Tax Bulletin

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Out-of-State Wineries and Texas Taxes

An out-of-state winery can ship wine directly to Texas consumers, even those who live in dry areas where alcohol sales are prohibited, if it has a direct shipper's permit from the Texas Alcoholic Beverage Commission (TABC). To get a direct shipper's permit, the winery must have a Texas sales tax permit, and must collect and remit the appropriate state and local taxes.

State and Local Sales Tax

Out-of-state wineries must collect and remit state sales tax on sales and deliveries to Texas. The current state sales and use tax rate is 6.25 percent.

An out-of-state winery must also collect local use tax if it ships to a customer in a local taxing jurisdiction where the winery is engaged in business. For purposes of the tax law, "engaged in business" means that within the last 12 months the winery had a physical contact or presence in the jurisdiction, such as sending traveling salespersons or attending trade shows or similar events to solicit or promote sales.

An out-of-state winery that is not engaged in business in any local jurisdictions in Texas does not have to collect local use tax. The winery can voluntarily collect use tax, however, as a convenience to their customers who owe the tax based on the point of delivery.

There are four types of local sales tax jurisdictions: city, county, special purpose district, and transit authority. Tax rates for each type of jurisdiction vary, but the combined local tax rate cannot exceed 2 percent. More information on local taxes is online at **http://window.state.tx.us/taxinfo/local/**.

Applying for a Sales Tax Permit

To apply for a sales tax permit, use application form AP-201, online at **http://www.window.state.tx.us/taxinfo/taxforms/01-forms.html**. A winery will not have to post a bond at the time of application unless their past business history makes it necessary. A winery may be required to post a bond at a later date if its business activity changes or if it does not comply with Texas tax laws.

Reporting and Remitting Sales Tax

Like all other Texas sales taxpayers, out-of-state wineries will report and remit state and local sales and use taxes to the Comptroller's office. Preprinted tax returns are generally sent to taxpayers a month before the report due date.

Texas Franchise Tax

Texas imposes a franchise tax on any corporation that does business in, or is chartered in, this state, and on any limited liability company that is organized under state law or that does business here. Partnerships and sole proprietorships are not subject to franchise tax. (See Texas Tax Code, Section 171.001.)

A foreign corporation or limited liability company will be considered to be doing business in Texas if it has sufficient physical presence in this state to be taxed without violating the U.S. Constitution. Franchise tax rules 3.546 and 3.554 provide a listing of activities that constitute doing business in this state. A corporation or limited liability company may be subject to the franchise tax's taxable capital component, but not the earned surplus component, if it is protected by Public Law 86-272.

More information about Texas franchise tax, including rules, statutes, forms, publications, and frequently asked questions, is online at **http://www.cpa.state.tx.us/taxinfo/franchise/index.html**.

Need More Information?

Information about filing requirements for Texas sales tax can be found in Texas Administrative Code, Rule 3.286, "Sellers and Purchasers Responsibilities."

Information about franchise tax filing requirements is in Texas Administrative Code Rule 3.544, "Reports and Payments."

Applications and information about regulations and requirements for direct shipper's permits for out-of-state wineries are available from the Texas Alcoholic Beverage Commission. TABC is online at **http://www.tabc.state.tx.us**, and can be contacted by telephone at (512) 206-3333.