

## Chapter Tax 8

### INTOXICATING LIQUORS

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**Tax 8.01 Tax liability. (1) PURPOSE.** This section clarifies the tax liability on all sales of intoxicating liquor shipped into Wisconsin, including foreign country imports.

**(2) IMPOSITION.** All intoxicating liquor, including wine, shipped to a permittee located in Wisconsin shall be sold with the occupational tax imposed under s. 139.03, Stats., included in the selling price except:

(a) Shipments in bulk to a rectifier or winery. The tax liability is incurred by the permittee doing the rectifying and bottling of the distilled spirits and wine at the time of the first sale in this state.

(b) Shipments from a foreign country if the "importer of record" as recorded on U.S. customs document is a Wisconsin wholesaler permittee located in this state. However, if the "importer of record" is the holder of an out-of-state shipper's permit, the tax payment is due from the out-of-state shipper regardless if the shipment is released from U.S. customs bond within or without this state.

(c) Merchandise which is destined to be shipped outside the state of Wisconsin in interstate commerce and is properly labeled as "interstate merchandise."

(d) Shipments of merchandise to the following types of permit holders:

1. Sacramental wine permittee.
2. Wholesale alcohol permittee, but only if the alcohol shipped is at least 190 proof.
3. Medicinal alcohol permittee.
4. Industrial alcohol permittee.
5. Industrial wine permittee.

**Note:** This section interprets s. 139.06 (1) (b), Stats.

**History:** Cr. Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.02 Inventory records.** A Wisconsin rectifier, wholesaler or winery is permitted to maintain separate stocks of untaxed and taxed intoxicating liquor on the same premises. Detailed records of movement into and out of untaxed stock must be maintained. Failure to maintain these records or to properly segregate the untaxed stock from the taxed stock will make the untaxed stock immediately subject to the provisions of s. 139.06, Stats.

**Note:** This section interprets s. 139.11, Stats.

**History:** Cr. Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.04 Refunds. (1) DESTRUCTION OR RETURN OF DISTILLED SPIRITS AND WINE IN WISCONSIN.** A manufacturer, rectifier or wholesaler properly authorized by this state, who possesses distilled spirits or wine in sealed containers which is spoiled or has become unfit for beverage purposes may file a request for a tax refund with the department. A refund for the amount of the tax applying to the merchandise may be made providing the claimant files a written notice to the department of intent to destroy the merchandise at least 10 days prior to destroying such distilled spirits

or wine. The department, upon receipt of the notice of intent, may inspect the merchandise prior to destruction by notifying the claimant prior to the expiration of the 10-day period. If the department does not notify the claimant of its intent to inspect before the end of the 10-day period, the claimant may destroy the distilled spirits or wine and make application for refund. The claimant shall make application for the refund on a form to be furnished by the department.

**(2) RETURNS TO AN OUT-OF-STATE PERMITTEE.** A manufacturer, rectifier or wholesaler authorized by this state, who possesses distilled spirits or wine in sealed containers which is spoiled or has become unfit for beverage purposes may file a written notice to the department of intent to return such merchandise to an out-of-state source at least 10 days prior to shipping the distilled spirits or wine. The department, upon receipt of the notice of intent, may inspect the merchandise prior to shipment by notifying the claimant prior to the expiration of the 10-day period. If the department does not notify the claimant of its intent to inspect before the end of the 10-day period, the merchandise may be returned and the out-of-state recipient may make application for refund, or take an appropriate amount of credit against taxable shipments into Wisconsin for that month. The Wisconsin customer will report the transaction as a tax-included export.

**Note:** This section interprets s. 139.10, Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1) and (2) and cr. (3), Register, June, 1979, No. 282, eff. 7-1-79; r. and recr. (1) and (2), r. (3), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.11 Reports.** Monthly reports shall be filed by all manufacturers, rectifiers, wholesalers and wineries located in this state and out-of-state firms holding a permit to ship into or do business within the state of Wisconsin, on forms furnished by the department of revenue. The reports must be made in duplicate, the original to be mailed to the department on or before the 15th day of each month covering the preceding calendar month, and the duplicate to be retained by the firm submitting the report. Reports shall be submitted on the basis of liters, not wine or proof gallons. In the event no transactions occur in any given month the report shall be filed with a notation written across the fact: "No transactions."

