

DOR on Tap

An Alcohol Industry Update

May 2021 | AIU 008

As we put an entire year of challenges from the COVID-19 pandemic behind us, I have seen encouraging signs of economic recovery in the alcohol industry. Hopefully, we will put the pandemic behind us soon.

The return to normalcy, along with the warmer weather, will likely provide some opportunities for temporary outdoor events. As a result, I would like to remind licensing authorities and event operators that a retail alcohol beverage license is required any time alcohol beverages are sold to consumers. Temporary Class "B" beer licenses and temporary "Class B" wine licenses are options for eligible and qualified applicants for a limited duration picnic or similar gathering, at meetings of veterans' organization posts, or during a fair conducted by a fair association or agricultural society. These temporary licenses may only be issued to:

- Bona fide clubs
- Chambers of commerce
- County or local fair associations
- Agricultural societies
- Churches, lodges, or societies that have been in existence for at least 6 months prior to application
- Posts of veterans' organizations

Additionally, the summer months usually bring an increase in requests for off-site retail outlets for brewers. Brewers should submit an application to our department at least 15 days in advance of any request for a retail outlet. Before doing so, we encourage brewers to first reach out to the municipality where the potential retail outlet will be established to determine whether any local regulations apply (i.e. zoning, beer garden license, hours of sale, etc.). Municipal officials should be aware that our department will reach out to you to determine whether the outlet is consistent with local ordinances and regulations. Also, brewers are reminded that Wisconsin laws allow a brewer to establish only one off-site retail outlet.

I am looking forward to warmer weather and brighter times!

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](#)

