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IMPORTANT NOTICE: THE SALE OF SPIRITUOUS LIQUOR DISTILLED AT DISTILLERY

This notice includes law changes enacted in the 2015-2016 session of the General Assembly on the selling of spirituous liquor distilled at distilleries as it relates to its taxation administered by the Excise Tax Division.

An excise tax is levied on the privilege of engaging in a phase of the alcoholic beverage industry under Part 3 of Article 2C. Licenses issued under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter.

Part I explains the Selling of Spirituous Liquor to Visitors and the Price of Spirituous Liquor Sold. Part II includes information for Taxation and Filing Requirements.

PART I: SELLING OF SPIRITUOUS LIQUOR TO VISITORS

Selling to Visitors - N.C. Gen. Stat. § 18B-1105(a)(4) addresses that distilleries holding a distillery permit may “sell spirituous liquor distilled at the distillery in closed containers to visitors who tour the distillery for consumption off the premises.” The spirituous liquor sold shall “have affixed to its bottle a sticker that bears the words “North Carolina Distillery Tour Commemorative Spirit” in addition to any other labeling requirements set by law.” Furthermore, “[c]onsumers purchasing spirituous liquor under this subdivision are limited to purchasing, and the selling distillery is limited to selling to each consumer, no more than one bottle of spirituous liquor per 12-month period. The distillery shall use a commonly adopted standard point of sale system to maintain searchable electronic records captured at the point of sale, to include the purchaser’s name, driver’s license number, and date of birth for at least 12 months from the date of purchase.”

Price of Spirituous Liquor Sold - N.C. Gen. Stat. § 18B-804(b) explains that when the distillery permittee sells spirituous liquor distilled and the distillery, “the retail price of the spirituous liquor shall be the uniform State price” as the spirituous liquor sold in ABC stores, unless otherwise provided by the ABC law.

PART II: TAXATION AND FILING REQUIREMENTS

Taxation - N.C. Gen. Stat. § 105-113.80(c) as amended by Session Law 2015-98 reads that “[a]n excise tax of thirty percent (30%) is levied on spirituous liquor and antique spirituous liquor sold in ABC stores and in permitted distilleries. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's or the antique spirituous liquor seller's price plus (i) the State ABC warehouse freight and bailment charges and (ii) a markup for local ABC boards.”

N.C. Gen. Stat. § 18B-804 sets out spirituous liquor pricing components. However, pursuant to legislation enacted in the 2015-2016 session of the General Assembly, distillery permittees shall not be required to remit the following components on the sale price of the spirituous liquor sold at the distillery:

- The freight and bailment charges of the State warehouse, as determined by the Commission;
- A markup for local boards, as determined by the Commission;
- An additional markup for local boards equal to three and one-half percent (3 1/2%) of the sum of the distiller's price, the freight and bailment charges, and a markup for local boards;
- A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters;
- The bailment surcharge;
- An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters; and
- A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.

NOTE: N.C. Gen. Stat. § 105-113.81(e) as amended by Session Law 2015-98 states that “[r]esident breweries, wineries, and distilleries are not required to remit excise taxes on malt beverages, wine, or spirituous liquor given free of charge to customers, visitors, and employees on the manufacturer's licensed premises for consumption on those premises.”

Filing Requirements - N.C. Gen. Stat. § 105-113.83(a) as amended by Session Law 2015-98 requires that the excise tax on liquor levied under G.S. 105-113.80(c) be payable monthly by the local ABC board and by a distillery permittee to the Secretary. The tax shall be paid on or before the 15th day of the month following the month in which the tax was collected.

If you have questions about the information in this document or about excise tax, please contact the Department at (919) 754-2631. If a written response would require the Department to interpret the law in a manner not specifically addressed in a statute, regulation, or Departmental or IRS publication, the person requesting the written response must follow the procedure (and pay the required fee) for requesting a private letter ruling available on the Department's website at the following address: www.dornc.com/practitioner/plr_policy.pdf.