**Note:** Blank forms may be obtained from the Department of Revenue, Box 8905, Madison, WI 53708.

**Note:** This section interprets s. 139.11, Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83; am. Register, July 1990, No. 415, eff. 8-1-90.

**Tax 8.12 Samples. (1)** Manufacturers shall attach a memo invoice stating quantity and package size by type and brand when shipping, to their representatives, intoxicating liquor into this state for the purpose of free samples.

**(2)** All sample liquor described in sub. (1) shall bear the legend "Applicable state tax paid. Not for resale." All sample liquor is subject to the Wisconsin liquor use tax. The tax paid by the out-

of-state shipper shipping or causing the liquor to be shipped into this state shall be remitted no later than the 15th day of the month following the shipment.

**Note:** This section interprets s. 125.65 (1), Stats.

**History:** Cr. Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.21 Purchases by the retailer.** (1) Every retail licensee shall retain invoices covering all purchases of intoxicating liquor for a period of 2 years from the date of the invoice. Such invoices shall be retained on the licensed premises in groups covering one month each and shall be open to inspection at all reasonable times by any representative of the department. The date of payment must be recorded on each invoice.

(2) An invoice retained by a retail licensee shall contain the following information:

- (a) Names and business addresses of both parties as shown on the permit or license of each.
- (b) Date of sale.
- (c) Invoice number.
- (d) Quantity and package size of intoxicating liquor by type and brand.
- (e) Unit price per package.
- (f) Discount, if any.
- (g) Signature of the person receiving the intoxicating liquor.
- (h) Date of payment.

**Note:** This section interprets s. 139.11 (1), Stats.

**History:** 1-2-56; am. (2), Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; r. (1), renum. (2) to be (1) and am., Register, June, 1983, No. 330, eff. 7-1-83; am. (1), cr. (2), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.22 Purchases made outside of state.** (1) No Wisconsin manufacturer, rectifier, wholesaler or winery shall purchase or receive intoxicating liquor from outside the state except from a person holding an out-of-state permit issued pursuant to s. 125.58, Stats.

(2) Upon request, the department will furnish Wisconsin manufacturers, rectifiers, wholesalers and wineries with a list of out-of-state permittees duly licensed to ship intoxicating liquor into the state. Purchases may be made and shipments received only from the permittees included on the lists.

(3) Upon request, the department will furnish out-of-state permittees with a list of Wisconsin manufacturers, rectifiers, wholesalers, wineries and other permittees to whom sales and shipments of intoxicating liquor may be made.

(4) The invoice of the out-of-state shipper shall contain the following information:

- (a) Name and business address of each party as shown on the permit of each.
- (b) Date of sale.
- (c) Invoice number.
- (d) Location from which shipment originated.
- (e) Name of carrier.
- (f) Name of salesperson.
- (g) Quantity and package size of intoxicating liquor by type and brand.
- (h) Unit price per package.
- (i) Amount of Wisconsin tax as a separate item.

**Note:** This section interprets ss. 125.52 (1), 125.54 (1) and 125.53, Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) and (3), cr. (4), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.23 Sales to non-licensees.** Wisconsin manufacturers, rectifiers, and wholesalers may sell intoxicating liquor to campus permittees, railroads, and aircraft which are exempted from retail licensing as provided in s. 125.06, Stats.

**Note:** This section interprets ss. 125.06, 125.52 (1) and 125.54, Stats.

**History:** Cr. Register, July, 1990, No. 415, eff. 8-1-90.

### Tax 8.24 Reciprocal interstate shipments of wine.

(1) GENERAL. (a) A winery located outside Wisconsin may ship wine into Wisconsin without payment of the occupational tax under s. 139.03, Stats., to an individual who does not hold a license or permit under ch. 125, Stats., provided all of the following requirements are met:

1. The state from which the wine is sent has entered into a reciprocal agreement with Wisconsin as described in s. 139.035, Stats., and sub. (2).

