

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
AIU002	DOR on Tap - An Alcohol Industry Update 002



DOR on Tap

An Alcohol Industry Update

November 2019 | AIU 002

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by [sec. 227.112\(1\)](#), Wis. Stats.

I am excited about our second edition of *DOR on Tap*! We received a lot of positive feedback following our inaugural August 2019 edition. In each *DOR on Tap* edition, I will provide information that is relevant to the season and updates on current trends or issues that enforcement agents are observing.

As late fall/early winter approaches, we receive a lot of questions and complaints about seasonal businesses serving alcohol beverages to the public. We begin to see businesses like pumpkin patches, corn mazes, Christmas tree farms, and retail stores wanting to provide alcohol beverages to customers to increase patronage during the holiday season. Sometimes this is seen as a "free" giveaway to customers (e.g., men's night at the jewelry store and every shopper may enjoy a beer while they shop). Other times it is given in conjunction with a paid activity (e.g., "Purchase a hay ride and get a free beer." or "Every Christmas tree purchase comes with a free shot of brandy."). Wisconsin law prohibits the consumption of alcohol beverages in places open to the public, regardless of whether the alcohol beverages are provided for free or sold, unless the business holds an appropriate retail alcohol beverage license for the premises.

Recently, the Alcohol and Tobacco Enforcement Unit (A&TEU) encountered a situation involving an intoxicating liquor wholesaler that was violating the bona fide wholesaler requirements in sec. 125.54(7), Wis. Stats. Specifically, this wholesaler was acting as a clearinghouse for a transaction facilitated between a supplier and retailer. The sale to the wholesaler from the supplier, and the subsequent sale from the wholesaler to the retailer was, in effect, a paper transaction only. In fact, the alcohol beverages were never delivered to and physically unloaded at the wholesaler's premises prior to being delivered to the retailer, as required by law. Section 125.34(2), Wis. Stats., requires the same for fermented malt beverage wholesalers. These so-called "paper wholesalers" do not meet the bona fide wholesaler requirements in sec. 125.54, Wis. Stats. Note that the bona fide wholesaler requirement does not apply to small winery co-op wholesalers under sec. 125.545, Wis. Stats. Penalties for such violations can be harsh, including the revocation of the wholesaler's permit. The A&TEU is committed to detecting, preventing, and enforcing these violations of Wisconsin alcohol beverage laws.

If you have questions about this information, or you would like to report suspected violators, see the "Contact Us" section at the bottom of this newsletter. Individuals reporting information about suspected violations of Wisconsin alcohol beverage laws to the A&TEU may remain anonymous or request confidentiality of their identity.

Cheers,

Tyler Quam, Special Agent in Charge | A&TEU | Wisconsin Department of Revenue

Resources & News

[Wisconsin Department of Revenue Website](#)

[Wisconsin Department of Revenue Alcohol Beverage Landing Page](#)

[Operator's \(Bartender's\) License – Training](#)

[Federal TTB \(Alcohol and Tobacco Tax and Trade Bureau\)](#)

[Wisconsin Department of Agriculture, Trade and Consumer Protection](#)

[Wisconsin Department of Health Services](#)

[Wisconsin Department of Justice](#)

[League of Wisconsin Municipalities](#)

[Advisory on Alcohol Mist/Vapor Machines in Wisconsin](#)

Clerk's Corner

Each issue, we'll answer an alcohol beverage licensing question from a municipal clerk.

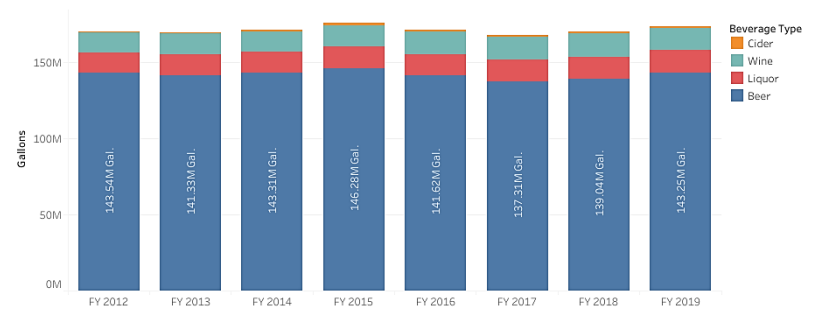
Q: Our volunteer fire department obtains a temporary Class "B" (beer) license for their annual fundraiser. Can the fire department accept donations of beer from a local brewery or brewpub, and can brewery or brewpub employees sell and serve beer at the fundraiser?

