



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

The following tax release is included:

Sales and Use Taxes –

1. Micro-Brewing Beer – Do Manufacturing Exemptions Apply?..... 23

SALES AND USE TAXES

Note: The following tax release interprets the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county and 0.1% stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

1 Micro-Brewing Beer – Do Manufacturing Exemptions Apply?

Statutes: Section 77.54(2), (6)(a), and (6m), Wis. Stats. (1997-98)

Wis. Adm. Code: Section Tax 11.39(2), (3)(d), and (4)(L), Wis. Adm. Code (October 1997 Register)

Background:

Section 77.54(6)(a), Wis. Stats. (1997-98), provides an exemption for machines and specific processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property.

The six elements detailed in sec. 77.54(6m), Wis. Stats. (1997-98), must be met for the exemption of sec. 77.54(6)(a), Wis. Stats. (1997-98), to apply. These six elements are:

- 1) production by machinery,
- 2) of a new article,
- 3) with a different form,

- 4) with a different use,
- 5) with a different name, and
- 6) by a process popularly regarded as manufacturing.

Section 77.54(2), Wis. Stats. (1997-98), exempts the purchase of tangible personal property that:

- 1) becomes an ingredient or component part of an article of tangible personal property destined for sale; or
- 2) is consumed, destroyed, or loses its identity in the manufacture of tangible personal property destined for sale.

Section Tax 11.39(3)(d), Wis. Adm. Code (October 1997 Register), states that breweries are ordinarily considered manufacturers. For purposes of this tax release, a “brew pub” is a restaurant/tavern that has a micro-brewery operation within its facility.

Question: Is the process of micro-brewing beer considered manufacturing for purposes of the exemptions under sec. 77.54(2) and (6)(a)?

Answer: Generally, the process of micro-brewing beer by a brew pub is considered manufacturing.

The following is an example of a micro-brewery which is considered a manufacturer for purposes of the exemptions provided in sec. 77.54(2) and (6)(a), Wis. Stats. (1997-98).

Caution: *This tax release relates to the specific conditions detailed in the example. The taxability of equipment, machinery, and supplies used by other brew pubs may be different.*

Example:

- Company A is a brew pub that serves sandwiches and alcoholic beverages, including beer, to its customers.
- The beer that Company A serves is made in Company A’s micro-brewery.
- The main ingredient of the beer, pale malted barley, is delivered into a silo storage tower located outside Company A’s back door. The other ingredients, including other types of malted barley, are stored in the raw materials storage room in Company A’s basement.
- The silo storage tower is a real property improvement.
- Company A’s activities include the following:

Step 1: A cablevey (i.e., enclosed cable system with attached discs) transports the pale malted barley from the silo tower to the mill room in the basement. The barley is dropped by the cablevey into the milling machine, which weighs and mills the barley.

Step 2: The milled barley is transferred from the milling machine into a bucket elevator, which transports the barley up two floors to the storage tank. The ingredients are dropped from the storage tank to the combi-tank, located one floor below in the brew house. The top half of the combi-tank is used to store hot water, while the bottom half of the combi-tank is called the “mash tun.” The combi-tank is welded together with a brew kettle. The two units are interconnected by a computerized, variable speed pump control system.

Step 3: The brew kettle is filled with water and the water is heated. Some of the water is used to sterilize the system, while the rest of the water is used in the brewing process. The heated water used in brewing is mixed with the milled barley (as it comes from the storage tank, in Step 2 above) in the mash tun. The “mash” stays in the mash tun for approximately 40 minutes, at which time the enzymes activated by the water convert the starch into sugar.

Step 4: “Sparging” is the step that occurs when “wort” (i.e., sweet liquid) is rinsed from the barley by flushing it with water. The barley remains are given to a local sheep farmer as fodder, while the wort gets boiled with hops in the brew kettle to (a) sterilize it; (b) coagulate the proteins; and (c) help utilize the hops.

Step 5: The boiled wort is piped to one of three fermentation tanks in the fermentation room located on the main floor, which is one of two fermentation rooms. During the transfer, the wort is cooled by a heat exchanger.

Step 6: Oxygen is inserted into the wort before it enters the fermentation tank. Yeast is put into the tank as the wort enters the tank. The ales must ferment for 10-20 days, while the lagers must ferment for 30 days. During different times of the fermentation process, carbon dioxide must be released or retained to preserve its natural carbonation.

Step 7: The beer is piped to the filter machine in the lower fermentation room. Diatomaceous powder is added to the filter tank to trap yeast and other particles for removal from the brew. The filtered beer is piped to a serving tank in a serving room. The serving room is a walk-in cooler (none of the walls of the cooler are walls of the building). At this point, the amount of beer produced is measured for excise tax purposes. Each of the serving tanks has a spigot, which is used to fill kegs that will be delivered to Company A’s wholesale distributors. Each of the serving tanks is also connected to taps to serve beer to Company A’s in-store customers directly from the serving tanks.

Tax Treatment:

The manufacturing process of micro-brewing beer as detailed in the Example above, begins with the conveyance of raw materials from inventory to the work point in the same facility (i.e., the conveyance of the materials by the cablevey to the mill room). The manufacturing process includes milling, brewing, sparging, fermentation, and filtration procedures. The manufacturing process ends with the conveyance of finished product (i.e., beer) to the point of first storage on the facility’s premises (i.e., storage tank); however, the manufacturing process also includes the packaging of the beer in kegs for sale to wholesalers. (Section Tax 11.39(2), Wis. Adm. Code (October 1997 Register), provides that manufacturing includes packaging when it is a part of an operation performed by the producer of the product and the package or container becomes a part of the tangible personal property as the unit is customarily offered for sale by the producer (i.e., sold in the keg).)

The following chart summarizes what equipment, based on the *Example* above, may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), providing it is used exclusively and directly in the manufacture of beer. It also summarizes which tangible personal property may be purchased without tax as exempt ingredients, component parts, or consumable items under sec. 77.54(2), Wis. Stats. (1997-98).

Note: The chart does not include Company A’s purchases of real property improvements (e.g., silo storage tower, building). The purchase of real property improvements is not subject to Wisconsin sales or use tax.

Equipment	
<i>Exempt under sec. 77.54(6)(a), Wis. Stats. (1997-98)</i> ¹	<i>Taxable under sec. 77.52(1), Wis. Stats. (1997-98)</i>
Brew kettle	Serving room (cooler)
Bucket elevator	Serving tanks ⁴
Cablevey	Taps
Combi-tank	
Computerized, variable speed pump control system	
Fermentation tanks	
Filter machine	
Filter tank	
Heat exchanger	
Milling machine	
Spigots ³	
Storage tank	
Ingredients, Component Parts, or Consumable Items	
<i>Exempt under sec. 77.54(2), Wis. Stats. (1997-98)</i> ²	
Diatonaceous powder	
Hops	
Malted barley	
Oxygen (if purchased)	
Water	
Yeast	

¹ Equipment that may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), provided it is used exclusively and directly in the manufacturing process.

² Ingredients, component parts, or consumable items that may be purchased without tax under sec. 77.54(2), Wis. Stats. (1997-98), assuming the product is sold.

³ Equipment that may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), because it is used in the packaging process. **Note:** Equipment must be used *exclusively and directly* in the manufacturing process to qualify for the exemption.

⁴ Equipment that may *not* be purchased without tax that is used in the packaging process, but *is not used exclusively and directly* in the manufacturing process. The serving tanks are also used to store beer which is served via taps to the brew pub's in-store customers. [☞](#)