

CITY OF PHILADELPHIA LIQUOR SALES TAX

Section 101. Definitions.

In this section the following definitions shall apply:

- (a) "Commissioner". Revenue Commissioner.
- (b) "Distributor" shall mean any person licensed by the Pennsylvania Liquor Control Board to engage in the purchase only from Pennsylvania manufacturers and from importing distributors and the resale of malt or brewed beverages, except to importing distributors and distributors, in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case of twenty-four containers, each container holding seven fluid ounces or more, or a case of twelve containers, each container holding twenty-four fluid ounces or more, except original containers containing one hundred twenty-eight ounces or more, which may be sold separately.
- (c) "Liquor" shall mean and include any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one-half of one per cent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.
- (d) "Malt or Brewed Beverages" means any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called.
- (e) "Person." Any individual, limited partnership, partnership, association or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment or both, the term "person" as applied to "limited partnership" or "partnership," shall mean such individual or individuals who, under the bylaws of such clubs, shall have jurisdiction over the possession and sale of liquor therein.
- (f) "Purchaser". A person who acquires liquor or malt and brewed beverages through sale at retail.
- (g) "Retail Dispenser" shall mean any person licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of one hundred ninety-two fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof.

- (h) "Sale". Any transfer at retail for consideration in any manner or by any means whatsoever of liquor and malt and brewed beverages, but the term shall not include any transaction which is subject to tax by the Commonwealth of Pennsylvania under Article II of the Tax Reform Code of 1971.
- (i) "Vendor". Any person having or maintaining within the School District of Philadelphia an establishment or location, whether permanent or temporary, and holding a license or permit issued by the Commonwealth of Pennsylvania to sell or dispense liquor or malt and brewed beverages, the sale of which is subject to the tax authorized by Philadelphia Code section 19-1805, but not including an employee who in the ordinary scope of employment renders services to his employer in exchange for wages or salaries.

Section 102. Excluded Transactions

- (a) Purchases from or sales by the following sources shall be excluded from this tax:
 - (1) Pennsylvania Liquor Stores
 - (2) Malt beverage

distributors Example 1

Mr. Jones goes to the Pennsylvania Liquor Store to purchase a bottle of wine. This purchase/sale is considered a "purchase at retail/sale at retail" for Pennsylvania Sales and Use Tax purposes and is therefore not subject to the Philadelphia Liquor Sales Tax. [See 72 P.S. § 7201 (f) and (k)]

Example 2

Mr. Jones goes to his neighborhood beer distributor to purchase a case of beer. This purchase/sale is considered a "purchase at retail/sale at retail" for Pennsylvania Sales and Use Tax purposes and is therefore not subject to the Philadelphia Liquor Sales Tax [See 72 P.S. § 7201 (f) and (k)]

- (b) Transfers without consideration are not subject to this tax.
- (c) Example 3

Upon the celebration of their silver wedding anniversary, Mr. and Mrs. Jones went to dinner at the local neighborhood restaurant. The proprietor, upon learning of the special occasion, sent a complimentary bottle of wine to their table. The complimentary bottle of wine is not subject to the Liquor Sales Tax since it does not meet the regulation's definition of "sale" (i.e. no consideration for the transfer).

- (d) Service Charges are not subject to this tax.

Example 4

Mr. Jones patronizes a restaurant that has a retail liquor license. However, Mr. Jones is permitted to provide his own liquor, wine, or beer etc. for consumption on the premises. The restaurant does however charge a corkage fee, which is a service charge imposed by the restaurant for every bottle of liquor or wine served that was not bought on the premises. The corkage fee is not subject to the Liquor Sales Tax.

Section 103. Taxable Transactions

- (a) Every sale at retail by any hotel, restaurant, club or other person holding a license or permit issued by the Commonwealth of Pennsylvania to sell or dispense liquor or malt and brewed beverages is subject to tax.

Example 1

Mr. Jones goes to his neighborhood tavern or deli (retail dispenser) and purchases packaged malt or brewed beverages for carry out. This purchase/sale is not considered a "purchase at retail/sale at retail" for Pennsylvania Sales and Use Tax purposes and therefore is subject to the Philadelphia Liquor Sales Tax. [See 72 P.S. § 7201 (f) and (k)]

Example 2

Mr. Jones goes to a local restaurant/bar (retail liquor license) and has a beer, mixed drink etc. at the bar before being seated for dinner. Mr. Jones also has a glass of wine with his dinner. These purchases/sales are subject to the Philadelphia Liquor Sales Tax. [See 72 P.S. § 7201 (f) and (k)] since they are not considered a "purchase at retail/sale at retail" for Pennsylvania Sales and Use Tax purposes.