A: No, [sec. 125.33\(1\)\(a\), Wis. Stats.](#), prohibits a brewer, brewpub, or beer wholesaler from providing anything of value to a Class "B" retail licensee, such as a volunteer fire department. If an entity is issued a temporary Class "B" license, they are considered a retailer under Chapter 125. As a retail licensee, the volunteer fire department is required to purchase beer from a permitted beer wholesaler, brewer, or brewpub ([secs. 125.33\(9\), 125.29\(3m\)\(b\), and 125.295\(1\)\(g\), Wis. Stats.](#)). Wholesalers, brewers, and brewpubs are required to charge the same price to all retail licensees, purchasing in similar quantities ([sec. 125.33\(6\), Wis. Stats.](#)).

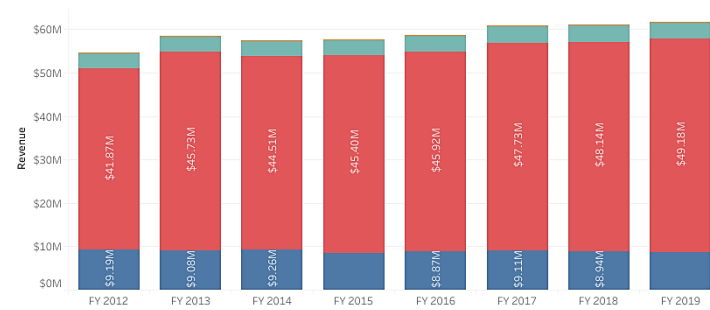
However, up to three representatives from a permitted brewer or brewpub can staff the event. Those individuals may provide information about the business they represent and dispense the brewer's beer at the event, if the beer is purchased by the volunteer fire department from a permitted wholesaler and the event has beer from at least five different brewers or brewpubs offered for consumption ([sec. 125.33\(2\)\(p\)1., Wis. Stats.](#)).

Graph: Volume Consumed & associated Excise Ta..	Map: Alcohol Beverage Excise Tax Rates by State (\$/Gal.)	Table: Taxable Gallons	Table: Excise Tax Revenues	Notes
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Graph: Taxable Gallons



Graph: Revenues



Data Visualizations

Have you seen the interactive data tools from the Research and Policy Division at the Wisconsin Department of Revenue? They are simple yet powerful tools for data analysis.

You can see live data visualizations on alcohol beverages, including a graph of volume consumed and associated excise tax, a map of alcohol excise tax rates by state, a table of taxable gallons, and more here:

<https://www.revenue.wi.gov/Pages/RA/AlcoholBeverage.aspx>

Legislative Update

[2019 Assembly Bill 91](#) (proposed) – requires common carriers to report shipments of alcohol into Wisconsin

[2019 Assembly Bill 92](#) (proposed) – requires out of state shippers (beer, wine, liquor) to consent to jurisdiction in Wisconsin before shipping alcohol beverages into Wisconsin

[2019 Assembly Bill 216/Senate Bill 203](#) (proposed) – allows municipalities to designate a municipal official to issue operator's licenses

[2019 Assembly Bill 362](#) (proposed) – allows for licensed retailers to fulfill remote orders of alcohol beverages to be picked up by consumers at a parking space that is part of the retailer's licensed premises

[2019 Assembly Bill 363](#) (proposed) – allows for online and telephone orders of alcohol beverages to be fulfilled and delivered by licensed retailers

[2019 Assembly Bill 385/Senate Bill 353](#) (proposed) – modifies the "Class B" quota law by providing a municipality with one additional "Class B" license for an Americans with Disabilities Act (ADA) compliant business, if the municipality has reached its quota and no "Class B" establishments in the municipality currently meet ADA standards

[2019 Assembly Bill 434/Senate Bill 395](#) (proposed) – authorizes the issuance of a retail alcohol beverage permit for motor vehicle racetrack grounds; authorizes caterers to make retail sales of alcohol beverages on racetrack grounds; imposes closing hours for retail sales by brewers

FAQ: Shining a Light on Shiners

What is a shiner? A "shiner" is a bottle of wine that has come off the bottle line without a label. Wineries in Wisconsin may not purchase unlabeled bottles of wine, add their own label, and then offer for sale as their own product. This practice, while commonplace, is not allowed under Wisconsin alcohol statutes (Chapters 125 and 139).

