

**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.

<b>Document Number</b>	<b>Document Title</b>
<b>100127</b>	Fermented Malt Beverage (Beer) Tax - Common Questions

State of Wisconsin  
Department of Revenue

# Fermented Malt Beverage (Beer) Tax

**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.**

1. What are the definitions of "fermented malt beverage," "person" and "permittee?"
2. What is the tax rate on fermented malt beverage?
3. Do I need a license or permit to handle fermented malt beverage?
4. What types of licenses and permits do I need?
5. Who pays the fermented malt beverage tax?
6. How do I pay fermented malt beverage tax?
7. How do I file my fermented malt beverage tax return?
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9. When are the fermented malt beverage tax returns due?
10. Is any fermented malt beverage exempt from the fermented malt beverage tax?
11. Will the Wisconsin Department of Revenue (DOR) refund any fermented malt beverage taxes I paid?
12. How do I correct a fermented malt beverage tax return that I already filed?
13. If I file an incorrect fermented malt beverage tax return, will I have to pay interest and penalties?
14. Should I notify DOR if the business has a change to its name, address, or ownership or if the business ceases operating in Wisconsin?
15. What records should I keep for Wisconsin tax purposes, and how long should I keep them?

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## 1. **What are the definitions of "fermented malt beverage," "person" and "permittee?"**

- o **Fermented malt beverage** - Any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated

and degerminated grains or sugar, containing 0.5% or more of alcohol by volume [[sec. 125.02\(6\)](#), Wis. Stats.]. The term "fermented malt beverage" is used in place of "beer".

- **Person** - In Wisconsin's alcohol beverage tax law (Chapter 139, Subchapter I), "person" includes any individual, sole proprietorship, partnership, limited liability company (LLC), corporation. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity under subchapter I [[sec. 139.01\(5p\)](#), Wis. Stats.].
- **Permittee** - A person who holds an alcohol beverage permit issued by the Wisconsin Department of Revenue (DOR).

## 2. What is the tax rate on fermented malt beverage?

There is a \$2.00 occupational tax on every 31 gallon barrel. [[sec. 139.02\(1\)](#), Wis. Stats.]

- **Eligible producer tax credit** - If you are a brewer who produces less than 300,000 barrels of fermented malt beverage per year, you are eligible for a tax credit of \$1.00 on every barrel for the first 50,000 barrels subject to Wisconsin fermented malt beverage tax [[sec.139.02\(2\)](#), Wis. Stats.]. To determine a brewer's total production, you must combine all the brands and labels from all production facilities regardless of where the facilities are located.
- **Inventory tax** - Currently, there is no statutory authority to impose an inventory tax on fermented malt beverage, if the tax rate changes.

## 3. Do I need a license or permit to handle fermented malt beverage?

Yes. You must have a license or permit to handle fermented malt beverage.

- You may not sell, manufacture, rectify, brew, or engage in any other activity relating to alcohol beverages without holding the appropriate license, permit or authorization. [[Sec. 125.04\(1\)](#), Wis. Stats.]
- If you want to obtain a beverage permit from DOR, you must also contact your municipal clerk to see if there are any licenses you need from the municipality.

## 4. What types of licenses and permits do I need?

### ◦ Retail licenses

To sell fermented malt alcohol beverages at retail, a Wisconsin municipality (town, village and city) subject to state law, would normally issue you a retail license. [[Secs. 125.25](#), [125.26](#), and [125.51](#), Wis. Stats.] Submit Original Alcohol Beverage Retail License Application [Form AT-106](#) and Auxiliary Questionnaire [Form AT-103](#) to your municipal clerk.

### ◦ Permits

To deal in fermented malt beverage at the **wholesale level** in Wisconsin, you must obtain a Business Tax Registration (BTR) Certificate [[sec. 73.03\(50\)](#), Wis. Stats.] and beverage permit from DOR. [[sec. 125.28](#), Wis. Stats.].

### To apply for a BTR Certificate and a beverage permit:

- Contact the department's Excise Tax Unit at (608) 266-6701.

### BTR Certificate

- There is a \$20 registration fee for the BTR Certificate.
- You may renew the certificate every two years for \$10.

**Note:** The BTR certificate and fermented malt beverage permits are valid until canceled by the permittee or until revoked by DOR. You only need one BTR certificate regardless of the number of permits or licenses you hold with DOR.

**The following *fermented malt beverage permits* are issued by DOR:**

<b>Types of Permits/AccountPrefix</b>	<b>Statute</b>	<b>Fee</b>	<b>Term of Permit</b>
Wisconsin brewery (309)	sec. 125.29	none	2 years
Wisconsin Brewpub (320)	sec. 125.295	none	2 years
Industrial fermented malt beverage (301)	sec. 125.275	none	2 years
Wisconsin wholesalers and importers (308)	sec. 125.28	\$2,400	2 years
Out-of-state shipper (304)	sec. 125.30	none	2 years
Wisconsin public warehouse (306)	sec. 125.19	\$200	2 years

**DOR also issues these *retail fermented malt beverage permits*:**

<b>Types of Retail Permits/Prefix</b>	<b>Statute</b>	<b>Fee</b>	<b>Term of Permit</b>
Sports club (318)	sec. 125.27	\$200	2 years
Vessel (317)	sec. 125.27	\$200	2 years

If you are a permittee and purchased fermented malt beverage from an out-of-state wholesaler that does not hold a permit with DOR, our Alcohol & Tobacco Enforcement Unit may confiscate the fermented malt beverage [sec. 139.22, Wis. Stats.].

