HARD SELTZER
REGULATION IN OREGON
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HARD SELTZER
REGULATION IN OREGON

WHAT IS A HARD SELTZER?
“Seltzer” is simply carbonated water.

In Oregon, a hard (sometimes also known as “spiked”) seltzer is a seltzer with more than one-half of one percent of alcoholic beverage in it.¹

The ingredients used to make a hard seltzer determines how the OLCC classifies it. This classification is important as it determines who may make it, import it into Oregon, distribute it, sell it at retail or wholesale, and the appropriate Oregon privilege tax category.

THE CLASSIFICATIONS OLCC GIVES TO HARD SELTZERS

MALT BEVERAGE
The OLCC will classify a hard seltzer as a malt beverage, if:

- It is an alcoholic beverage containing more than one-half of one percent of alcohol by volume (ABV) but does not contain more than 14 percent ABV and 100% of the ABV is obtained by the fermentation of grain². and;
- It is an alcoholic beverage containing more than one-half of one percent of ABV but contains six percent or less ABV and that contains at least 51 percent ABV obtained by the fermentation of grain, as long as not more than 49 percent of the beverage’s overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; and
- It is an alcoholic beverage containing more than six percent ABV obtained by the fermentation of grain that derives not more than 1.5 percent of the beverage’s overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

Verification of a “malt beverage”
The OLCC may require the manufacturer, wholesaler, or importer who is claiming a product as a malt beverage for privilege tax purposes to provide verification that the alcohol is produced through the fermentation of grain.

Examples of “malt beverage” include:
- Beer, ale, porter, stout and similar alcoholic beverages obtained by the fermentation of grain that do not contain more than 14 percent alcohol by volume.

¹ Some may be familiar with the definition of “hard seltzer” in ORS 459A.700(9). However, this definition pertains only to beverage container redemption in Oregon.
² OLCC relies on the federal definition of “grain” to mean barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat and the subsequent definition for each specific grain.
**Examples of what is NOT a “malt beverage” include:**

- An alcoholic beverage obtained primarily by the fermentation of grain; however, the alcohol by volume is over 14 percent.
- An alcoholic beverage classified at the federal level as a beer; however, the beer is not obtained primarily by the fermentation of grain.
- An alcoholic beverage is classified at the federal level as a “malt beverage” but the alcoholic beverage doesn’t meet Oregon’s definition of a “malt beverage.”
- Examples of what the OLCC does not include as a “malt beverage” are sake, mead, and kombucha products made with cane sugar.

**WINE**

The OLCC will classify a hard seltzer as a wine, if:

- If it is an alcoholic beverage obtained by the fermentation of vinous or fruit juice, or other fermented beverage fit for beverage purposes, and it contains more than one-half of one percent of alcohol by volume and does not contain more than 21 percent alcohol by volume.
- Wine may contain distilled liquor and other “non-traditional” ingredients, provided that it does not contain more than 21 percent alcohol by volume.
- “Wine” does not include malt beverage, cider, or distilled liquor.

**CIDER**

The OLCC will classify a hard seltzer as a cider (and therefore tax it as a malt beverage) if:

- It is an alcoholic beverage obtained by the fermentation of the juice of apples or pears; and it contains more than one-half of one percent of alcohol by volume but does not contain more than 8.5 percent alcohol by volume.
- The juice is not required to come only from apples or pears.
- “Cider” may include flavored, sparkling, or carbonated cider.
- “Cider” does not include malt beverage, wine, or distilled liquor.

**DISTILLED LIQUOR**

The OLCC will classify a hard seltzer as a distilled liquor, if:

- It is an alcoholic beverage that is other than a malt beverage, wine, or cider.

Other common names for “distilled liquor” are distilled spirits, hard liquor, hard alcohol, ethyl alcohol, and ethanol.

Typically, distilled liquor comes from a distillation process. Oregon considers distilling to be any process that separates beverage alcohol (also known as ethanol or ethyl alcohol) from any substance or mixture. The two primary methods of distilling are using a still to apply heat and freeze distillation.

However, in Oregon, it is not a requirement that the liquor be distilled to be considered distilled liquor. A fermented liquor that does not meet the definition of malt beverage, wine, or cider would be considered a distilled liquor.
MANUFACTURING AND WHOLESALING (INCLUDING IMPORTING AND DISTRIBUTING) HARD SELTZER IN OREGON

WHO MAY MAKE HARD SELTZER IN OREGON?
- A Brewery licensee may make a malt beverage hard seltzer.
- A Brewery-Public House licensee may make a malt beverage hard seltzer.
- A Distillery licensee may make a distilled liquor hard seltzer.
- A Winery licensee may make a wine or cider hard seltzer.

