

MESSAGE FROM GENERAL COUNSEL

To: Pennsylvania Distillers Guild – Leadership and Member Distilleries

From: Anthony M. Brichta, Esq., General Counsel

Date: November 15, 2024

Re: Department of Revenue Guidance Re: Taxes on RTDCs Sold by PA
Manufacturers

When [Act 86 of 2024](#) was passed in July, the PADG was able to successfully advocate for the preservation of the right of Pennsylvania licensed distilleries to sell Ready to Drink Cocktail (“RTDC”) products directly to RTDC Permit Holders such as distributors and restaurant licensees. As is often the case with new statutes, there was some uncertainty regarding certain provisions of the new law. One such issue was that Act 86 did not explicitly provide for whether taxes must be paid when a Pennsylvania manufacturer sells an RTDC to a RTDC Permit Holder. The statute explicitly provides that RTDC Permit Holders must pay sales tax when buying from the PLCB and can seek a credit for those taxes paid, but was silent as to sales from PA Manufacturers. Fortunately, the Department of Revenue has now issued definitive guidance. The new guidance from the Department of Revenues is located at: [Ready to Drink Cocktail Permit Holders | Department of Revenue | Commonwealth of Pennsylvania](#).

The new Guidance is a win for PA distillers and prevents double taxation of RTDCs sold by PA distillers. The new guidance confirms that Pennsylvania manufacturers do not have to charge sales tax to RTDC permit holders for resale to customers for off premise consumption **if the RTDC Permit Holder supplies the manufacturer with an executed exemption certificate at the time of purchase or within 60 days thereafter**. The proper sales tax exemption form is REV-1220 which can be found at [Pennsylvania Exemption Certificate \(REV-1220\)](#). Please note that if the RTDC Permit holder you are selling to does not provide you with the certificate, you are still required to charge sales tax and remit that sales tax as part of your own tax filings. Best practice is to get the certificate in place before the sale if possible so that you do not have to keep track of which permit holders have not supplied the certificate (and owe you sales tax).

Additionally, if you have already charged sales tax to an RTDC permit holder or do so in the future because they do not present you with a certificate, the RTDC permit holder can still get a refund from the state if they charges a customer sales tax when they sold the RTDC product for off premises consumption. This guidance can be provided to RTDC permit holders if necessary.

If the RTDC Permit Holder is purchasing the RTDCs from you for use at a restaurant to be sold for **on-premise consumption**, the RTDC Permit Holder should either be paying sales tax

to the PA Manufacturer OR if they did not pay sales tax (because they presented a sale tax exemption), they must pay a use tax as set forth in the Example 4 in the Department of Revenue Guidance. The RTDC Permit Holder does not have to charge sales tax to customers who purchase RTDCs for consumption on their licensed premises.

Simply put: this Guidance puts PA Manufacturers on a level playing field with sales from the PLCB because PA Manufacturers either do not have to charge sales tax (if an exemption certificate is presented) or the RTDC Permit holder can seek a refund for any taxes paid. This avoids the situation where there is more tax on a product sold by a PA Manufacturer than if the same product was purchased from the PLCB.

Guild Members may also be free to contact Attorney Brichta with any questions or concerns regarding this Guidance from the Department of Revenue or other legal issues relating to member distilleries. (ambrichta@norris-law.com or 484-765-2256).