

DOR on Tap

An Alcohol Industry Update

February 2023 | AIU 015

Happy 2023 and thank you for reading the 15th edition of the quarterly DOR on Tap newsletter!

During our November 2022 edition of DOR on Tap, I announced our new and improved [complaint form](#) used to report alcohol beverage, cigarette, tobacco products, vapor products, and video gambling violations. This form has been a wonderful success as we've received many recent complaints from the public. In fact, we've received almost 80 individual complaints via this online form in just the past 6 months!

We appreciate and depend upon citizens to alert us about any alleged violations of law in Wisconsin. Keep in mind that the form allows individuals to request anonymity or confidentiality, and that submissions are sent directly to the Alcohol & Tobacco Enforcement Unit for review and follow up.

We certainly appreciate the information we've received through these online submissions, and we encourage anyone with information about alleged violations of alcohol beverage, cigarette, tobacco products, vapor products, or video gambling laws to report this to the Alcohol & Tobacco Enforcement Unit.

Cheers,

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ATEU | Wisconsin Department of Revenue

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TO DOR ALCOHOL BEVERAGE NEWS

To Beer, or Not to Beer: What is a Fermented Malt Beverage in Wisconsin?

A fermented malt beverage, as defined under Wisconsin Law (sec. [125.02\(6\)](#) Wis. Stats.), has important elements that distinguishes it from other types of alcohol beverages:

- Alcohol is created by fermentation
- Contains barley malt AND hops
- May also contain unmalted grains, degerminated grains, or sugar
- 0.5 percent or more alcohol by volume

Based on state law, if a product does not contain barley malt and hops it cannot be classified as a fermented malt beverage. The terms "fermented malt beverage" (FMB) and "beer" are used interchangeably, but not all beverages commonly referred to as "beer" fit the Wisconsin statutory definition of a fermented malt beverage.

To Beer, or Not to Beer (Continued)

Some hard seltzers, gluten-free beers, and many other beverages marketed as "beer" or beer substitutes may not contain barley malt and hops. These products must be produced by an entity that holds a manufacturer or winery permit and they must be reported on a liquor tax return. The tax rate on many of these beverages is the same as wine.

State and federal law differ when it comes to the classification of beverages. The Alcohol & Tobacco Tax and Trade Bureau (TTB) created a rule (27 C.F.R. § 25.11) effective January 3, 2006, defining "beer", in addition to the federal statutory definition of "malt beverage". Many hard seltzers and hard sodas are classified by the TTB as "beer" or "flavored beer", and thus this classification is printed on the label of the product. This federal classification does not affect applicable Wisconsin law.

The Wisconsin Department of Revenue conducts audits of producers and wholesalers. During an audit, the department will enforce the statute as written. Beverages that are incorrectly classified as fermented malt beverages will result in tax due. The tax rate on fermented malt beverages is \$2.00 on every 31-gallon barrel. 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. The tax rate on wine is 6.605 cents per liter if the alcohol by volume is less than or equal to 14%, and 11.89 cents per liter if the alcohol by volume is greater than 14% (but not more than 21%).

Guns, Drugs, and Alcohol: Retailer Stripped of Alcohol Beverage License

In August 2022, special agents from the DOR Alcohol & Tobacco Enforcement Unit (ATEU) worked closely with a sheriff's department and municipal officials on an investigation that ultimately led to the revocation of the retailer's alcohol beverage license.

ATEU agents routinely network with local law enforcement agencies to discuss how they can work together to promote and enforce compliance with state and local laws. A sheriff's office in northwestern Wisconsin stated they had concerns about a specific establishment in their jurisdiction that was exhausting their resources. They had 14 calls-for-service in just two months that ranged from assault and weapons offenses to drug activity. Recent reports disclosed a physical altercation at the business that led to shots fired in the parking lot. In another instance, a deputy attempted to conduct a routine check of the licensed premises and was denied access by management and asked to leave. State law prohibits a licensee from refusing an inspection of a licensed premises.

In September 2022, several ATEU agents and sheriff's detectives conducted an inspection of the establishment. Upon arrival, agents were met by management of the establishment who initially gave consent for law enforcement personnel to conduct an inspection. Shortly thereafter, agents located a loaded handgun, drugs, and drug paraphernalia. Approximately 20 minutes after the initial inspection began, the business owners and managers changed course and refused to allow ATEU Agents and sheriff's detectives to continue their inspection. A manager was arrested and detained for refusing a lawful inspection.

