



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

JUNE 14, 2010

Bottlers and Distributors Subject to Temporary Carbonated Beverage Tax

Summary

Second Engrossed Substitute Senate Bill (2ESSB) 6143, Sections 1401 – 1406, temporarily imposes a carbonated beverage tax of \$.02 per 12 ounces on persons that sell carbonated beverages.

Background

Washington State imposes the carbonated beverage tax on sales at wholesale and retail. With limited exemptions, the carbonated beverage tax applies to every person, such as a bottler, distributor, wholesaler, or retailer that sells carbonated beverages in Washington. The carbonated beverage tax is in addition to all other taxes currently imposed on a seller, such as the wholesaling and retailing business and occupation (B&O) taxes.

Unlike the retail sales tax, the carbonated beverage tax is not imposed on the consumer.

Effective date

Persons who sell carbonated beverages are subject to the tax on sales made July 1, 2010, through June 30, 2013.

Bottler's exemption

The first \$10 million sales of carbonated beverages bottled by the bottler during a calendar year are exempt from the tax. For 2010, the "calendar year" is July 1st through December 31st. For years 2011 and 2012, the calendar year is January 1st through December 31st. For 2013, the calendar year is January 1st through June 30th.

If a bottler is affiliated with any other bottler or distributor, the \$10 million exemption is based on the combined gross income of all affiliated persons from all sales at wholesale and retail of carbonated beverages in this state during the calendar year. "Affiliated" means under common control. "Common control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

This exemption is limited to bottlers. A bottler is a person who bottles, cans, or otherwise packages carbonated beverages in beverage containers. A person who distributes carbonated beverages and who does not bottle the beverages may not claim the exemption.

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Successive sales exemption

Bottlers, distributors, and wholesalers owe the carbonated beverage tax when they sell carbonated beverages in Washington unless one of two exemptions apply. Sales of carbonated beverages are exempt only if the sale is a successive sale of carbonated beverages that were:

- Previously subject to the carbonated beverage tax when either a bottler or a distributor sold those beverages in Washington. This is generally referred to as “previously taxed carbonated beverages;” or
- Exempt from the tax because the product was exempt under an exemption limited to the bottler. This is generally referred to as the “bottler’s exemption” and it applies to the first \$10 million of the bottler’s sales.

Documenting exempt sales

A person who claims the exemption for successive sales of previously taxed or bottler-exempt carbonated beverages must keep documentation to support that claim.

Documentation from the previous seller may be in the form of:

- Information printed on each sales invoice stating that the carbonated beverages identified on the invoice were either previously subject to the carbonated beverage tax or exempt from the tax under the bottler’s exemption; or
- A separate certification stating that the carbonated beverages sold under a specific sales invoice were either previously subject to the carbonated beverage tax or exempt from the tax under the bottler’s exemption.

The Department will presume that the carbonated beverage tax has not been paid unless the person selling carbonated beverages has the documentation described above to verify the claim of exemption. The seller must keep the documentation for a minimum of five years (the current and previous four calendar years).

Carbonated beverages acquired before July 1, 2010

Any person who acquires carbonated beverages before July 1, 2010, and sells such beverages on July 1st or after owes the carbonated beverage tax.

Example: A Tukwila distributor receives a shipment of carbonated beverages from a bottler on June 15th. On July 1st, half of the beverages from that shipment remain unsold in the distributor’s inventory. The distributor owes the carbonated beverage tax on beverages it sells on or after July 1, 2010 from the pre-July 1 shipment. This is because neither the bottler’s exemption nor the previously taxed carbonated beverage exemption applies to sales of the remaining beverages.

Carbonated beverages acquired on or after July 1, 2010

Any person, such as a bottler, distributor or retailer that acquires carbonated beverages that do not qualify for the bottler’s exemption, or comes from a source that has not paid the tax, owes the carbonated beverage tax when they sell the beverages.

Example: A Fife bottler, temporarily unable to use its production equipment, fills customers’ orders from a shipment it picked up in Oregon from another bottler. The sales invoice from the Oregon bottler does not mention the carbonated beverage tax because the bottler has not sold carbonated beverages in Washington and does not owe the tax on this sale. The Fife bottler owes the carbonated beverage tax when it resells the beverages in this state.

Example: A Kennewick distributor purchases carbonated beverages that were packaged by a Prosser bottler. The bottler’s sales invoice to the distributor includes a statement that the carbonated beverages are not subject to the carbonated beverage tax under the bottler’s exemption. The distributor’s sales of these same carbonated beverages are successive sales of bottler-exempt beverages and the distributor does not owe the tax.

Example: A Yakima distributor purchases carbonated beverages from a Kennewick bottler. The sales invoice includes a statement that the carbonated beverage tax has been paid. The Yakima distributor does not owe the carbonated beverage tax on sales of these beverages because the exemption for successive sales of carbonated beverages applies.

