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NOTICE 18-04

2017 AND 2018 CHANGES TO SALES OF CEREAL MALT BEVERAGE AND BEER
(JULY 1, 2018)

Under Kansas law the term, "cereal malt beverage" (CMB) means "any fermented or undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage . . . . but does not include any such liquor which is more than 3.2% alcohol by weight."

The term "beer" means "a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager, porter and similar beverages having such alcoholic content." For purposes of this Notice, "beer" cannot contain more than 6% alcohol by volume.

2017 Changes to Sales

During the 2017 Legislative Session House Substitute for Senate Bill 13 was passed and signed into law. Changes made by the Bill, which take effect April 1, 2019, affect the sale of cereal malt beverage and beer.

Prior to the passage of Senate Bill 13 a retailer licensed under the cereal malt beverage act (a "CMB retailer") was not permitted to sell beer, and a retailer licensed under the liquor control act (a "retail liquor store") was not permitted to sell CMB. With the passage of Senate Bill 13, a CMB retailer or retail liquor store may sell both CMB and beer (see New Section 1, Section 4, and Section 7 of the Bill). In addition, a retail liquor store may "sell any other good or service on the licensed premises, except that the gross sales of other goods and services, excluding fees derived from the sale of lottery tickets and revenues from sales of cigarettes and tobacco products, shall not exceed 20% of the retailer's total gross sales."

In summary, these changes mean that:

> CMB retailers (such as grocery stores, convenience stores, and drug stores) will be allowed to sell beer, in addition to CMB.
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> Retail liquor stores will be allowed to sell CMB and other goods or services on their licensed premises, as long as those sales (excluding the sale of lottery tickets, cigarettes, and tobacco products) do not exceed 20% of their total gross sales.

2018 Changes to Taxation

During the 2018 Legislative Session House Bill 2502 was passed and signed into law. Changes made by this Bill, which take effect April 1, 2019, affect the taxation of beer sold by a CMB retailer.

Section 5 of the Bill amends K.S.A. 2017 Supp. 79-3602, which provides definitions used in the Kansas retailer's sales tax act. The amendment adds subsection (hhh) which provides:

> (hhh) "Cereal malt beverage" shall have the same meaning as such term is defined in K.S.A. 41-2701, and amendments thereto, except that for the purposes of the Kansas retailers' sales tax act and for no other purpose, such term shall include beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.

In accordance with this provision, a CMB retailer will charge state and local sales tax on their sales of CMB and on their sales of beer. This will generally include locations such as grocery stores, convenience stores, and drug stores. Please note these sales cannot be used as a deduction on the Kansas Retailers' Sales Tax Return.

A retail liquor store will not charge sales tax on their sales of beer. Beer sold by a retail liquor store remains subject to the 8% liquor enforcement tax. Other goods or services sold by a retail liquor store on their licensed premises (excluding the sale of lottery tickets) will be subject to state and local sales tax. This includes the sale of CMB.

It is important to note the changes explained above apply to package sales of CMB or beer made by a CMB retailer or a retail liquor store, and to on premises sales of CMB made by a CMB retailer. The changes do not apply to CMB or beer sold by a retailer licensed under the club and drinking establishment act to sell liquor by the drink who operates a club or drinking establishment. CMB or beer sold in a club or drinking establishment remains subject to the 10% liquor drink tax.

This notice is intended to make you aware of the changes to the liquor laws that will be effective April 1, 2019. This will allow you time to program your cash registers, adjust your tracking mechanisms or make any needed software changes. Another notice will be sent in January 2019 to remind you of the changes.

This notice highlights only a portion of 2017 House Substitute for Senate Bill 13 and 2018 House Bill 2502. For a detailed, full-text copy of these bills, please visit the Kansas Legislature's web site at: www.kslegislature.org.

Taxpayer Assistance

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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