

Chapter Tax 7

FERMENTED MALT BEVERAGES

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Tax 7.001 Fermented malt beverage tax return and refund claim forms. (1) FORMS. The department shall provide official forms for filing fermented malt beverage tax returns and refund claims. Except as approved by the department, tax returns and refund claims may only be filed using these official forms.

Note: The official forms for filing fermented malt beverage tax returns and refund claims are available on the department's web site at <http://www.revenue.wi.gov/forms/excise/index-b.html>.

(2) FILING RETURNS. (a) Forms filed with the department shall be submitted by one of the following means:

1. Mailing them to the address specified by the department on the forms or in the instructions.
2. Delivering them to the department or to the destination that the department prescribes.
3. Filing them electronically by means prescribed by the department.

(b) The department may require fermented malt beverage tax returns and refund claims be filed electronically. The department shall notify a person at least 90 days prior to the due date of the first return required to be filed electronically of the requirement to file electronically.

(c) The secretary of revenue may waive the requirement to file electronically when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be e-mailed to excise@revenue.wi.gov, faxed to (608) 261-7049, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-107, PO Box 8900, Madison WI 53708-8900.

2. Clearly indicates why the requirement causes an undue hardship.

(d) In determining whether the requirement to file electronically causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

Note: Section Tax 7.001 interprets s. 139.01 (2r), Stats.

History: CR 10-093; cr. Register November 2010 No. 659, eff. 12-1-10.

Tax 7.01 Purchases and invoices. (1) Wisconsin wholesalers properly registered and licensed may purchase and receive fermented malt beverages only from registered Wisconsin breweries and wholesalers or from out-of-state firms holding a fermented malt beverage permit. Wisconsin breweries and wholesalers will upon request be furnished with a list of out-of-state firms having a permit to ship into Wisconsin.

(2) An invoice shall be submitted covering each sale, shipment or delivery to a Wisconsin wholesaler by all breweries and permittees shipping within the state or into this state. The invoice shall be retained on the licensed premises of the wholesaler.

(3) An invoice shall be submitted to the retailer by the brewery or wholesaler, covering each sale, shipment or delivery of fermented malt beverages made to the retailer. Breweries and wholesalers shall keep a copy or a record of the invoices on their licensed premises. The invoices or record shall be available for inspection

at all reasonable hours by representatives of the department of revenue.

(4) Retailers shall retain on their premises invoices covering all purchases of fermented malt beverages. These invoices shall be retained for 2 years from the date of invoice in groups covering a period of one month each and be available for inspection at all reasonable times by representatives of the department of revenue. The date of payment shall be recorded on the invoice.

(5) An invoice shall contain the following information:

- (a) Names and business addresses of both parties as shown on the permit or license of each party.
- (b) Date of sale.
- (c) Quantity and package size of fermented malt beverages by type and brand.
- (d) Unit price per package.
- (e) Discount.
- (f) Signature of the person receiving the fermented malt beverages.
- (g) Date of payment.

(6) (a) No licensed retailer may transfer his or her sealed fermented malt beverage stock upon selling or liquidating the business without first completing a written inventory listing the entire stock to be transferred. The inventory shall list the names and addresses of the seller and buyer, quantities, brands and container sizes for the stock being transferred and shall be signed by both the buyer and the seller. A copy of the inventory listing shall be retained on the licensed premises for 2 years from the date of transfer and shall be made available for inspection at all reasonable times by representatives of the department of revenue.

(b) A licensed retailer may sell his or her entire sealed fermented malt beverage stock in a liquidating transaction to any other licensed retailer provided the conditions in par. (a) are met.

Note: This section interprets ss. 125.30, 125.33 (9) and 139.11 (1), Stats.

History: 1-2-56; am. Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83; am. (1) to (3), r. and recr. (4), cr. (5) and (6), Register, September, 1990, No. 417, eff. 10-1-90.

Tax 7.11 Refunds on sale of beer to armed forces.

The state tax paid on fermented malt beverages sold to the armed forces of the United States may be refunded to the licensed Wisconsin brewery, bottler or wholesaler making the sale under the following conditions and provisions:

(1) An invoice covering each sale must be executed in triplicate, the original to be retained at the office of the commanding officer, and the 2 copies to be signed by the commanding officer, or designated representative and retained by the firm making the sale.

(2) A refund request in affidavit form together with one of the receipted copies of each invoice must be filed with the department of revenue.

(3) If beer which is sold or delivered, under s. 139.10 (1), Stats., and this rule is returned to the brewery, bottler or wholesaler, a notation of such return, signed by the commanding officer or a designated representative, must be recorded on the original invoice clearly indicating quantity and description.

(4) Under no consideration may fermented malt beverages, on which a refund has been paid or applied for, be returned to any wholesaler, bottler or brewery without special permission from the department of revenue.

Note: This section interprets s. 139.10, Stats.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (3), Register, December, 1977, No. 264, eff. 1-1-78; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478.

Tax 7.21 Labeling. All fermented malt beverages sold in this state shall be labeled in accordance with federal regulation No. 7, now in effect or as subsequently amended, relating to the labeling and advertising of malt beverages, issued under the federal alcohol administration act.

Note: This section interprets s. 125.32 (7), Stats.

History: 1-2-56; am. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 7.23 Activities of brewers, bottlers, out-of-state shippers, and wholesalers. (1) DEFINITIONS. In this section and in ss. 125.02, 125.06, 125.28, 125.29, 125.295, 125.30, 125.33, 125.34, and 139.01, Stats.:

(a) "Brewer" has the meaning given in ss. 125.02 (2) and 139.01 (2), Stats., and includes a recipe-brewer.

(b) "Event" means any activity, game, contest, tournament or entertainment which is conducted on that part of a campus premises where the sale of fermented malt beverages takes place or premises operated under a retail Class "B" fermented malt beverage license or permit or promoted by a campus operation for the sale of fermented malt beverages or retail Class "B" fermented malt beverage licensee or permittee.

(c) "Out-of-state shipper" means the holder of an out-of-state shipper's permit issued under s. 125.30, