



From: Elisha Hodge, MTAS Legal Consultant
Date: October 19, 2022
Re: Assessing the liquor privilege tax on limited service restaurants

Request from municipality:

During our recent conversation, you asked whether certain entities within city should be assessed the privilege tax authorized in Tennessee Code Annotated Section 57-4-301(b)(2). The privilege tax is applicable to licensed entities selling alcohol for on-premises consumption. Specifically, you asked whether entities licensed as limited service restaurants by the Tennessee Alcoholic Beverage Commission (hereinafter “TABC”) should be assessed such privilege tax. For the reasons set out below, limited service restaurants cannot be assessed the privilege tax, in my opinion.

Response from MTAS:

As I said I would do when we spoke, I reached out to a colleague at the TABC. He confirmed that Blockhouse is licensed as a limited service restaurant and that the entity remits an annual fee to the TABC in the amount of \$5,000, which is the amount found in the chart for limited service restaurants with between 0% and 15% gross sales of prepared food. He, too, said that the TABC has not weighed in on the issue of whether the privilege tax can be assessed to limited service restaurants. However, he did point out that the language related to limited service restaurants with between 0% and 15% gross sales of prepared food, was not adopted until 2010. [Here](#) is the link to Public Chapter 1133, Acts of 2010, that placed the limited service restaurant designation in the statute and the fees that can be assessed annually by the TABC to these entities.

Based upon the language in Tennessee Code Annotated Section 57-4-301(b)(2) that limits the assessment of the privilege tax by municipalities to the “2003 level” and given that there is no 2003 limit for limited service restaurants, I do not think that the tax can be assessed by the City.