

CHAPTER 74. MALT BEVERAGE TAX

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Source

The provisions of this Chapter 74 adopted March 5, 1982, effective June 23, 1979, 12 Pa.B. 875, unless otherwise noted.

GENERAL PROVISIONS**§ 74.1. Purpose.**

It is the purpose of the Malt Beverage Tax Law (47 P. S. §§ 103—120.3) to provide revenue by imposing a State tax upon the sale of malt beverages by the manufacturer and importing agents for foreign manufacturers, the obligation to collect said taxes for the Commonwealth and transmit same monthly to the Commonwealth.

§ 74.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Malt Beverage Tax Law (47 P. S. §§ 103—120.3).

Consumer—Any person other than a distributor, retailer or manufacturer.

Department—The Department of Revenue of this Commonwealth.

Distributor—Any person engaged in the purchase and resale of malt or brewed beverages in the original sealed packages as prepared for market by the manufacturer, including the following:

(i) Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt or brewed beverages for his own use in this Commonwealth, or for sale and delivery in and after reaching this Commonwealth.

(ii) Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt or brewed beverages for his own use in this Commonwealth, or for sale or delivery therein, after the same have come to rest or storage therein, in the original package, receptacle or container.

(iii) Purchases or receives malt or brewed beverages in the original package, receptacle or container in this Commonwealth for his own use, or for sale and delivery therein, from any person who has imported the same from a foreign country.

(iv) Purchases or receives malt or brewed beverages in the original package, receptacle, or container in this Commonwealth for his own use therein, or for sale and delivery therein, from any person who has imported the same from any other state or territory of the United States, in case malt

or brewed beverages have not, prior to the purchase or receipt, come to rest or storage in this Commonwealth.

Malt or brewed beverages—Alcoholic beverages, which include beer, lager beer, ale, porter or similar fermented malt liquor, containing 0.5% or more of alcohol, by whatever name the liquors may be called.

Manufacturer—Any person engaged in the brewing or manufacturing of malt or brewed beverages for sale, and for the purpose of posting bond and payment of taxes required under the provisions of the act, shall include importing agents for foreign manufacturers.

Original container—Bottle, cask, keg or other container that has been securely capped, sealed or corked by the manufacturer, with the name and address of the manufacturer permanently affixed to the bottle, cask, keg or other container, or to the cap or cork used in sealing the same, or to a label securely affixed to a bottle.

Person—Any individual or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals, or a corporation. Whenever used in this chapter to prescribe and impose a fine or imprisonment, or both, the term person, as applied to a partnership, limited partnership, or any other form of unincorporated enterprise, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

Public service license—Any railroad, pullman or steamship company licensed to serve malt or brewed beverages in club, dining or buffet cars or compartments.

Retail dealer—Any person engaged in the retail sale of malt or brewed beverages either for consumption on the premises or not for consumption on the premises where sold.

Sale—Any transfer for a consideration, exchange, barter, gift, offer for sale and distribution.

IMPOSITION AND RATE OF TAX

§ 74.11. Imposition of tax.

(a) Each manufacturer shall post an acceptable surety bond to guarantee the payment of the taxes imposed by the act. Each bond shall be in an amount equal to the highest 2 months average tax liability of the preceding 12-month period but in no event less than \$5,000. A new bond or an acceptable renewal, in writing, shall be filed on or before the July 1 anniversary date of each bond. The bond may be increased or decreased based on previous years' operations.

(b) A manufacturer shall notify the Department in writing should he desire to discontinue operations in this Commonwealth. The Department will, before the

July anniversary date of the bond, prepare a field audit of the manufacturer's records and release the surety from its obligation if all malt beverage taxes are paid.

(c) Each manufacturer shall be subject to pay to the Commonwealth the taxes imposed by this section upon all malt or brewed beverages manufactured and sold by him in this Commonwealth for use in this Commonwealth or manufactured by him outside this Commonwealth and sold to an importing distributor or any person for importation into, and use in, this Commonwealth. Every person who ships or transports malt or brewed beverages into this Commonwealth for sale, delivery or storage in this Commonwealth shall pay to the Commonwealth the taxes imposed in this section.

Authority

The provisions of this § 74.11 issued under section 15 of the Malt Beverage Tax Law (47 P. S. § 117).

Source

The provisions of this § 74.11 amended July 1, 1983, effective July 2, 1983, 13 Pa.B 2067. Immediately preceding text appears at serial pages (70285) and (70286).

§ 74.12. Tax rate.

(a) The tax rates per original container or standard fraction thereof are as follows:

<i>Standard Fraction</i>	<i>Malt Beverage Tax Rate</i>	<i>Volume</i>
1 Barrel	\$2.48	31 Gallons
1/2 Barrel	\$1.24	15 1/2 Gallons
1/3 Barrel	.84	10 1/3 Gallons
1/4 Barrel	.62	7 3/4 Gallons
1/6 Barrel	.42	5 1/6 Gallons
1/8 Barrel	.32	3 7/8 Gallons
1 Gallon	.08	
1/2 Gallon	.04	
1 Quart	.02	
1 Pint	.01	
1/2 Pint	.0066	

(b) In all cases where a tax is imposed upon a 1/2 pint of eight fluid ounces or fraction thereof, the tax shall be \$.0066.

METHODS OF PAYMENT OF TAX**§ 74.21. Payment of tax.**

It is the intent and purpose of the act, to require all manufacturers and other persons whose malt or brewed beverages are sold or used in this Commonwealth to pay the tax on all such malt or brewed beverages in the month following that in which such beverages are first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into and use in this Commonwealth, except that as to malt or brewed beverages sold to public service licensees; the public service licensees, and not the manufacturer, shall report and pay the tax on all malt or brewed beverages sold by them within this Commonwealth.

