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## Alcoholic Beverage Producers in New York State

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### Introduction

Alcoholic beverage producers in New York State may qualify for various exemptions from sales and use taxes (sales tax).<sup>1</sup> This bulletin provides information on the exemptions available to alcoholic beverage producers. It also briefly discusses sales made by alcoholic beverage producers, as well as tastings and facility tours.

Alcoholic beverage producers include:

- wineries and farm wineries
- cideries and farm cideries
- breweries and farm breweries
- distilleries and farm distilleries
- meaderies and farm meaderies

As used in this bulletin these terms have the following meanings:

- *Directly* means that during the production phase the property must:
  - act upon or effect a change in material to form the product to be sold;
  - have an active and necessary role in the production of the product for sale;
  - be used during production in the handling, storage, or conveyance of materials or the product to be sold; or
  - be used to package the product for sale.
- *Predominantly* means that the property is used more than 50% of the time in a production activity. This is generally determined by hours of operation.

### Exemptions for manufacturers

Alcoholic beverage producers may qualify as *manufacturers*. Manufacturers can purchase tangible personal property, such as machinery, equipment, and supplies, exempt from tax if the property will be used *directly* and *predominantly* in the production of tangible personal property (alcoholic beverages) for sale. Certain services and utilities used in production may also be purchased exempt from tax.

To qualify for these exemptions, 50% or more of the alcoholic beverages produced must be sold:

- at wholesale, or
- at retail for off-premises consumption.

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<sup>1</sup> Certain New York State alcoholic beverage producers may also qualify for an alcoholic beverage production tax credit available under the State's personal income and corporate franchise taxes. See [TSB-M-16\(5\)C.\(3\)](#), *Alcoholic Beverage Production Credit*.

An alcoholic beverage producer will **not** qualify as a *manufacturer* if 50% or more of the beverages produced are sold at a restaurant, tavern, brew pub, wine bar, or similar establishment owned and operated by the beverage producer. This is because alcoholic beverages sold at such establishments are treated as “restaurant-type” drinks and not as tangible personal property.

**Example:** *Brewery A produces beer, all of which is sold at an adjoining brew pub that Brewery A also owns and operates. Since more than 50% of the beer produced is sold at a restaurant owned and operated by Brewery A, Brewery A is not considered to be producing tangible personal property for sale, and Brewery A does not qualify as a manufacturer eligible for the production exemptions.*

See Tax Bulletins [Machinery, Equipment, Materials, and Services Used in Production \(TB-ST-552\)](#) and [Sales by Restaurants, Taverns, and Similar Establishments \(TB-ST-806\)](#) for more information.

### **Alcoholic beverage producers that qualify as manufacturers**

As stated above, alcoholic beverage producers that qualify as *manufacturers* are eligible to purchase exempt from sales tax items such as:

- raw materials (i.e., food items)
- machinery and equipment
- parts, tools, and supplies
- packaging materials
- utilities and fuel

### **Food items**

An alcoholic beverage producer may purchase food items used in producing alcoholic beverages exempt from sales tax, including:

- grains (e.g., barley, corn, and wheat)
- grapes and other fruit
- honey
- hops
- malt
- sugar
- yeast

### **Machinery and equipment**

Machinery and equipment used directly and predominantly in the production of alcoholic beverages for sale may be purchased exempt from sales tax using [Form ST-121, Exempt Use Certificate](#). Exempt items include:

- |                           |                     |
|---------------------------|---------------------|
| • barrels                 | • hydrometers       |
| • bottling equipment      | • mash/lauter tuns  |
| • carboys                 | • presses           |
| • CO <sub>2</sub> systems | • racking equipment |
| • chillers                | • refractometers    |
| • crushers                | • regulators        |
| • dehydrators             | • stills            |
| • destemmers              | • tanks             |
| • fermentation vats       | • thermometers      |
| • heat exchangers         |                     |

The services of installing, maintaining, servicing, or repairing exempt production machinery and equipment also qualify for the production exemption.

**Note:** Machinery or equipment used in administration or distribution activities does not qualify for this exemption. See Tax Bulletin [Machinery, Equipment, Materials, and Services Used in Production \(TB-ST-552\)](#).

### Parts, tools, and supplies

Parts, tools, and supplies may be purchased exempt from sales tax if they are used directly and predominantly in the production of alcoholic beverages for sale. Exempt items include:

- bowls
- buckets
- colanders
- cleaning and sanitizing chemicals
- flavoring agents
- oil and grease (for exempt equipment)
- punch-down tools
- stirring wands
- strainers
- tubing

Also included are parts and supplies used to maintain, service, or repair exempt production machinery and equipment.

### Packaging materials

[Form ST-121](#) may be used to make exempt purchases of cartons, containers, and other packaging materials that will be actually transferred to the customer. Exempt items include:

- bottles
- boxes
- cans
- caps
- corks
- labels

*Actually transferred* means that the packaging material is physically transferred to the customer along with the product being sold and can be disposed of as the customer wishes.