Example 3

Mr. Jones hired a local restaurant/ caterer for his daughter's wedding reception. In addition to the dinner, Mr. Jones had an open tab bar. The caterer presented Mr. Jones with an itemized bill separately stating the food and bar charges. The portion of the bar bill that represents charges for liquor and malt or brewed beverages is not considered a "purchase at retail/ sale at retail" for Pennsylvania Sales and Use Tax purposes and therefore is subject to the Philadelphia Liquor Sales Tax. [See 72 P.S. section 7201 (f) and (k)]

Example 4

A local chapter of a nonprofit organization holds its annual meeting at a local neighborhood restaurant. The meeting includes dinner and an open bar. The consideration paid for the open bar by the nonprofit organization will be subject to

the Liquor Sales Tax. The provisions of section 103 of these regulations shall apply since there is no religious, charitable or educational nonprofit exemption provided in section 102 of these regulations.

- (b) Taxable portion of purchase/sale price. The total consideration, in any manner or by any means whatsoever, for the sale/transfer at retail defined in section 101(h), of liquor and malt or brewed beverages is fully taxable. If the vendor engages in the sale at retail of both taxable and nontaxable items (e.g. prepared foods) for a single all-inclusive price, an allocation of the price must be made to reflect the proper retail sales price attributable to the liquor and malt or brewed beverages. It is the responsibility of the vendor to maintain adequate accounts, books and records to accurately distinguish taxable and nontaxable sales at retail. If documents, books and records are not maintained that would show the allocation of a single all-inclusive price between the taxable and nontaxable components, the presumption is that the entire consideration for the transaction(s) is fully taxable.

Example 5

Mr. Jones, a licensed caterer, serves a business dinner for 100 people and charges \$35 per person. The single price includes food, liquor and service charges. Mr. Jones presents his customer with an itemized bill showing \$10 per person or \$1000 for liquor and malt or brewed beverages. The \$1000 is the consideration subject to the Liquor Sales Tax.

- (c) Special drink/ meal price promotions. There is nothing in the ordinance to preclude a vendor from engaging in special price promotions in an effort to draw patrons. However, it is incumbent upon the vendor to reasonably and fairly allocate any special or all-inclusive reduced price promotions to properly reflect the discounted sales price at retail for liquor and malt or brewed beverages. A reasonable basis of allocation would be the relative cost of the food and liquor for the promotion period multiplied by the revenues generated by the special promotion. This in no way should be construed as the only acceptable method of allocation but whatever method chosen needs to be reasonable and verifiable by documentary evidence.

Example 6

Mr. Jones, a nightclub owner, has a happy hour special meal package on Friday evenings. For a \$10 charge, a patron receives a buffet dinner and open bar from 5pm to 8pm. The promotion normally draws 200 patrons. The costs for liquor and beer are usually \$1700 while food costs are usually \$300 for the promotion period. Mr. Jones allocates the \$10 charge as follows:

<u>Cost Allocation</u>	
Beer/ Liquor	\$1700 (85%)
Food	<u>\$ 300 (15%)</u>
Total	<u>\$2000 (100%)</u>

Allocation of the Promotion price

Beer/Liquor	$\$10 * 85\% = \$ 8.50$
Food	$\$10 * 15\% = \underline{\$ 1.50}$
Promotion Price	<u>$\\$10.00$</u>

Based on this calculation, Mr. Jones allocates 85% or \$8.50 of the promotion price as attributable to the sale at retail for liquor and malt or brewed beverages. Mr. Jones will need to collect Liquor Sales Tax of \$.85 ($\$8.50 * 10\%$) per patron for the Friday night happy hour promotions.

Section 201. Imposition and Rate of Tax

- (a) The subject tax is imposed upon each separate sale at retail as defined herein within the School District of Philadelphia at the rate of ten percent (10%) of the sales price.

Section 301. Collection, Returns and Payment of the Tax

- (a) Every vendor shall collect the tax as agent for the Board of Education of the School District of Philadelphia from the purchaser at the time of making the sale and shall remit the tax to the Commissioner.
- (b) Any vendor required under the ordinance to collect tax from another person, who shall fail to collect the proper amount of tax, shall be liable for the full amount of the tax which he should have collected, and in addition shall be subject to any other remedies at law or in equity.
- (c) Returns and Payments of the Tax. The vendor who collects the tax authorized under the ordinance shall file a monthly report of taxes collected and pay that amount at the time the return is filed with the Commissioner. The return is due twenty-five (25) days after the last day of any month for which the return is filed. Forms for the return shall be provided by the Commissioner. The failure of any vendor to procure or receive any report form shall not excuse the vendor from making a return and paying the taxes collected.
- (d) Annual Information Returns by Vendors. Every vendor who collects the tax authorized under the ordinance shall, annually, on or before the last day of February, file a true and correct information return for the previous calendar year detailing the following information:
- (1) Name, address and account number of the vendor;
 - (2) Total sales volume (both taxable and nontaxable);