After the refusal, ATEU agents applied for a special inspection warrant with a county judge. The sheriff's office also applied for a search warrant due to the contraband found on the licensed premises. Both warrants were granted by the county judge, and ATEU agents and sheriff's detectives continued their inspections.

Ultimately, the sheriff's office requested charges on seven people associated with the establishment. The charges ranged from a felon in possession of a firearm to drug possession. Additionally, the municipality held a special meeting and revocation hearing to discuss and review the alcohol beverage licenses for the establishment. After testimony by ATEU agents, sheriff's detectives, and the owners of the establishment, the board members voted to revoke both the Class "B" fermented malt beverage license and the "Class B" intoxicating liquor license for the establishment.

ATEU agents and local law enforcement want to work with industry members and establishments by providing education and guidance, rather than enforcement action and penalties. The ATEU will continue to work with our local partners to find and stop criminal activity at licensed or permitted premises, especially activities that are harmful to a community.

Clerk's Corner: The Revocation Process for Municipalities

The process for a municipality to revoke a retail alcohol beverage license is found in sec. [125.12\(2\)](#), Wis. Stats. The law provides municipalities with a specific process to follow when initiating revocation proceedings.

Step 1: Complaint Filed

Any revocation proceeding must start with a sworn, written complaint filed by any resident of the municipality. The complaint is filed with the municipal clerk and must allege one or more of the following about a license holder:

- they violated Chapter 125 of the Wisconsin Statutes or municipal regulations adopted under sec. [125.10](#), Wis. Stats.
- they keep or maintain a disorderly or riotous, indecent, or improper establishment
- they have sold or given away alcohol beverages to known habitual drunkards
- they do not possess the qualifications required under state or municipal law to hold the license
- they have been convicted of manufacturing distributing, or delivering illegal drugs; or possessing with the intent to manufacture, distribute, or deliver illegal drugs
- they knowingly allow another person, who is on their licensed premises, to possess, with the intent to manufacture, distribute, or deliver illegal drugs
- they received the benefit from an act prohibited under sec. [125.33\(11\)](#), Wis. Stats.

Step 2: Summons Issued

After the filing of the sworn, written complaint, the municipal governing body or an authorized committee of a city council must issue a summons to the license holder. The summons must be signed by the municipal clerk and directed to a peace officer in the municipality. The summons must direct the license holder to appear before the municipal governing body or authorized committee of a city council for a hearing on a particular date and time where the license holder may show cause why their license should not be revoked. The date of the hearing cannot be less than 3 days nor more than 10 days from the date the summons is issued. The summons and a copy of the complaint must be properly served upon the license holder at least 3 days before the time of the hearing.

Step 3: Hearing

A hearing must be held at the date and time specified in the summons. If the license holder does not appear at the hearing, the allegations of the complaint must be taken as true. If the municipal governing body or authorized committee of a city council finds the allegations sufficient, the license should be revoked.

If the license holder appears for the hearing and denies the complaint, both the complainant and the license holder may produce witnesses, cross-examine witnesses, and be represented by counsel. If the hearing is held before the governing body and the complaint is found to be true, the license must either be suspended or revoked. If the hearing is held before an authorized committee of a city council, the committee must submit a report to the city council. The report must include findings of fact, conclusions of law, and a recommendation as to what action, if any, the city council should take with respect to the license. The committee must supply the complainant and the license holder with a copy of the report and either party may file objections to the report and be provided an opportunity to present objecting arguments to the city council. If the city council finds the complaint to be true, the license must be suspended or revoked.

Step 4: Notice and Effect of Decision

If the governing body finds that a license should be revoked, the clerk must give notice of the revocation to the license holder. The revocation is then effective, and no other license may be granted to that entity within 12 months of the date of revocation. No part of the fee paid for the license(s) revoked can be refunded.

If the governing body finds the complaint to be untrue, the revocation proceeding must be dismissed without any cost to the license holder. If the governing body finds the complaint to be malicious and without probable cause, the costs of the hearing must be paid by the complainant. A municipality may require the complainant to provide security for these costs before issuing the summons.

The revocation or failure to revoke can be reviewed in circuit court upon the filing of an application by the license holder or any resident of the municipality.