WHO MAY IMPORT INTO (RECEIVE) HARD SELTZER IN OREGON?
- A Brewery licensee may import a malt beverage hard seltzer, but only if the malt beverage is of a brand produced by a manufacturer that is under common control with the Brewery licensee.
- A Distillery licensee may import a distilled liquor hard seltzer.
- A Warehouse licensee may import a malt beverage, wine, or cider hard seltzer.
- A Wholesale Malt Beverage and Wine licensee may import a malt beverage, wine, or cider hard seltzer.
- A Winery licensee:
  - With a Producer/Blender permit from the Alcohol Tobacco Tax and Trade Bureau (TTB)
    - If the container has a capacity of more than four liters, may import a wine or cider hard seltzer.
    - If the container has a capacity of four liters or less, may import a wine or cider hard seltzer only if the wine or cider hard seltzer brand is under the control of the Winery licensee. “Control” is defined in ORS 471.223.
  - With a Wholesaler or Wine Cellar permit from the TTB
    - Regardless of container size, only if the wine or cider hard seltzer brand is under the control of the Winery licensee. “Control” is defined in ORS 471.223.
- The OLCC may import a distilled liquor hard seltzer.
- A consumer may receive a malt beverage, wine, or cider hard seltzer from a Direct Shipper Permittee.

WHO MAY CONDUCT WHOLESALE ACTIVITIES (SELL AT WHOLESALE AND DISTRIBUTE) HARD SELTZER IN OREGON?
- If the hard seltzer is a malt beverage, wine, or cider:
  - A Brewery licensee may sell at wholesale and distribute a malt beverage hard seltzer, but only to a Wholesale Malt Beverage and Wine licensee.
  - A Brewery-Public House licensee may sell at wholesale and distribute a malt beverage hard seltzer only if it:
    - Produced the malt beverage hard seltzer; and
    - Sells at wholesale and distributes no more than 7,500 barrels of any malt beverage that it produced in a calendar year.
A Grower Sales Privilege licensee may sell at wholesale and distribute a hard seltzer, but only hard seltzer that is a wine or cider that was made from fruit or grapes grown in Oregon under the control of the licensee.

A Wholesale Malt Beverage and Wine licensee may sell at wholesale and distribute a malt beverage, wine, or cider hard seltzer.

A Winery licensee:
- With a valid Producer and Blender Basic Permit from the TTB may sell at wholesale and distribute a wine or cider hard seltzer.
- With a valid Wholesaler Basic Permit from the TTB may sell at wholesale and distribute only hard seltzer made from wine and cider brands that are under the control of the licensee.

If the hard seltzer is a distilled liquor:
- A Distillery licensee may sell at wholesale and distribute a distilled liquor hard seltzer, but only to the OLCC.

**TAXES ON HARD SELTZER IN OREGON**

If the hard seltzer is a malt beverage, wine, or cider Oregon assesses a tax for the privilege of:

- Manufacturing malt beverage, wine, or cider in Oregon.
- Importing malt beverage, wine, or cider into Oregon.
- Shipping malt beverage, wine, or cider into Oregon.

This tax is sometimes called a “privilege tax.”

**PRIVILEGE TAX**

**Who pays and what is the rate?**

- Malt Beverage. Under ORS 473.030(1), a manufacturer in Oregon and all importing distributors must pay the tax at a rate of $2.60 per barrel of 31 gallons.
- Wine. A manufacturer in Oregon and all importing distributors must pay the tax at a rate of:
  - 67 cents per gallon (as per ORS 473.030 (2) & (4)
  - An additional 10 cents per gallon for all wines containing more than 14% ABV (as per ORS 473.030 (3)
- Cider. Under ORS 473.035(1), a manufacturer in Oregon and all importing distributors must pay the tax at a rate of $2.60 per barrel of 31 gallons.

**Which OLCC licensees are responsible for paying the privilege tax?**

Brewery, Winery, Wholesale Malt Beverage & Wine, Warehouse, Brewery-Public House, Growers Sales Privilege, Wine Self-Distribution (WSD), and Direct Shipper (DS). The privilege tax is paid only once.

**What is a privilege tax bond?**

This is a bond that certain OLCC licensees and permittees are required to obtain. It allows the OLCC to collect payment if the privilege taxes are not paid. The minimum bond amount is $1,000.