**Security required**

- o Persons who are responsible for paying the fermented malt beverage tax must have security (e.g., cash, surety bond) on file with DOR [sec. 139.05(4), Wis. Stats.].
- o The amount of security must be equal to twice the person's estimated maximum monthly fermented malt beverage tax liability but not less than \$1,000 or more than \$100,000 [sec. 139.05(4), Wis. Stats.].

**Revocation of permits**

- o As a permittee, it is very important to file your fermented malt beverage tax returns on time and pay any amount due. If you have poor filing and/or payment records, DOR may revoke your permits. [Secs. 139.11 and 139.25, Wis. Stats.]

**5. Who pays the fermented malt beverage tax?**

The following permittees pay the fermented malt beverage tax to DOR [sec. 139.05(2), Wis. Stats.]:

- o Wisconsin breweries/brewpubs on all sales made in Wisconsin.
- o Wisconsin wholesalers who import fermented malt beverage into Wisconsin from a foreign country.
- o Out-of-state shippers who ship fermented malt beverage into Wisconsin from another state.

**Note: Sports club and vessel permit holders**

If you hold this type of retail permit, you are not required to file fermented malt beverage tax returns with DOR. The excise tax on the fermented malt beverage purchased in Wisconsin is paid at the wholesale level, not at the retail level.

## 6. How do I pay the fermented malt beverage tax?

You must pay your taxes by electronic funds transfer (EFT) if your liability was more than \$1,000 in the previous calendar year. For more information, visit [Electronic Funds Transfer Common Questions](#) or call (608) 264-9918.

Your tax liability is determined and paid based on one of the following fermented malt beverage monthly returns [secs. 139.05(2) and 139.11(2), Wis. Stats.].

### There are two types of fermented malt beverage tax returns:

- a. Wisconsin Brewery Fermented Malt Beverage Tax Return - Form BT-100 is filed by in-state breweries and brewpubs.
- b. Wisconsin Fermented Malt Beverage Tax Return - Form BT-104 is filed by Wisconsin fermented malt beverage wholesalers and out-of-state shippers.

Information on [Wisconsin Fermented Malt Beverage Tax Monthly Taxable Barrels](#) is reported on the Revenue website.

## 7. How do I file my fermented malt beverage tax return?

You are required to file all fermented malt beverage tax returns electronically. You may file using My Tax Account or an approved XML schema.

### For more information on:

- [My Tax Account, tap.revenue.wi.gov](#)
- Approved XML schema, visit [On-Line Services "E-File."](#)

## 8. What should I do if filing electronically causes a hardship?

If filing electronically causes you a hardship, you may request a waiver. If, based on your request, the Secretary of Revenue determines the requirement causes a hardship, the Secretary may waive your requirement to file electronically.

### To request a waiver, you must do the following:

- Request the waiver in writing. Mail your written request to:  
Excise Tax Unit  
Mandate Waiver Request  
Wisconsin Department of Revenue  
PO Box 8900  
Madison, Wisconsin 53708-8900
- Clearly state why the requirement causes a hardship.
- The Secretary of Revenue may consider the following factors when deciding if this requirement causes a hardship:
  - An unusual circumstance that may prevent you from filing electronically.  
**Example:** You do not have access to a computer connected to the internet.
  - Any other factor the Secretary determines is relevant.
- If you have any questions, contact us at (608) 266-6701 or email [DORExciseTaxpayerAssistance@wisconsin.gov](mailto:DORExciseTaxpayerAssistance@wisconsin.gov).

## 9. When are the fermented malt beverage tax returns due?

All fermented malt beverage tax returns are due no later than the 15th day of the month following the period covered by the return [sec. 139.05(1), Wis. Stats.]. Example: a return for October is due November 15.

If you file a late return, you will be charged:

- Late-filing fee - \$10 [sec. 139.25(2), Wis. Stats.].
- Delinquent interest - 1.5% of the amount of tax due with the return per month (18% annually) until paid [sec. 139.25(2), Wis. Stats.].
- Late-filing penalty - 5% of the amount of tax due with the return per month until paid, maximum of 25% [sec. 139.25(4), Wis. Stats.].