What is bulk shipment? "Bulk" is a common term used to describe a large container of liquid that has not yet been bottled. [Section 139.04\(4\), Wis. Stats.](#), provides a tax exclusion for the sale or shipment of intoxicating liquor in bulk between manufacturers, rectifiers, and wineries. In Wisconsin, it is illegal to transfer non-bulk wine or distilled spirits between manufacturers. Bottled, unlabeled products (shiners) cannot be sold or transferred between manufacturers.

Federal law does allow for the transfer in bond of non-bulk distilled spirits, but Wisconsin law does not.

Reminder to Wisconsin Liquor Retailers

All intoxicating liquor offered for sale at a licensed retail establishment must be purchased from a Wisconsin wholesaler holding a permit issued by the Department of Revenue.

The following examples of purchasing intoxicating liquor from another manufacturer, retailer, or out-of-state wholesaler are illegal:

Example 1: A distillery in Wisconsin or another state offers to sell entire barrels of whiskey to a Wisconsin tavern owner. The distillery will bottle the whiskey expressly for the tavern and apply a unique label. The tavern owner agrees to pick up the products purchased directly from the distillery. (A retailer cannot purchase any intoxicating liquor directly from a manufacturer for resale at his/her establishment.)

Example 2: A Wisconsin tavern owner purchases too many cases of an unusual vodka from a Wisconsin wholesaler. Instead of holding on to this slow-moving inventory, the tavern owner offers it for sale to another tavern in a nearby town. (A retailer cannot purchase any intoxicating liquor from another retailer for resale at his/her establishment.)

Example 3: A Wisconsin tavern owner lives very close to the Minnesota/Wisconsin border. She knows the owner of a Minnesota wholesale liquor company that offers to sell to her directly if she will drive across the border to pick up the merchandise from the warehouse. (A retailer cannot purchase any intoxicating liquor directly from an out-of-state wholesaler for resale at his/her establishment.)

Long Distance (Rum)Runner

An August 2019 investigation by the DOR's Alcohol and Tobacco Enforcement Unit found that a tavern had contracted with an out-of-state distillery to have private label spirits made.

During a visit, agents noticed several bottles of spirits labeled with the tavern's name and requested invoices for the private label spirits. Agents were told that the tavern had contracted with an out-of-state distillery to have the private label spirits made, and the tavern owner drove there on multiple occasions to pick up the spirits and bring them to the tavern for resale to customers, effectively circumventing Wisconsin's three-tier system regulating the distribution and sale of alcohol beverages. As a result, no intoxicating liquor excise taxes had been paid on the product.

Agents also found the tavern utilizing an off-site storage location to house several more bottles of the private label spirits. A total of 72 bottles were seized from the business.

Wisconsin law

- Requires retailers, such as taverns, to store alcohol beverages on the premises described in their license
- Requires retailers to purchase all intoxicating liquor from wholesalers holding a permit from DOR
- Requires any person selling or shipping intoxicating liquor into Wisconsin from another state to obtain an out-of-state shipper's permit
- Prohibits licensed retailers from having any direct or indirect interest in the wholesale or manufacturing tiers of the alcohol beverage industry

Individuals in this case are presumed innocent until proven guilty in court.

Every Season is Festival Season in Wisconsin!

Beer festivals, wine tastings, and spirit samplings...there are events like these nearly every weekend in Wisconsin! Organizers should familiarize themselves with Wisconsin laws regarding alcohol beverage permits so they can provide accurate information to participants (manufacturers of fermented malt beverages [beer], distilled spirits, and wine).

Wisconsin companies holding one of the following permits may participate in beer, wine, and spirits festivals:

- Manufacturer
- Rectifier
- Winery
- Brewery
- Brewpub

Out-of-state breweries, distilleries, and wineries may only participate with an Out-of-State Shipper permit.