**Note:** Packaging material that is required to be returned by the customer to the seller (e.g., reusable kegs or pallets) **cannot** be purchased exempt from sales tax. Bottles and cans that may be returned to the seller for their deposit do not disqualify them for this exemption. See Tax Bulletin [Cartons, Containers, and Packaging Materials \(TB-ST-107\)](#) for more information.

### Utilities and fuel

Utilities used in manufacturing are eligible for the exemption when used *directly* and *exclusively* (100%) in the production process. This includes:

- gas (natural gas, propane, etc.)
- coal
- electricity
- refrigeration
- steam
- wood (including wood pellets and other compressed wood products)
- gas, electric, refrigeration, and steam services

Sales tax exemptions or refunds are also available for purchases of different types of motor fuel and diesel motor fuel used directly and exclusively in production. See Tax Bulletins [Utilities Used in Production \(TB-ST-917\)](#) and [Motor Fuel and Diesel Motor Fuel Used in Production \(TB-ST-587\)](#).

## Alcoholic beverage producers that are also farmers

Alcoholic beverage producers may also be farmers. The production exemption available to farmers is more expansive than the general production exemption. Property only has to be used *predominantly* (more than 50% of the time) - and not *directly* - in farm production to qualify for the exemption. See Tax Bulletin [Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#).

Farming includes the growing and harvesting of crops used in producing alcoholic beverages for sale, such as grapes and other fruit, hops, grains, and honey. Some farmers sell their products to alcoholic beverage producers, while others will use their crops to produce their own beverages for sale.

Examples of qualifying items are:

- balers
- combines
- computers used to perform agricultural research
- crop data management systems
- crop sprayers
- cuttings (slips) or rootings
- harvesters
- irrigation management software
- parts and tools for farm equipment
- pelletizers
- pesticide application tracking software
- seeds
- sprouters
- trellis systems

[Form ST-125, Farmer's and Commercial Horse Boarding Operator's Exemption Certificate](#), is used to make purchases that qualify for the farm production exemption.

**Note:** The more expansive farm production exemption ceases when the farm product has reached a stage where it will be processed or converted into an alcoholic beverage. From that point on, only the general production exemption applies to the activities of producing the alcoholic beverages.

**Example:** *A brewery grows its own hops for use in making beer. Once the hops are harvested and pelletized, they are ready to be used with other ingredients in brewing beer. At that point, farm production has ceased, and any other machinery or equipment used to process the hops into beer qualifies only for the general production exemption.*

## Registration requirements

Alcoholic beverage producers must be registered for sales tax purposes to make any sales of alcoholic beverages. Sales of alcoholic beverages to customers are taxable whether sold for on-premises or off-premises consumption (however, see *Tastings and tours*, below). See Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

Sales to a distributor or retailer for the purpose of resale do not require the collection of sales tax provided the purchaser issues a properly completed [Form ST-120, Resale Certificate](#).

Alcoholic beverage producers must also be registered with the Tax Department for purposes of the [Alcoholic Beverages Tax](#) and must be licensed by the [New York State Liquor Authority](#).

## Tastings and tours

Specific sales and use tax exemptions exist for certain items taken from inventory and furnished to customers at tastings held in conformance with the Alcoholic Beverage Control Law. These items include wine, wine product, beer, cider, mead, mead products,

or liquor furnished at the tastings. Also included are bottles, corks, caps, and labels used to package these beverages. See [TSB-M-15\(1\)S](#), *Sales and Use Tax Exemptions for Alcoholic Beverage Tastings* and [TSB-M-14\(9\)S](#), *Sales and Use Tax Exemptions for Certain Wine Tastings*.

**Note:** Because braggot is a beer product it also qualifies for this exemption.

Charges for admission to tour the facilities of an alcoholic beverage producer are not taxable.

Effective December 20, 2019, the sale of four or fewer beer samples by a licensed brewer or farm brewer is exempt from sales tax if each sample is:

- a different beer than the others, and
- four ounces or less.

This exemption applies only to one daily purchase per customer at each licensed brewery.

**Note:** A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Environmental Control Law:** Section 27-1012

**Tax Law:** Sections 1101(b)(19); 1105-B; 1115(a)(12), (19), (33), and (45); and 1118(13)

**Regulations:** Sections 528.7, 528.13, and 528.20

**Memoranda:**

- [TSB-M-00\(8\)S](#), *Farmers and Commercial Horse Boarding Operations*
- [TSB-M-14\(9\)S](#), *Sales and Use Tax Exemptions for Certain Wine Tastings*
- [TSB-M-15\(1\)S](#), *Sales and Use Tax Exemptions for Alcoholic Beverage Tastings*
- [TSB-M-16\(5\)C. \(3\)I](#), *Alcoholic Beverage Production Credit*

**Bulletins:**

- [Cartons, Containers, and Packaging Materials \(TB-ST-107\)](#)
- [Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#)
- [How to Register for New York State Sales Tax \(TB-ST-360\)](#)
- [Machinery, Equipment, Materials, and Services Used in Production \(TB-ST-552\)](#)
- [Motor Fuel and Diesel Motor Fuel Used in Production \(TB-ST-587\)](#)
- [Utilities Used in Production \(TB-ST-917\)](#)