Reporting the carbonated beverage tax

The carbonated beverage tax is reported on the excise tax return. A new line for reporting taxable sales of carbonated beverages will appear on page two of the tax return under “V. OTHER TAXES:”

Line No.	Carbonated Beverage Tax	Code 136	# of taxable (non-exempt case equivalents sold)	Quantity	Rate .48	Tax Due
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The tax will be reported on a “case equivalent” basis, which is equal to 24 – 12 ounce cans. Thus, 288 fluid ounces of carbonated beverages equals one case equivalent. A worksheet to convert various container sizes to case equivalents will be available July 1 at dor.wa.gov/carbonatedbeverages.

Washington sales

A sale of tangible personal property occurs in Washington when the goods are delivered to the buyer in this state. A person making sales of carbonated beverages in this state owes the carbonated beverage tax unless the bottler’s exemption or the exemption for successive sales of previously taxed beverages applies.

The carbonated beverage tax does not apply to interstate and foreign sales of carbonated beverages. To determine if a sale is an interstate or foreign sale, the Department will apply the same criteria used to determine the application of this state’s retailing and wholesaling business and occupation (B&O) taxes. For further information, please refer to the Department’s rules, Washington Administrative Code (WAC) 458-20-193 and 458-20-193C.

Out-of-state bottlers and distributors

An out-of-state bottler or distributor that has established “nexus” in Washington for business and occupation tax purposes owes the carbonated beverage tax on sales of carbonated beverages delivered to a buyer in Washington State. “Nexus” is the connection that a business has with a state for taxation purposes.

With respect to sales of tangible personal property, such as carbonated beverages, nexus is established if a business has a physical presence in this state. Examples of a physical presence in this state include:

- Real estate;
- Local stock of goods;
- Employees, agents, or other representatives conducting sales, marketing, or other activities that establish a market for sales in this state; or
- Delivery of goods with the seller's transportation equipment.

For additional information, please refer to WAC 458-20-193.

Nexus examples

Examples of out-of-state bottlers and distributors that have established nexus and owe the carbonated beverage tax are provided below.

Example: A Salem, Oregon, company bottles carbonated beverages and uses its trucks to deliver the beverages to a distributor's Longview and Camas, Washington, warehouses. The Salem company has established nexus and owes the carbonated beverage tax, unless the bottler's exemption described above applies.

Example: A Post Falls, Idaho, distributor delivers carbonated beverages from its Idaho warehouse to 15 convenience stores in Spokane. In addition, the driver restocks the convenience stores' coolers with the beverages. The Idaho distributor has established nexus and owes the carbonated beverage tax.

Example: A Portland, Oregon, bottler's sales agents call on Southwest Washington retailers to determine inventory needs for carbonated beverages. The Portland bottler contracts with a commercial carrier to deliver the beverages. The Portland company has established nexus and owes the carbonated beverage tax on sales to the Southwest Washington retailers, unless the bottler's exemption described above applies.

Carbonated beverages defined

"*Carbonated beverages*" are any packaged nonalcoholic liquids intended for human consumption that contain carbonation by natural or artificial means and any of the following substances:

- Caffeine;
- Extracts;
- Fruit juice or concentrated fruit juice;
- Herbs;
- Sweeteners; or
- Syrup (a concentrated mixture in liquid or powdered form that contains sugar or a sugar substitute).

Carbonated beverages are packaged in cans, bottles, or other similarly sealed containers.

Carbonated beverages do not include:

- Fountain drinks mixed by a retailer and sold in unsealed containers; or
- Bottled water that is carbonated. For information about bottled water, please refer to the Department's Special Notice titled *Bottled Water Subject to Sales Tax*.

**Sales tax
unchanged**

The carbonated beverage tax does not affect the application of retail sales tax to carbonated beverages. Retail sales of sweetened carbonated beverages that contain less than 50% fruit or vegetable juice are soft drinks that remain subject to sales tax. (See RCW 82.08.0293.)

**B&O tax
unchanged**

The carbonated beverage tax does not affect the application of the B&O tax to sales of carbonated beverages. Retail sales of carbonated beverages remain subject to the retailing B&O tax as measured by the gross proceeds of sales from such sales. Wholesale sales of carbonated beverages remain subject to the subject to the wholesaling B&O tax as measured by the gross proceeds of sales from such sales. (See RCW 82.04.250 and 82.04.070.)

**For more
information**

To learn more about the new carbonated beverage tax, visit our website at dor.wa.gov/carbonatedbeverages. Also, check our website for updates to frequently asked questions. You can also send an email to communications@dor.wa.gov or call the Department's Telephone Information Center at 1-800-647-7706.