2. The individual receiving the wine is at least 21 years of age.

3. No more than 9 liters are received by any one individual during a calendar year.

4. The shipping container is clearly labeled indicating each of the following:

a. The container may not be delivered to a person under 21 years of age.

b. The container may not be delivered to a person who is visibly intoxicated.

5. The individual does not resell the wine received.

(b) A winery located in Wisconsin may ship wine to an individual in another state without payment of that state's occupational tax provided the individual does not hold a license or permit and the requirements in sub. (1) (a) 1. to 5. are met.

(2) RECIPROCAL AGREEMENTS. (a) The department of revenue may enter into agreements with other states concerning the shipping of wine by wineries outside Wisconsin to individuals in Wisconsin and the shipping of wine by wineries in Wisconsin to individuals outside Wisconsin.

(b) A reciprocal agreement may include a provision that the winery shipping the wine pay its own state's occupational tax and the individual receiving the wine to be exempt from the occupational tax on the shipment.

(3) WISCONSIN WINERIES FAILING TO MEET REQUIREMENTS. If a winery located in Wisconsin does not comply with all the requirements in sub. (1) (a) 1. to 5., the Wisconsin winery may be subject to a hearing with the department and may have its winery permit revoked.

(4) OUT-OF-STATE WINERIES FAILING TO MEET REQUIREMENTS. If an out-of-state winery does not comply with all the requirements in sub. (1) (a) 1. to 5., the out-of-state winery shall be subject to its own state's jurisdiction with respect to actions for failure to comply.

(5) PAYMENT OF TAX BY INDIVIDUALS RECEIVING WINE. (a) An individual located in Wisconsin who receives wine as described in this section shall not be liable for the occupational tax under s. 139.03, Stats.

(b) An individual located in Wisconsin who receives wine as described in this section shall be subject to the use tax imposed under ch. 77, Stats. The individual shall report the use tax on that individual's sales and use tax return or income tax return for the period in which the wine is received, unless the tax has already been collected by the out-of-state winery. The tax is equal to 5%, or 5<sup>1</sup>/<sub>2</sub> % if delivered to a county that has adopted the county tax, of the selling price of the wine received.

(c) If the individual does not pay the use tax as provided in par. (b), the individual shall be subject to interest and penalties as provided in s. 77.60, Stats., in addition to the amount of use tax due.

(6) REPORTING REQUIREMENTS BY WISCONSIN WINERIES. Every winery located in Wisconsin that ships wine to another state as described in this section shall report those sales on Wisconsin form AB-131, Liquor Tax Multiple Tax Schedule, as tax-paid sales. A description of each sale shall appear on the report.

**Note:** Form AB-131 may be obtained by writing to: Wisconsin Department of Revenue, P.O. Box 8905, Madison, WI 53708.

**Note:** This section interprets ss. 125.58 (4), 125.68 (10) (bm) and (bs), and 139.035, Stats.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 8.31 Sales out of Wisconsin.** (1) The occupational tax imposed upon the sale of intoxicating liquor within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers, rectifiers and wholesalers need not pay the tax on intoxicating liquors that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer, rectifier or wholesaler to show that the merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers, rectifiers, wholesalers and wineries claiming exemption from the occupational tax on intoxicating liquor on the ground that shipments or deliveries were made in interstate commerce shall certify, under oath:

(a) That the persons receiving such shipments or deliveries in a foreign state at the address stated are licensed to receive the same or

(b) That they are in possession of bills of lading, way bills, freight bills or other evidence of shipment issued by common carriers operating in this state, that such shipments or deliveries were made to persons having an actual licensed place of business in the foreign state.

(3) No Wisconsin manufacturer, rectifier, wholesaler or winery shall receive an exemption from the tax imposed on the sale of intoxicating liquor where such liquor is sold and shipped into any state or territory where the importation or sale of such liquor is prohibited by state or federal law; nor will an exemption be allowed on liquor sold and shipped into other states to a purchaser who, under the laws of the state in which such purchaser is located, cannot lawfully receive the same.