#### 10. **Is any fermented malt beverage exempt from the fermented malt beverage tax?**

Yes. The following are exempt from the Wisconsin fermented malt beverage tax [sec. 139.04, Wis. Stats.]:

- "Homemade" (see Note below) fermented malt beverage that is not sold or offered for sale.
- Homemade fermented malt beverage that is used for purposes of exhibition, judging or tasting at a private residence or licensed premises. No fee may be charged for the consumption of the fermented malt beverage at these events.
- Homemade fermented malt beverage that is produced at a home brewer's/home winemaker's supply store. The fermented malt beverage may not be sold; samples may be given only by persons holding an operator's (bartender's) license from the municipality where the supply store is located.
- Homemade fermented malt beverage, provided the total quantity of fermented malt beverage made, in a calendar year, by the person and any other person living in the same household does not exceed 100 gallons, if the household has only one person of legal drinking age or 200 gallons if the household has 2 or more persons of legal drinking age.  
**Note: "Homemade" with respect to the making of fermented malt beverage means fermented malt beverage made by a person's own efforts and not for a commercial purpose, but does not require that the fermented malt beverage be made on the person's property [sec. 125.02(6m), Wis. Stats.].**
- Fermented malt beverage furnished by a brewer to its employees without charge for consumption on brewery premises.
- Fermented malt beverage that contains less than 0.5% alcohol by volume.
- Fermented malt beverage shipped to another state or foreign country.
- Fermented malt beverage sold to industrial permittees for use in food items.

#### 11. **Will DOR refund any fermented malt beverage taxes I paid?**

Fermented malt beverage permittees may receive refunds from DOR if one of the following applies:

- You sold fermented malt beverage to the Armed Forces (e.g., Fort McCoy, Coast Guard stations, etc.)
  - File Form BT-612 [sec. 139.10(1), Wis. Stats.].
- The fermented malt beverage is spoiled or unfit for consumption
  - File Form AB-605 [sec. 139.10(1), Wis. Stats.].
- Fermented malt beverage shipped to wholesalers outside Wisconsin
  - Send a letter of request to DOR. Including applicable invoices [sec. 139.04(5), Wis. Stats.].

#### 12. **How do I correct a fermented malt beverage tax return I already filed?**

- o You must electronically file an amended return. You are required to electronically file all Wisconsin fermented malt beverage tax reports, returns and amended returns (see question #6).
- o If you are filing an amended fermented malt beverage tax return, you must file a true, corrected and complete return. Include all previously reported unchanged transactions.
- o Do not file a return that only reports the changes.

**13. If I file an incorrect fermented malt beverage tax return, will I have to pay interest or penalties?**

Yes. If you file an incorrect fermented malt beverage tax return, the following may apply:

- o Unpaid taxes - 12% interest per year [sec. 139.25(1), Wis. Stats.].
- o Refunded taxes - 3% interest per year [sec. 139.25(1), Wis. Stats.].
- o Negligence penalty - 25% of the tax, if you do not file a return [sec. 139.25(3), Wis. Stats.].
- o Fraud penalty - 50% of the tax, if there was intent to defeat or evade the fermented malt beverage tax [sec. 139.25(5), Wis. Stats.].

**14. Should I notify DOR if the business has a change to its name, address, or ownership or if the business no longer operates in Wisconsin?**

Yes. You can inform DOR by letter, email or attach a note to your return.

- o If your name or ownership changes and you receive a different federal employer identification number (FEIN), you must file a new application with DOR and update your security (file a new surety bond Form A-133).
- o When you end operations, you must file a return for the last month of operations even if you were in business only a few days during that month or you had no liability.
- o If you have any questions about your fermented malt beverage tax permit, contact DOR at (608) 266-6701 or email [DORAlcoholTobaccoEnforcement@wisconsin.gov](mailto:DORAlcoholTobaccoEnforcement@wisconsin.gov).

**15. What records should I keep for Wisconsin tax purposes, and how long should I keep them?**

- o Keep a complete copy of your fermented malt beverage tax returns and all records about your business for at least four years so we can determine how you calculated your tax liabilities [secs. 139.092 and 139.11(1), Wis. Stats.].
- o Records may be kept in electronic form or paper.
- o Required records include, but are not limited to: purchases and sales receipts (whether taxable or exempt), inventories, distribution, and consumption of products.
- o Keep records organized and in a place available for review by DOR. Records must be available for inspection at all reasonable hours, including all business hours. [Sec. 139.08(4), Wis. Stats.]
- o If you do not maintain adequate records, all the products you purchase or receive are subject to tax without benefit of any deductions. [Sec. 139.092, Wis. Stats.]

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 13, 2020: Sections 71.74, 73.03(50), 125.02, 125.04, 125.06, 125.10, 125.25, 125.26, 125.28, 125.51, 139.01, 139.02, 139.04, 139.05, 139.08, 139.092, 139.10, 139.11, 139.22 and 139.25, Wis. Stats., and secs. Tax 1.12 and 7.001, Wis. Adm. Code.

Laws enacted and in effect after February 13, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 13, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

**FOR QUESTIONS OR COMMENTS CONTACT:**

Excise Tax Unit

WISCONSIN DEPARTMENT OF REVENUE

PO Box 8900

Madison, WI 53708-8900

Phone: (608) 266-6701

Fax: (608) 261-7049

Email additional questions to [DORExciseTaxpayerAssistance@wisconsin.gov](mailto:DORExciseTaxpayerAssistance@wisconsin.gov)

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