**Who obtains a privilege tax bond?**

Unless eligible for a waiver as per ORS 473.065(4), an applicant for any of the following licenses is responsible for paying the privilege tax; and therefore, must obtain a privilege tax bond before
getting a license or a temporary authority to operate: Brewery (only at 1st location), Winery (at each location where production occurs), Wholesale Malt Beverage & Wine, Warehouse, Brewery-Public House (only at 1st location), Growers Sales Privilege (only at 1st location), Wine Self-Distribution (WSD), and Direct Shipper (DS).

What are the payment, record keeping, and reporting requirements for privilege taxes?
Unless eligible for a waiver, a licensee must file on a quarterly basis with the OLCC’s privilege tax department and pay any owed tax. Reports for the preceding calendar quarter are due on or before the 20th day of January, April, July and October.

Under what circumstances is a privilege tax not imposed?
See ORS 473.050.

Questions about privilege taxes?
Contact the OLCC’s privilege tax department: OLCC.privilegetax@oregon.gov

If the hard seltzer is a distilled liquor
Oregon does not assess a privilege tax on distilled liquor. Instead, the distilled liquor hard seltzer must be listed with the OLCC and factory-sealed containers of distilled are then sold at retail in a liquor store or by a distillery outlet agent.

RETAIL
Who may SELL hard seltzer at RETAIL (direct to consumer) in Oregon?
If the hard seltzer is a malt beverage, wine, or cider:
  o A Brewery licensee may sell hard seltzer at retail for both on and off premises consumption.
  o A Brewery-Public House licensee may sell hard seltzer at retail for both on and off premises consumption.
  o A Direct Shipper Permittee:
    ▪ If the product is a wine or cider, may sell and delivery sealed containers of hard seltzer at retail direct to an Oregon resident. Also, the permittee must follow the delivery rules at OAR 845-006-0392.
    ▪ If the product is a malt beverage, may sell and deliver sealed containers of hard seltzer at retail direct to an Oregon resident only if the state from which it is coming allows Oregon licensees to delivery malt beverages directly to a resident of that state. Also, the permittee must follow the delivery rules at OAR 845-006-0396.
  o A Full On-Premises Sales licensee may sell hard seltzer at retail, but only for on-premises consumption.
  o A Grower Sales Privilege licensee may sell hard seltzer, but only hard seltzer that is a wine or cider made from fruit or grapes grown in Oregon under the control of the licensee, at retail for both on and off premises consumption.
  o A Limited On-Premises Sales licensee may sell hard seltzer at retail for on-premises consumption. If the hard seltzer is a malt beverage, the licensee may also sell hard seltzer in a keg. A “keg” is a container holding more than seven gallons.
An Off-Premises Sales licensee may sell hard seltzer at retail, but only for off-premises consumption.

A Wholesale Malt Beverage and Wine licensee may sell hard seltzer at retail (direct to consumer):

- If the product is a wine or cider, may sell in quantities of not less than four gallons or more than 55 gallons at any one time. The licensee may not deliver the hard seltzer (the consumer must pick up the product at the licensed premises).
- If the product is a malt beverage, may sell a malt beverage that is not more than 9% alcohol by volume in quantities not less than four gallons. The licensee may not deliver the hard seltzer (the consumer must pick up the product at the licensed premises).

A Winery licensee:

- With a valid Producer and Blender Basic Permit from the TTB may sell hard seltzer at retail for both on and off premises consumption.
- With a valid Wholesaler Basic Permit from the TTB:
  - For wine and cider, may only sell hard seltzer made from wine and cider brands that are under the control of the licensee and may sell it for both on and off premises consumption.
  - For malt beverage, may sell hard seltzer made from malt beverage at retail for both on and off premises consumption.

If the hard seltzer is a distilled liquor:

- A Retail Liquor Store may sell hard seltzer at retail in a sealed container for off-premises consumption.
- A Distillery licensee who has also been appointed by the OLCC as a distillery retail outlet agent may sell hard seltzer at retail in a sealed container, but only at retail direct to consumer, and may sell it by the drink for consumption on the premises if the licensee has obtained a Special Event Distillery (SED) special event license.

LIQUOR LICENSING IN OREGON

FOR APPLICATION INFORMATION
https://www.oregon.gov/olcc/lic/Pages/default.aspx

TO SUBMIT A LIQUOR LICENSE APPLICATION OR FOR LIQUOR LICENSING QUESTIONS
OLCC.LiquorLicenseApplication@oregon.gov