MALT BEVERAGE TAX REFUNDS**§ 74.31. Refunds for manufacturers on out-of-State sales.**

In the event any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold or shipped by him to a licensed or regular dealer in such malt or brewed beverages in another state, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that the seller shall make affidavit that the malt or brewed beverages were so sold and shipped, and that he shall furnish from the purchaser an affidavit, or in cases where the total purchase price is \$5 or less, a written certificate in lieu of an affidavit from the purchaser, or, upon satisfactory proof that such affidavit or certificate cannot be obtained, other evidence satisfactory to the Department that he has received such malt or brewed beverages for sale or consumption outside this Commonwealth, together with the name and address of the purchaser.

§ 74.32. Refunds for Pennsylvania manufacturers on sales to exempt parties.

In the event any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, the manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

§ 74.33. Refunds for out-of-State manufacturers on sales to tax exempt parties.

In the event any malt or brewed beverages upon which the tax has been paid by an out-of-State manufacturer and subsequently sold by an importing distributor to commissaries, ship's stores or voluntary unincorporated organizations of

the armed forces personnel operating under regulations promulgated by the Secretary of Defense, the manufacturer shall be entitled to a refund of the actual amount of tax paid by him upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

§ 74.34. Refunds for manufacturers on sales to public service licensee.

In the event any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold and delivered to a public service licensee who is obligated to pay the tax thereon, the manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the Department of the facts.

§ 74.35. Refunds on malt beverage rendered unsalable by reason of damage or destruction.

In the event any malt or brewed beverages, upon which the tax has been paid by a manufacturer shall be rendered unsalable by reason of damage or destruction, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the Department that the malt beverages were so damaged or destroyed.

§ 74.36. Refunds on leakers, stale beer and beer which has become unsalable or over-aged.

The Department will not permit refunds on leakers, stale beer and beer which has become unsalable or over-aged.

§ 74.37. Credits.

No credits will be granted without the approval of the Department of Revenue, attention Bureau of Examination.

Authority

The provisions of this § 74.37 issued under the Tax Reform Code of 1971 (72 P.S. § 7270).

Source

The provisions of this § 74.37 amended October 5, 1984, effective October 6, 1984, 14 Pa.B. 3624. Immediately preceding text appears at serial page (84331).

§ 74.38. Malt beverage damaged in transit.

A manufacturer shall be entitled to deduct the tax liability from the original billing for malt beverages which have been damaged in transit on the seller's owned and operated truck prior to being accepted by the distributor.

§ 74.39. Salable malt beverage returns.

A manufacturer shall be entitled to deduct the tax liability on salable malt beverages returned from a distributor because they were not ordered by the distributor or were a result of an overstock in distributor's inventory.

§ 74.40. Off-premises storage.

Malt beverages returned to an off-premises location shall not be entitled to a tax refund.

§ 74.41. Time limit on refunds.

No application for refund shall be recognized or processed unless filed within two years from date of sale.

REPORTING PROCEDURE**§ 74.51. Manufacturer's reports.**

(a) Each manufacturer whose malt or brewed beverages are sold in or imported into this Commonwealth shall, on or before the 15th day of each month, file with the Department, on forms prescribed by it, a verified report showing for the preceding calendar month the quantities of the malt and brewed beverages:

(1) Manufactured by him in this Commonwealth, and constituting his beginning and ending inventory in this Commonwealth for the month.

(2) Sold by him in this Commonwealth for use in this Commonwealth or sold to an importing distributor or any person for importation into, and use in, this Commonwealth, specifically naming the distributors to whom the sales were made and the quantity sold to each.

(3) Sold to purchasers or persons outside this Commonwealth for exportation from, and use outside, this Commonwealth, or sold in other tax exempt transactions, naming the purchasers and the quantity sold to each and specifically indicating those sales or transactions to which the tax imposed by this act is not applicable.

(4) Additional information as the Department may reasonably require to assure the accuracy of the tax computation and payment and the proper administration of the act.

(b) The tax payable on malt or brewed beverages first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or a person for importation into, and use in, this Commonwealth during the month in the amount disclosed by the report, shall accompany the report and be paid by the manufacturer to the Department.

(c) The report shall be in the Bureau Office on the 15th of the month following the month of operations, or bear a United States postmark of the 15th to avoid the 10% penalty imposed by the act.

§ 74.52. Retention of records.

Each manufacturer, transporter for hire, bailee for hire, warehouseman, distributor and retail licensee shall maintain and keep, for 2 years, records of malt or brewed beverages manufactured, sold by a manufacturer or distributor, transported from a point outside of the Commonwealth to a point within the Commonwealth, imported or substantiating the other information required on his report, together with invoices, bills of lading and other pertinent papers, as may be required by the Department.

PENALTY**§ 74.61. Penalty for unlawful transportation.**

It shall be unlawful for a person to transport into this Commonwealth, taxable malt or brewed beverages in containers on which the tax is not paid or provisions for the payment thereof are not made under the provisions of the TRC. The transportation of malt or brewed beverages in violation of this section shall be a misdemeanor, and, upon conviction thereof in a summary proceeding before a magistrate, alderman or district justice, the person shall be fined \$10 for each container so transported, and, in default of payment thereof, shall undergo imprisonment for not more than 5 days for each container so transported. Transportation into this Commonwealth of malt or brewed beverages in containers other than in the manner prescribed by this title, shall be prima facie evidence of violation of this section.

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