

The Department has promulgated regulations regarding the presentation of the sales price of alcoholic beverages to customers. For example, TENN. COMP. R. & REGS. 1320-4-2-.06 (2001) requires that “[a]ll licensees<sup>6</sup> shall have available for use by all customers menus which clearly indicate the sales price of alcoholic beverages, both liquor and wine, and that the sales price includes the applicable rate of alcoholic beverage tax and sales tax.” In other words, the Taxpayers must include the alcoholic beverage tax in the price shown on the menu.

Nothing in the Tennessee Code Annotated or the Departmental rules and regulations, however, precludes the Taxpayers from separately itemizing the alcoholic beverage tax on the receipts they provide to their customers.

The Taxpayers may thus separately itemize the alcoholic beverage tax charged on alcoholic beverages on the receipts they provide to their customers, as proposed in Alternatives #1 and #2. Note that the separately itemized alcoholic beverage tax must be an accurate representation of the amount of the tax, computed in accordance with TENN. COMP. R. & REGS. 1320-4-2-.03 (2001).<sup>7</sup>

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<sup>3</sup> TENN. CODE ANN. § 57-4-102(1) (Supp. 2012).

<sup>4</sup> Beer generally does not meet the definition of “alcoholic beverages” contained in TENN. CODE ANN. § 57-4-102(1), but the Taxpayer should be aware of the 5% alcoholic content weight threshold embodied in the definition.

<sup>5</sup> TENN. COMP. R. & REGS. 1320-4-2-.01(7) (2001).

<sup>6</sup> A “licensee” means “any person authorized by the [Alcoholic Beverage Commission of the State of Tennessee] or the [Commissioner of Revenue of the State of Tennessee] to sell alcoholic beverages for consumption on the premises.” TENN. COMP. R. & REGS. 1320-4-2-.01(3)-(4), (6).

<sup>7</sup> Rather than repeat the formula in this ruling, the Taxpayer is advised to refer to the Department’s website, available at <http://www.state.tn.us/sos/rules/1320/1320-04/1320-04-02.pdf> (last visited Dec. 27, 2012).

## 2. SALES TAX ON ALCOHOLIC BEVERAGES

Under the Retailers' Sales Tax Act, TENN. CODE ANN. §§ 67-6-101 to -907 (2011 & Supp. 2012), the retail sale<sup>8</sup> in Tennessee of tangible personal property is subject to the sales and use tax, unless an exemption applies.

Tangible personal property, as defined in the Retailers' Sales Tax Act, means "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(89)(A). Alcoholic beverages are capable of being seen, measured, and are perceptible to the senses, and thus constitute tangible personal property.<sup>9</sup>

The sales tax is "levied on the sales price of each item or article of tangible personal property when sold at retail in this state."<sup>10</sup> The "sales price" of tangible personal property is "the total amount of consideration, including cash, credit, property, and services," generally without any deduction for "taxes imposed on the seller."<sup>11</sup> The sales price of alcoholic beverages, however, does not include the alcoholic beverage tax imposed by TENN. CODE ANN. § 57-4-301(c).<sup>12</sup>

The sales tax on alcoholic beverages, as defined in TENN. CODE ANN. § 57-4-102(1), is properly computed as set forth in TENN. COMP. R. & REGS. 1320-4-2-.03. As with the alcoholic beverage tax, the sales tax must be included in the price listed on menus provided to customers, but nothing in the Tennessee Code Annotated or the Department's rules and regulations precludes the Taxpayers from separately itemizing the sales tax charged on alcoholic beverages on the receipts they provide to their customers.

Consequently, the Taxpayers may separately itemize the Tennessee sales tax charged on alcoholic beverages on the receipts they provide to their customers, akin to proposed Alternatives #1 and #2.

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<sup>8</sup> TENN. CODE ANN. § 67-6-102(76) (Supp. 2012) defines the terms "retail sale" as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent." Moreover, TENN. CODE ANN. § 67-6-102(78)(A) defines the term "sale" in pertinent part to mean "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration." *Accord Nashville Clubhouse, Inc. v. Johnson*, 27 S.W.3d 542, 544 (Tenn. Ct. App. 2000) ("[T]here are three elements necessary to constitute a taxable sale: (1) the transfer of title or possession or both, (2) of tangible personal property, and (3) for a consideration.").

<sup>9</sup> *Accord* TENN. COMP. R. & REGS. 1320-5-1-.100(1) (2008) ("All sales of alcoholic beverages, including beer, ale and any other malt beverages, are subject to the Sales or Use Tax.").

<sup>10</sup> TENN. CODE ANN. § 67-6-202(a) (Supp. 2012).

<sup>11</sup> *See* TENN. CODE ANN. § 67-6-102(79)(A), (A)(ii).

<sup>12</sup> *See* TENN. COMP. R. & REGS. 1320-5-1-.100(2) ("The sales price subject to tax shall include any and all Federal and State taxes, except the tax imposed by [TENN. CODE ANN.] § 57-4-301(c) on the sale of alcoholic beverages.").

APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 1/7/2013