Monthly Taxable Sales Reported on Sales/Use Tax Returns by County

Filter on Industry

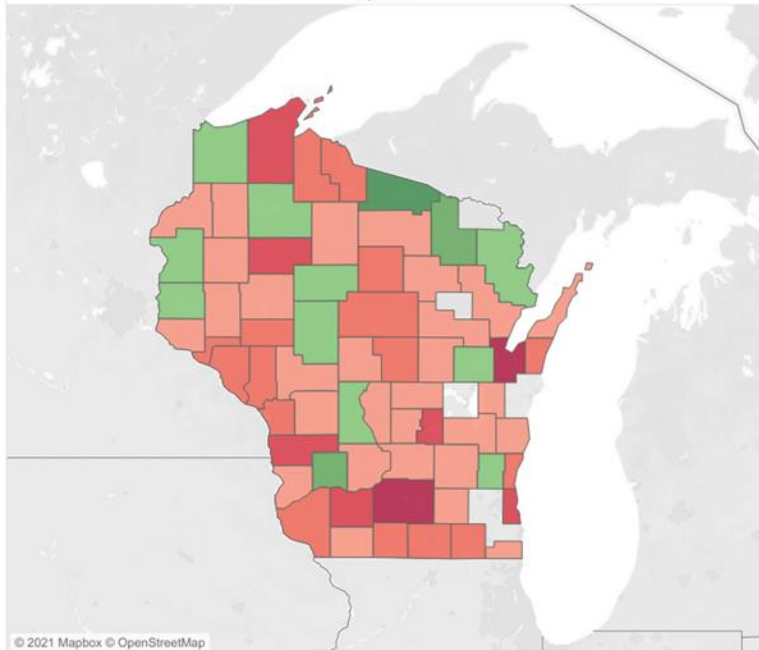
Filter on County

Data in Tabular Form

Notes on the Data

Taxable Sales: September 2020 vs 2019
722 - Food Services and Drinking Places

September



Select Industry

722 - Food Services and Drinking Places

Select Month

September

September - NAICS 722 - Food Services and Drinking Places

County	2019	2020	\$change	Y/Y Growth
	September	September	September	September
Adams	3,507,462	3,350,701	-156,761	-4.5%
Ashland	2,427,533	2,179,082	-248,451	-10.2%
Barron	6,147,475	5,684,092	-463,383	-7.5%
Bayfield	2,043,197	1,607,873	-435,324	-21.3%
Brown	49,055,661	34,389,664	-14,665,997	-29.9%
Buffalo	1,504,465	1,335,914	-168,551	-11.2%
Burnett	2,017,271	1,939,147	-78,124	-3.9%
Calumet	4,746,221	4,324,455	-421,766	-8.9%
Chippewa	7,234,489	6,952,513	-281,976	-3.9%
Clark	1,787,915	1,827,818	39,903	2.2%
Columbia	6,902,529	6,575,116	-327,413	-4.7%
Crawford	2,329,954	2,203,258	-126,696	-5.4%
Dane	105,355,900	69,943,867	-35,412,033	-33.6%
Dodge	6,576,239	6,238,887	-337,352	-5.1%
Door	12,603,375	12,578,888	-24,487	-0.2%
Douglas	6,402,992	6,492,708	89,716	1.4%
Dunn	4,608,604	4,379,451	-229,153	-5.0%
Eau Claire	17,104,299	15,281,581	-1,822,718	-10.7%
Fond du Lac	12,003,152	11,390,026	-613,126	-5.1%
Forest	902,594	991,914	89,320	9.9%
Grant	4,997,242	4,276,778	-720,464	-14.4%
Green	3,900,952	3,356,100	-544,852	-14.0%
Green Lake	2,049,448	1,483,433	-566,015	-27.6%
Iowa	1,906,453	1,491,485	-414,968	-21.8%
Iron	1,020,185	852,958	-167,227	-16.4%
Jackson	2,341,082	2,258,382	-82,700	-3.5%
Jefferson	8,612,415	8,369,143	-243,272	-2.8%

No Way, Rosé

Agents with the Department's Alcohol & Tobacco Enforcement Unit received a tip in February 2021 about a potential illegal winery operating in Chippewa County.

After some investigation, agents visited the site where wine for commercial purposes was allegedly being produced. Agents eventually found over 2,000 bottles of wine and over 800 gallons of bulk wine that had been produced at the site. Department records indicated that no Wisconsin winery permit had been issued to the site.

While speaking with the individual who was making the wine, agents learned that wine had been sold to several retailers in the area, including taverns, restaurants, liquor stores, and grocery stores. Numerous invoices from the unpermitted winery to the retailers were found during the investigation. The individual claimed to not be aware that a Wisconsin winery permit was needed in order to manufacture and bottle for commercial purposes.

Wisconsin law generally allows individuals to make homemade wine if:

- The person making the wine receives no compensation
- The wine is not sold or offered for sale
- The total quantity of wine made in a calendar year does not exceed 100 gallons if the household has only one person of legal drinking age or 200 gallons if the household has two or more persons of legal drinking age
- The wine is consumed by the person who made it for their family, friends, or neighbors at a private residence or other private location where consumption is otherwise permissible

Manufacturing and bottling wine for commercial purposes requires a Wisconsin winery permit. Doing so without a permit could result in multiple criminal charges, including a Class F felony which is punishable by a fine of up to \$25,000 and up to 12 years and 6 months in prison.

Wisconsin law does not allow wineries to self-distribute their wine to retailers. Wine must be distributed to retailers by a permitted Wisconsin wholesaler. Wisconsin retailers should be careful to purchase wine only from these authorized sources.

Clerks Corner: Is a License Available?

Municipal License Quotas

Wisconsin statutes impose a statewide quota system on "Class B" intoxicating liquor licenses that limits each municipality to a specific number of licenses. The quota calculation is based on the number of "Class B" licenses granted or issued in good faith and in force on December 1, 1997, plus the number of reserve "Class B" licenses the municipality is authorized to issue.

Municipalities may only issue as many "Class B" licenses as the quota allows but are not required to issue all licenses and may even choose to self-impose a more restrictive quota or a quota system for other types of retail alcohol beverage licenses.

The Department of Revenue does not maintain historical records of municipal quotas, so each individual municipality is responsible for determining its respective quota figure.