**Note:** This section interprets s. 139.04 (5), Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.35 Interstate shipments.** (1) Shipments of intoxicating liquor shall be delivered to the consignee by the carrier thereof within a period of 5 days after arrival at point of destination. If such merchandise is not delivered within such 5 day period, the consignor shall be notified by the carrier thereof and the merchandise shall be returned to the consignor.

(2) A common carrier in this state which has in its possession intoxicating liquor which the consignee and consignor refuse to accept shall notify the Wisconsin department of revenue of the possession of such merchandise. Permission for disposal shall be granted upon proper application.

**Note:** This section interprets ss. 125.58 (1) and 125.68 (10), Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (5), Register, December, 1977, No. 264, eff. 1-1-78; r. (1), (2) and (3), renum. (4) and (5) to be (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478.

**Tax 8.41 Size of containers.** (1) No manufacturer, rectifier, wholesaler, retailer or other person licensed for the sale of intoxicating liquor shall possess intoxicating liquor, not including wine, in a container of more than 1.75 liter (59.1752 fluid ounce) capacity, except alcohol intended for industrial, medicinal, scientific or mechanical purposes.

(2) Manufacturers and rectifiers may have in their possession intoxicating liquor in containers greater than 1.75 liters in size for purposes of manufacturing or rectifying or for sale to other manufacturers or rectifiers in Wisconsin or in interstate commerce.

**Note:** This section interprets s. 125.03 (2), Stats.

**History:** 1-2-56; am. Register, December, 1971, No. 192, eff. 1-1-72; am. Register, June, 1977, No. 258, eff. 7-31-77.

**Tax 8.43 Empty containers.** (1) Any person possessing a bottle of intoxicating liquor, excluding wine, shall, as soon as such bottle is emptied, scratch, deface or mutilate any label attached thereto in such a manner that the label cannot be used. The requirement that labels be defaced shall not apply to ceramic commemorative bottles and other uniquely designed decanters.

(2) No person shall fill, or cause to be filled, any bottle which has previously been used for intoxicating liquors, not including wine. Such bottles, except ceramic commemorative bottles and other uniquely designed decanters and bottles retained for delivery or collection for recycling through a process which will result in rendering them unusable as bottles, shall be broken and destroyed immediately upon being emptied of their original contents.

(3) Empty liquor bottles retained for recycling purposes shall have all labels scratched, defaced or mutilated, and shall be stored in containers marked "For recycling only" and shall be removed from the premises within 10 days.

**Note:** This section interprets s. 125.68 (8), Stats.

**History:** 1-2-56; am. (1) and (2), r. (3), Register, October, 1974, No. 226, eff. 11-1-74; cr. (3), am. (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83; am. (1) and (3), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.52 Label requirements.** (1) No person, firm or corporation shall sell intoxicating liquor within the state of Wisconsin unless the container thereof shall bear a clear and legible label setting forth the name and address of the manufacturer and the kind of liquor contained therein.

(2) (a) Intoxicating liquor sold within this state shall be labeled in conformance with the labeling requirements under the federal alcohol administration act now in effect or as subsequently amended.

(b) Either the words "Bottled By" and the name of the bottler and the place where bottled or the words "Bottled For" and the name of the wholesaler or retailer for whom such intoxicating liquors or wines were bottled must be stated on the container.

**Note:** This section interprets s. 125.68 (9), Stats.

**History:** 1-2-56; am. (2) (a) and r. (3), Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 8.61 Processing of permits by department.**

(1) The department of revenue shall review and make a determination on an application for a permit required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application for a permit is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

**Note:** This section interprets ss. 125.51 (7) and 125.58, Stats.

**History:** 1-2-56; cr. (3), Register, August, 1985, No. 356, eff. 9-1-85; r. (1) and (2), renum. (3) to be (1) and am. (intro), (a) and (b), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.63 Liquor wholesaler warehouse facilities.**

(1) MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES. The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of 1,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

(1m) EXCEPTION TO MINIMUM REQUIREMENTS. The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.54, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines the waiver fair and equitable, if the applicant or permittee does both of the following:

(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. 125.54 (7), Stats., other than the requirement that the

premises described in the permit be a minimum of 1,000 square feet of floor space, will be or have been met.