- Out-of-state shipper of beer permit: <https://www.revenue.wi.gov/DORForms/bt-136f.pdf>
- Out-of-state shipper of liquor permit (includes distilled spirits, wine, or cider):
<https://www.revenue.wi.gov/DORForms/ab-123f.pdf>

The event organizer is responsible for:

- Obtaining a retail alcohol beverage license from the municipality where the event will be held (contact municipal clerk)
- Communicating permit requirements with all potential participants
 - A Wisconsin state issued permit is required for all participating alcohol beverage manufacturers.
- Purchasing all beer, wine, or spirits from a Wisconsin wholesaler or self-distributing brewery or brewpub that holds a Wisconsin permit
 - It is illegal for a participant to bring their own alcohol beverage products directly to the event (secs. [125.32\(6\)\(a\)](#), [125.33\(9\)](#), [125.29\(3m\)\(b\)](#), and [125.295\(1\)\(g\)](#), Wis. Stats.).
- Making the sales of alcohol beverages to event attendees
 - This is typically accomplished by charging a fee for admission to the event.
- Providing licensed bartenders to serve the beer, liquor, or wine

Both the organizer and participant may serve taste samples to attendees, provided that the organizer (the licensee) or a representative of the participant (manufacturers) hold an operator's license from the municipality where the event will be held.

To qualify for an operator's license, a person must:

- Be at least 18 years old
- Meet criminal record requirements
- Have completed a responsible beverage server training course (information on these courses can be found here: <https://www.revenue.wi.gov/Pages/Training/alcSellerServer.aspx>)

To apply for a permit:

- The permit application should be submitted at least four to six weeks prior to the scheduled event to allow time for processing of the application.
- Additional information may be requested (requiring additional processing time) before the permit can be issued.
- The most common reasons for delays in issuing a permit are 1) a copy of the federal permit is not included with the application, and 2) the contact name and phone number is left blank on the application.

Call or email questions to DOR's Excise Tax Unit:

(608) 266-6701 or DORExciseTaxpayerAssistance@wisconsin.gov

Safecracking Agents Find Unauthorized Liquor

A July 2019 investigation by the DOR's Alcohol and Tobacco Enforcement Unit found a tavern owner was in possession of intoxicating liquor which was undocumented and suspected of being obtained from unauthorized sources.

Agents received a tip that the bar was buying alcohol beverages from illegal sources and went to the premises just as the business was opening that afternoon. The bar owner spoke with agents on the telephone and said that all alcohol beverages were purchased from Wisconsin wholesalers. Agents telephoned the main liquor wholesaler for the area and were told the business had not purchased the liquor from them. Agents later discovered that virtually none of the liquor bottles on site had been delivered by any wholesaler.

Agents again spoke with the bar owner on the telephone who told agents that purchase invoices were all locked in a small safe at the bar, but the owner had the only key and was unavailable. Agents explained that undocumented alcohol was subject to seizure and the bar owner instructed the agents to open the safe to find the invoices. Agents said they did not think they could open the locked safe but were told by the owner that if the safe was dropped on the ground, it would open. The bar owner insisted invoices were in the safe and agents could open it if they tried. The agents took the safe to the parking lot and, after several drops on the hard pavement, the safe door popped open. Inside the safe, agents found documents indicating all beer on the premises had been properly purchased from Wisconsin beer wholesalers, but also found cash register receipts documenting liquor purchases from unauthorized sources. The bar owner said they had not physically been to the tavern in several weeks and did not know where the liquor was from but thought maybe the bartenders were buying the liquor stock from local stores without their knowledge. Agents ultimately seized 119 bottles of unauthorized intoxicating liquor.

Wisconsin law requires licensed retailers to purchase their alcohol beverages only from permitted wholesalers. Purchase invoices must be retained on the licensed premises for a minimum of 2 years from the date of the invoice, be maintained in sequence and order, and be available for inspection by law enforcement at all times.

The owner in this case is presumed innocent until proven guilty in court.

Contact Us

Phone: (715) 842-2343 | Email: DORAlcoholTobaccoEnforcement@wisconsin.gov | [Follow us on Twitter](#)

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes in effect as of November 7, 2019: Sections 125.04(5), 125.07(4)(a)2., 125.32(2), 125.66(3), 125.68(2) and (8), 125.69(6), 139.03(5), 139.08(4), and 139.38, Wis. Stats.

Laws enacted and in effect after November 7, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to November 7, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Certification Statement

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE

A handwritten signature in cursive script, reading "Peter W. Barca", is written over a horizontal line.

Peter Barca

Secretary of Revenue