Changes to the Quota

A municipality gains a reserve "Class B" license for each population increase of 500 people, since the system started in 1997. The Wisconsin Department of Administration maintains historical population estimates.

A reserve license may be transferred from one municipality to another if their borders are contiguous or within two miles of each other. The receiving municipality must pay a one-time issuance fee of not less than \$10,000 to the municipality that transfers the license.

Annexed or detached territory can also change a municipality's quota as described in secs. [125.51\(4\)\(c\)](#) and [\(d\)](#), Wis. Stats.

Exceptions to the Quota

A "Class B" wine-only license issued to a permitted winery does not count towards a municipality's quota.

If a municipality has reached its quota, it may still issue an above-quota license to specific types of businesses. Common situations where above-quota licenses may be issued include:

- A full-service restaurant that has an interior, permanent seating capacity of 300 or more persons
- A hotel that has 50 or more rooms of sleeping accommodations, and that has either an attached restaurant with a seating capacity of 150 or more persons or a banquet room in which banquets attended by 400 or more persons may be held
- An opera house or theater for the performing arts operated by a nonprofit organization, as defined in sec. [134.695\(1\)\(am\)](#), Wis. Stats.

For a list of exceptions to the "Class B" liquor license quota, see secs. [125.51\(4\)\(v\)](#) and [\(w\)](#), Wis. Stats.

New Standards of Fill for Wine and Distilled Spirits

The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) recently amended regulations governing wine and distilled spirits container standards of fill. After this update, wine container sizes of 200 ml, 250 ml, and 355 ml are newly authorized by the TTB and allowable for use in Wisconsin.

For distilled spirits, standards of fill of 700 ml, 720 ml, 900 ml, and 1.8 L have been approved by the TTB. However, 1.75 L is the maximum allowable container size for intoxicating liquor, other than wine, sold in Wisconsin. This limitation does not apply for intoxicating liquor intended for industrial, medicinal, scientific, or mechanical purposes, or sold in bulk by a permitted manufacturer or rectifier (secs. [Tax 8.41\(1\)](#) and [\(2\)](#), Wis. Adm. Code).

The full updated list of TTB-approved standards of fill can be found in the [Federal Register](#).

Basics for Wineries

A permit must be obtained from the department in order to operate as a winery. A winery permit authorizes the following common activities:

- Manufacturing and bottling of wine on the winery premises
- Possessing intoxicating liquor and mixing or blending it to produce wine
- Selling wine produced to a permitted Wisconsin liquor wholesaler
- Providing taste samples of wine manufactured on the winery premises
- Obtaining either one "Class A" license or one "Class B" license, with municipal approval
- Making retail sales and providing taste samples of wine made by the winery on county or district fairgrounds provided that the wine is purchased from a permitted wholesaler

Retail Sales

A winery permit does not allow a winery to make retail sales. However, a winery may, subject to municipal approval, obtain either one "Class A" or one "Class B" license which would allow the winery to sell wine to individuals on the licensed premises. A "Class B" license issued to a winery allows the winery to sell only wine, not any other intoxicating liquor (e.g., spirits). "Class B" licenses issued to wineries are not subject to state quota. A winery holding a "Class B" license may allow consumption of and make retail sales of wine only between the hours of 8 a.m. and 9 p.m. A "Class A" license issued to a winery allows the winery to engage in all activities that any other "Class A" licensee could.

Small Winery Cooperative Wholesalers

Wisconsin law allows for the organization of small winery cooperative wholesalers, consisting of members that are wineries. Small winery cooperative wholesalers sell wine manufactured, blended, or mixed, and bottled by its members to retailers or wholesalers in Wisconsin. A cooperative wholesaler cannot purchase wine from any person other than a member. Cooperative wholesalers also cannot employ any member or employee of a member.