(2) **PURCHASES BY A WHOLESALER.** Every permittee under s. 125.54, Stats., shall retain invoices covering all purchases of intoxicating liquor stored at the premises described in the permit for a period of 2 years from the date of the invoice. Such invoices shall be retained on the premises described in the permit and shall be open to inspection at all reasonable times by any representative of the department.

(3) **INVENTORY RECORDS.** Every permittee under s. 125.54, Stats., shall complete a written inventory listing the entire stock of intoxicating liquor stored at the premises described in the permit as of the close of business on the last day of every month. A copy of the inventory listing shall be retained on the premises described in the permit for 2 years from the date the inventory is completed and shall be open to inspection at all reasonable times by any representative of the department.

(4) **INSPECTIONS OF WAREHOUSE FACILITIES.** Before issuing a permit under s. 125.54, Stats., the department shall conduct a site inspection of the premises described in the permit application to determine if such premises meets the minimum requirements described in sub. (1). The department shall also conduct periodic site inspections of premises described in permits issued under s. 125.54, Stats. Site inspections shall be conducted by department personnel generally familiar with activities of intoxicating liquor wholesalers.

(5) **BACKGROUND INVESTIGATIONS OF APPLICANTS.** Before issuing a permit under s. 125.54, Stats., the department shall conduct a background investigation to determine that the applicant is qualified to hold the permit. The background investigation shall be limited to obtaining information that is necessary to enable the department to verify that the applicant meets the eligibility requirements described in s. 125.54 (2), Stats.

(6) **PROCESSING OF PERMITS BY THE DEPARTMENT.** All applications for issuance or renewal of permits under s. 125.54, Stats., shall be processed by department personnel generally familiar with activities of intoxicating liquor wholesalers. The issuance and renewal of permits shall be done in coordination with the enforcement of the requirements of s. 125.54 (7), Stats., including the inspections under sub. (4) and the background investigations under sub. (5).

(7) **INTERNET POSTING OF PERMITTEE INFORMATION.** The department shall prepare and maintain a list of all permittees under s. 125.54, Stats., and shall post the names of permittees from this list on the Internet at a site that is created and maintained by the department. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

**Note:** This section interprets s. 125.54 (7), Stats.

**Note:** Section 125.54 (7), Stats., was created by 2005 Wis. Act 25, effective July 27, 2005.

**History:** CR 06-030: cr. Register September 2006 No. 609, eff. 10-1-06; CR 07-109: am. (1), cr. (1m) and (7) Register May 2008 No. 629, eff. 6-1-08.

**Tax 8.66 Merchandise on collateral.** No manufacturer, rectifier or wholesaler shall place untaxed intoxicating liquor as collateral or security to a loan unless the untaxed liquor used for this purpose is placed in a licensed alcohol beverage warehouse.

**Note:** This section interprets s. 139.06 (1), Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83; am. Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.76 Salesperson.** (1) Any salesperson soliciting orders or selling for future delivery for a person, firm or corporation having a permit to operate in the state of Wisconsin shall have, at all times within the salesperson's possession, a salesperson's permit issued by the secretary of revenue.

(2) No Wisconsin manufacturer, rectifier, wholesaler or winery shall purchase or order intoxicating liquor except from a salesperson who is duly registered by the secretary of revenue.

(3) Samples of intoxicating liquor carried by salespersons shall be Wisconsin tax paid merchandise.

(4) A salesperson's permit authorizes the soliciting of orders of selling for future delivery at wholesale. Retail sales are prohibited.

