



# MISSISSIPPI DEPARTMENT OF REVENUE

Sales and Use Tax Bureau

Notice 72-17-002 July 1, 2017

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## NOTICE TO ALL SMALL CRAFT BREWERIES LOCATED IN MISSISSIPPI

As most of you know, Governor Bryant signed HB 1322 into law on March 15, 2017. This means that, as of July 1, 2017, small craft breweries will benefit from the on-site sale of beer for both on-premises and off-premises consumption. While these sales will undoubtedly provide growth and new opportunities for these breweries, the sales also bring on responsibilities for reporting and paying excise taxes as well as certain regulatory concerns. This Notice services as short-hand list of issues you, as a small craft brewery, should begin thinking about.

1. **Filing Returns-** You will be selling beer to the public. This means that you will be expected to file a monthly excise tax return under Miss. Code Section 27-71-307 and remit taxes based on the number of gallons provided at your brewery under Miss. Code Sections 67-3-47 and Miss. Code Sections 67-3-48. The Department is finalizing a return that you will be able to file electronically through your TAP account. It's important that you file a monthly return regardless of whether you sell any beer under Section 67-3-48 or provide beer during a tour under Section 67-3-47. If you don't file a return, the Department may issue estimated returns based on the information it has available. Additionally, this return will include the monthly number of gallons you sell on-site.

You will need to register and collect sales tax on all sales made at the brewery under Miss. Code Sections 27-65-17. Sales made to licensed wholesalers are exempt from sales tax. The sales tax return will be due monthly and can be filed electronically through your TAP account. It's important that you file a monthly return regardless of whether or not you have taxable sales for the month.

2. **Maintaining Records-** There are specific limitations on the number of gallons that a small craft brewery may produce annually and the number of gallons you may sell annually on-site. Pursuant to Miss. Code Section 27-71-327, you will be expected to maintain sufficient records for the Department to verify the amounts listed on your returns. Such documents should be maintained at least three (3) years from the date the return is filed.
3. **Sales to Minors-** It is your responsibility to ensure that no beer is served on your premises to individuals under the age of 21. Given the great importance of this issue, the universal punishment for sale to a minor is a one-week suspension of the permit. This is the case for all entities in the State that sell beer, and small craft breweries will be no exception. However, ABC offers valuable training to permittees at no cost to show the best ways to stop underage serving, as well as over-serving intoxicated patrons. All you have to do is contact your local ABC District Office and schedule the training.
4. **Aggregate Daily Sales to Individuals-** Breweries are prohibited from selling more than 576 ounces to an individual for off-premises consumption on a daily basis. ABC will investigate all credible accusations that your brewery is making sales to individuals that exceed this cap. As a good business practice, you should notify ABC if you are selling the maximum amount to certain individuals for off-premises consumption on a regular basis. This could be an indication that the individual is a retailer using your on-site sales to circumvent the three tier system.



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- Floor Plan-** The bill only allows for the sale of beer or light wine “on the premises”. Therefore, breweries will be required to update their permit file through TAP with a floor-plan layout of the premises on which beer will be sold. There will be times when you may want to sell or serve beer on an area contiguous to the brewery. If you want to temporarily extend your floor plan, you will be able to request a temporary extension through TAP. The extension will be available for areas connected or contiguous to the licensed premises of the brewery (ie, parking lot, neighboring field owned by brewery). The extension will not be available for areas separated from the licensed premises.

There is no state law prohibiting individuals from leaving the premises with beer or light wine. Therefore, although all sales must be made on the premises, breweries would not be violating any statute enforced by DOR or ABC by allowing patrons to leave the premises with beer or light wine subject to any volume limits placed in HB 1322. However, it is up to each brewery to review local ordinances to ensure compliance with any open container laws.

- Food Service-** DOR is taking the position that the sale and service of food on the brewery premises would not violate any statute enforced by DOR or ABC. Food sale and service can be accomplished either through an in-house restaurant, food truck or catering service. However, if the brewery sells food, it should have the proper tax collection, reporting and remittance procedures in place for applicable sales tax.

This Notice is not meant to advise you of all of your obligations. It is important that you independently review applicable statutes and ordinances to ensure compliance. However, this Notice should give you a good idea of some of the responsibilities and opportunities you have under this new law.