A winery may become a member of a cooperative wholesaler only if the winery meets all the following:

- It produces and bottles less than 25,000 gallons of wine in a calendar year
- It is certified by the department as a "small winery"
- It holds a Wisconsin winery permit (unless an out-of-state winery)
- It holds a Wisconsin direct wine shipper's permit

If a winery becomes a member of cooperative wholesaler, the winery may only make its wine available for purchase by a retailer or another wholesaler through the cooperative wholesaler of which it is a member. The winery may not sell its wine directly to any other wholesaler or directly to a retailer.

Legislative Update

[SB 266](#) / [AB 231](#) (Sen. LeMahieu / Rep. Vorpapel) Proposed

Relating to the issuance by the Department of Revenue of retail alcohol beverage permits for motor vehicle racetrack grounds and authorizing caterers to make retail sales of alcohol beverages on racetrack grounds.

[SB 57](#) / [AB 71](#) (Sen. Stroebel / Rep. Tauchen) Proposed

Relating to alcohol beverages delivery and the face-to-face requirement for retail sales of alcohol beverages.

[SB 22](#) / [AB 32](#) (Sen. Felzkowski / Rep. Steffen) Signed into law as 2021 Wisconsin Act 21

Relating to the retail sale of intoxicating liquor by the glass for consumption away from the licensed premises.

[SB 56](#) / [AB 70](#) (Sen. Stroebel / Rep. Tauchen) Proposed

Relating to remote orders for the sale of alcohol beverages to be picked up on retail licensed premises.

[SB 282](#) / [AB 277](#) (Sen. Darling / Rep. Loudenbeck) Proposed

Relating to sales of alcohol beverages at the state fair park.

[SB 285](#) / [AB 250](#) (Sen. Wanggaard / Rep. Spiros) Proposed

Relating to Department of Revenue enforcement and providing a penalty.

Cocktails To-Go Q&A

[2021 Wisconsin Act 21](#), signed into law effective March 28, 2021, allows the sale of cocktails to-go from "Class B" intoxicating liquor licensed premises under certain circumstances.

What are "cocktails to-go"?

"Cocktails-to-go" is the informal phrase used to describe intoxicating liquor sold by the glass and not in the original package or container, for consumption off the licensed premises.

Who can sell cocktails to-go?

"Class B" intoxicating liquor license holders, including "Class B" wine-only wineries, are authorized to make retail sales of cocktails to-go. Manufacturers, rectifiers and "Class B" permit holders are not authorized to sell cocktails to-go. A brewer permitted to make retail sales of intoxicating liquor under [sec. 125.29\(3\)\(h\), Wis. Stats.](#), may not make to-go sales of cocktails.

Where can cocktails to-go sales be made from?

To-go sales of cocktails must be made in a face-to-face transaction at the licensed premises.

What time of day are cocktails to-go allowed?

State law prohibits the sale of cocktails to-go between 12 midnight and 6 a.m., however, a municipality may pass an ordinance to impose more restrictive hours. Wineries making to-go sales of wine by the glass are prohibited from doing so between 9 p.m. and 8 a.m.

What is the "tamper-evident seal" that must be used?

"Tamper-evident seal" means a device or material that is used to securely and fully close off a container, with no perforations, in such a manner that access to the contents of the container cannot be gained without showing evidence of tampering. Lids containing sipping holes or openings for straws are not tamper-evident seals and may not be used for to-go cocktails.

Are there container size requirements?

Existing Wisconsin law states intoxicating liquor, other than wine, cannot be sold at a capacity greater than 1.75 liters, [sec. 125.03\(2\), Wis. Stats.](#) Act 21 does not include any new requirements for container size.

Can a municipality adopt an ordinance to disallow cocktails to-go?

No, municipalities may continue to regulate the sale of intoxicating liquor by "Class B" licensees in original packages and containers for off-premises consumption through ordinance, but cocktails to-go are allowed whether or not this ordinance is adopted.

Are there other regulations?

Laws regarding open intoxicants in motor vehicles under [sec. 346.935, Wis. Stats.](#), and local restrictions dealing with open intoxicants and consumption in public still apply.

Contact Us

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Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of May 1, 2021. Laws enacted and in effect after May 1, 2021, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to May 1, 2021 that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.