**Note:** This section interprets ss. 139.06 (1) and 125.65 (1) and (7), Stats.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (2), Register, June, 1983, No. 330, eff. 7-1-83; cr. (4), Register, August, 1985, No. 356, eff. 9-1-85; am. (1) and (3), r. and recr. (4), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.81 Transfer of retail liquor stocks.** (1) No licensed retailer shall transfer his or her intoxicating liquor stock, upon selling or liquidating the business, without first completing a stock transfer form listing an inventory of the entire stock to be transferred. The inventory must list quantities, brands, container sizes and other information as the department may require and shall be signed by both the buyer and the seller. One copy is to be retained by the seller, the other copy shall be retained by the buyer on the licensed premises and available for inspection at all times by representatives of the department.

(2) A licensed retailer may sell his or her entire sealed liquor stock in a liquidating transaction to any other licensed retailer providing the conditions in sub. (1) are met.

**Note:** This section interprets ss. 125.69 (6) and 139.11, Stats.

**History:** 1-2-56; am. Register, June, 1983, No. 330, eff. 7-1-83; cr. (3), Register, August, 1985, No. 356, eff. 9-1-85; am. (1) and (2), r. (3), Register, July, 1990, No. 415, eff. 8-1-90.

**Tax 8.85 Procedure for apportionment of costs of administration of s. 125.69 (4), Stats.** (1) All direct and indirect costs of administering s. 125.69 (4), Stats., including costs of supplies, equipment, rent and clerical, investigational, administrative and supervisory help, shall be borne by the intoxicating liquor permittees. The aggregate of such costs shall be determined by the department semi-annually and shall be prorated by it among the permittees at any time licensed in each period covered. Each such permittee shall be billed its share of such aggregate costs, and such bill shall be paid within ten days of the billing date.

(2) The costs of administration for each 6-month period shall be prorated among the permittees licensed in such period on the basis of estimated dollar sales to retailers based upon reported gallons and liters of wine and liquor sold to retailers by each permittee. Whenever the sales of a permittee have not been reported to the department, the department shall estimate such sales for purposes of such proration.

**Note:** This section interprets s. 125.69 (4) (e), Stats.

**History:** Cr. Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.87 Intoxicating liquor tied-house prohibitions.** (1) **PURPOSE.** Section 125.69 (1) (a) and (b), Stats., prohibits "any interest directly or indirectly" in a retail establishment by a manufacturer, wholesaler or rectifier of intoxicating liquor or in a wholesaler by a retailer. Section 125.69 (1) (a), Stats., exempts from this prohibition any licenses and permits issued prior to October 3, 1963 and which have been renewed annually since that date. Section 125.69 (1) (b), Stats., prohibits a manufacturer, rectifier or wholesaler from holding an interest in any license or premises where intoxicating liquor is sold for consumption on the premises. The purpose of this section is to give examples of some direct and indirect interests prohibited by ch. 125, Stats.

(2) **DEFINITIONS.** In this section:

(a) "Agent" means a person who represents or acts, or who is empowered to represent or act, for another in conducting the other's business.

(b) "Corporation" includes all members of a controlled group of corporations, defined as a "parent–subsidiary controlled group", a "brother–sister controlled group", or a "combined group of controlled corporations".

1. A "parent–subsidiary controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation, if:

a. Stock possessing at least 50% of all voting power of each of the corporations, except for the common parent corporation, is owned directly or indirectly by one or more of the other corporations, and

b. The common parent corporation owns directly or indirectly stock possessing 50% of the voting power of at least one of the other corporations, excluding, in computing such voting power, stock owned directly by such corporations other than the common parent corporation.

2. A "brother–sister controlled group" means 2 or more corporations where 10 or fewer persons (other than corporations) own at least 50% of all voting power of each of the corporations taking into account only stock ownership of such person to the extent it is identical with respect to each corporation.

3. A "combined group of controlled corporations" is a group of 3 or more corporations, each of which is a member of a parent–subsidiary group or a brother–sister group and one of which is both a common parent in a parent–subsidiary group as well as a member of the brother–sister group.

(c) "Effective control" means either the power to direct the affairs of the wholesale permittee or the retail licensee or the actual direction of the affairs of the wholesale permittee or the retail licensee.

(d) "Employee" means a natural person who performs services for wages or salary.