Death and Taxes – A Brief History of Alcohol Beverage Taxes

The U.S. Congress enacted the first "sin" tax on whiskey in 1791 at Secretary Alexander Hamilton's suggestion. Since then, "sin" taxes have had a place in United States and Wisconsin tax schemes. Sin, selective sales, or excise taxes are levied on a specific activity or good – usually things or habits that are determined to be detrimental to society.

Before Prohibition, [alcohol beverage taxes made up a significant portion of the U.S. Budget](#). At that time, 30-40 percent of the U.S. budget was derived from taxes on beer, liquor, and wine. Adoption of the 16th Amendment paved the way for Prohibition because it created the federal income tax to replace lost revenue.

In Wisconsin, alcohol beverage excise taxes are as follows:

Beverage	\$/Liter (rounded)	\$/Gallon (rounded)
Liquor	\$0.86	\$3.25
Wine (up to 14% ABV)	\$0.07	\$0.25
Wine (>14 – 21% ABV)	\$0.12	\$0.45
Cider (less than 7% ABV)	\$0.20	\$0.06
Fermented Malt Beverage	N/A	\$0.07

Generally, producers and wholesalers pay monthly excise taxes.

Wisconsin levies an additional administrative fee of \$0.11 per gallon on liquor to fund administrative costs associated with enforcing state liquor laws.

Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of February 20, 2023. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

A HISTORY OF Wisconsin Alcohol Beverage Taxes



JULY 1933

First excise tax on liquor and wine is effective. The rate is 25 cents per gallon for wine and liquor up to 21% ABV and \$1 per gallon for liquor and wine over 21% ABV.

SEPTEMBER 1935

Liquor and wine tax structure is amended to remove the tax rate on liquor under 21% ABV.



AUGUST 1963

Fermented Malt Beverage tax increased to \$2 per 31-gallon barrel.

NOVEMBER 1971

Liquor and wine tax rates were increased to 25 cents, 45 cents, and \$3.25 per gallon.

MAY 1986

Excise tax on hard cider is implemented. The rate is set at 1.71 cents per liter.



A temporary beer tax is implemented. The tax rate is set at \$1 per 31-gallon barrel.

JANUARY 1934

The beer tax is made permanent.

JULY 1961

Liquor and wine tax rates were changed. Wine under 14% ABV: 17 cents per gallon. Wine between 14 and 21% ABV: 34 cents per gallon, Liquor and wine over 21% ABV: \$2.25 per gallon.

NOVEMBER 1969

Liquor and wine tax rates were increased to 20 cents, 39 cents, and \$2.60 per gallon.

AUGUST 1981

Converted liquor and wine tax rates from dollars per gallon to cents per liter.

JULY 1998

Liquor Tax on Direct Imports: Are You the "Importer of Record?"

The person responsible for tax on intoxicating liquor (distilled spirits or wine) imported to Wisconsin from a foreign country depends upon who is the "importer of record" (Chapter [Tax 8.01\(2\)](#), Wis. Adm. Code).

- If a Wisconsin wholesaler is the "importer of record," the wholesaler is responsible for Wisconsin liquor tax on those imports
- If an out-of-state shipper's permittee is the "importer of record," the shipper is responsible for Wisconsin liquor tax on those shipments regardless of where the shipment was released from U.S. customs bond

The "importer of record" is the entity identified on U. S. Customs and Border Protection ([CBP](#)) [Form 7501](#), which is the mandatory document used by CBP officials to quickly determine the classification and origins of merchandise entering the United States. It also documents details of the amount of duty and/or tax paid and any related fees associated with the goods. The "importer of record" is identified in block 26 of the Entry Summary form. Following is an explanation of some other fields:

- Block 1: Entry Number – This is an 11-digit alphanumeric code. The entry number comprises a three-digit filler code assigned to the importer by the CBP, followed by the seven-digit entry number which is a unique number assigned to a specific importer, and a one-digit check computed on the previous 10 characters.
- Block 3: Summary Date – This is the date that the form was filed with CBP.
- Block 7: Entry Date – This is the date the goods were released from the custody of CBP.
- Block 23: Importer Number – This is the importer of record's Federal Tax ID Number (adding two zeros to the end of their FEIN).

The instructions included with CBP Form 7501 give more details about each field on the form.

Are you the importer of record? If so, you must retain the following for every direct import:

- Foreign invoice from the manufacturer/shipper of the alcohol beverage
- CBP Form 7501 Entry Summary that supports the goods listed on the foreign invoice
- Bill of lading from the port of debarkation to its final destination