- (3) Nontaxable sales volume;
- (4) Taxable liquor/ malt or brewed beverages sales volume

Section 302. Electronic Filing and Payment¹

- (a) Effective January 1, 2011, through December 31, 2011, any vendor that remits an average of \$20,000 or more per month will be required to file the tax return and remit the attending tax payment electronically through electronic funds transfer (“EFT”). Effective January 1, 2012 and thereafter, the Department may periodically determine or change the parameters for vendors to electronically file tax returns and remit the attending tax payments electronically through EFT. These parameters will be posted to the Department’s website and vendors will be notified of the changes. EFT includes automated clearinghouse (ACH) debits and/or credits and any other means or technologies that may be available to obtain the funds due the City in an efficient manner. The Department may by policy or announcement provide for additional electronic means/technologies as they become available.
- (b) The application of the Department’s electronic filing and payment parameters for a particular vendor will be determined by using the filings and payments for the vendor in the immediate prior calendar year. If there is no filing for the prior calendar year, the Department may set the parameters and notify the vendor.
- (c) Any vendor who is required by this regulation to electronically file a return and fails to do so will be subject to a penalty of \$500 for each occurrence. Every month that the vendor fails to electronically file will constitute a separate occurrence. This penalty is in addition to any penalty due under Philadelphia Code § 19-509(4)(e).
- (d) Any vendor who is required by this regulation to make an electronic payment and fails to comply shall in addition to any interest, penalties and fees owed under Philadelphia Code § 19-509 be subject to a penalty for each occurrence as follows:
 - (1.) If the amount to be paid electronically is less than or equal to \$10,000: five percent (5%) of the amount to be paid electronically.
 - (2.) If the amount to be paid electronically is more than \$10,000 but less than \$50,000: five hundred dollars (\$500).
 - (3.) If the amount to be paid electronically is \$50,000 or more: one percent (1%) of the amount to be paid electronically.

Every month that the vendor fails to make electronic payments will constitute a separate occurrence.

¹ Added by Regulation filed with the Department of Records December 28, 2010 (effective January 27, 2011), amended by Regulation filed November 2, 2011 (effective December 2, 2011, but by its terms January 1, 2012).

Section 401. Examination of Taxpayer's Books and Records

- (a) The Commissioner is hereby authorized to examine the books and records of every vendor in order to verify the accuracy of the return and of the payment of the tax authorized by the ordinance. Every vendor is hereby directed and required to give to the Commissioner or any authorized representative of the Commissioner the means, facilities and opportunities for such examinations.

Section 501. Review and Appeal

- (a) Appeals may be taken from any assessments by the Commissioner, and petitions for waiver of interest and penalty, compromise and refund may be filed under the procedures set forth in Philadelphia Code 19-1700 et seq. and Article VII of the General Regulations [Sections 701, 702 and 703].

Section 601. Penalties and Enforcement

- (a) Any vendor who willfully fails or refuses to appear before the Commissioner in person with his books, records or accounts for examination when required by the Commissioner to do so, or to permit inspection of the books, records or accounts in his custody or control when required by the Commissioner; or who willfully makes any false or untrue statement on his or her return; or who willfully fails or refuses to file a return required by this Section or to collect and pay over to the Revenue Commissioner any tax imposed herein shall be liable to pay a fine of three hundred (\$300) dollars, or to undergo imprisonment for not more than ninety (90) days, or both.
- (b) Any vendor who fails to pay the taxes collected on or before the last date prescribed for payment shall be liable to pay a penalty of one percent (1%) per month or fraction thereof on such tax from the time the tax became due and interest at the rate of one-half (1/2) of one (1) percent per month or fraction thereof. The penalties and interest provided for in this section shall be added to the tax assessed and collected at the same time, in the same manner, and as a part of the tax.
- (c) It shall be the duty of the Commissioner to sue for the recovery of all taxes due hereunder not paid when due. Any suit to recover any tax, together with interest and penalties, authorized hereunder, from any vendor, shall be begun within six (6) years after such tax is due or within six (6) years after a return has been filed, whichever date is later; but this limitation shall not apply:
 - (1) Where a vendor has failed to file a report required under the provisions of the ordinance
 - (2) Where an examination of a return filed by a vendor and of other evidence relating to such return reveals a fraudulent evasion of taxes, including, but not limited to, substantial understatement of sales at retail taxed hereunder.

Where suit is brought for the recovery of any such tax the vendor shall be liable for, and it shall be the duty of the Commissioner to collect, in addition to the tax assessed against such vendor, the costs of such collection and the interest and penalties provided hereunder.