(e) "Equity" means the money value of a property or of an interest in a property in excess of the claims or liens against it.

(f) "Immediate family member" means a spouse, a brother or sister (whole– or half–blood relationship) or spouse, ancestor or spouse, or lineal descendant or spouse.

(g) "License or permit" means an intoxicating liquor license or permit issued under ch. 125, Stats.

(h) "Person" means natural person, partnership, association or corporation.

(i) "Premises" means the property described on an application for a license or permit where alcoholic beverages are to be stored, sold or served.

(j) "Sign" means a graphic display, and its parts, including the labor to assemble it, which has no value or use except to advertise product or a place of business or an event or combination of these. The value of the sign is determined by the original costs of acquisition if it is purchased by a manufacturer, rectifier, or wholesaler.

**(3) EXAMPLES OF "DIRECT" INTERESTS.** Examples of "direct" interests prohibited by ch. 125, Stats., include, but are not limited to, the following:

(a) A person who holds both a wholesale permit and retail license.

(b) A person who holds a wholesale permit and owns any equity in a partnership, association or corporation holding a retail license.

(c) A person who holds a retail license and owns any equity in a partnership, association or corporation holding a wholesale permit.

(d) A person who holds a wholesale permit and leases premises to a retail licensee.

(e) A person who holds a retail license and leases premises to a wholesale permittee.

**(4) EXAMPLES OF "INDIRECT" INTERESTS.** Examples of "indirect" interests prohibited by ch. 125, Stats., include, but are not limited to, the following:

(a) A natural person who holds a wholesale permit and is an officer, director, employee or agent of a retail licensee.

(b) A natural person who holds a retail license and is an officer, director, employee or agent of a wholesale permittee.

(c) A natural person who is an officer, director, employee or agent of a wholesale permittee and an officer, director, employee or agent of a retail licensee.

(d) Two corporations, one holding a wholesale permit and the other holding a retail license, in which effective control of both corporations is held by the same person or group of 10 or less persons.

(e) A natural person who has effective control in a partnership, association or corporation which holds a wholesale permit and who leases premises to a retail licensee.

(f) A natural person who has effective control in a partnership, association or corporation holding a retail license and who leases premises to a wholesale permittee.

(g) A natural person who has effective control in a business operated under a wholesale permit and an immediate family member residing in the same household who has effective control in a business operated under a retail license.

(h) A natural person who has effective control in a partnership, association or corporation which holds a wholesale permit and who has effective control in a partnership, association or corporation which holds a retail license.

**Note:** The definition of "controlled group of corporations" is illustrated by examples which may be derived from Internal Revenue Code Regulations 1.1563–1 (a). Some examples follow:

1. P Corporation owns stock possessing 50% of the voting power of S Corporation. S owns stock possessing 50% of the voting power of T Corporation. P is the common parent of a parent–subsidiary controlled group consisting of member corporations P, S and T. The result would be the same if P, rather than S, owned the T stock.

2. The outstanding stock of corporations P, Q, R and S is owned by the following individuals:

	Individuals		Corporations			Identical Ownership
	P	Q	R	S		
A	50%	50%	50%	100%	50%	
B	25%					
C	25%	25%				
D		25%				
E			25%			
F			25%			

Corporations P, Q, R and S are members of a brother–sister controlled group.

3. Smith, an individual, owns stock possessing 50% of the voting power of corporations X and Y. Y, in turn, owns stock possessing 50% of the total combined voting power of corporation Z. Since X, Y, and Z are each members of either a parent–subsidiary or brother–sister controlled group of corporations, and Y is the common parent of a parent–subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother–sister controlled group of corporations consisting of X and Y, X, Y, and Z are members of the same combined group.

**Note:** This section interprets s. 125.69 (1), Stats.

**History:** Cr. Register, May, 1981, No. 305, eff. 6–1–81; am. (1), (2) (g), (3) (intro.) and (4) (intro), Register, June, 1983, No. 330, eff. 7–1–83; cr. (2) (j), Register, July, 1990, No. 415, eff. 8–1–90.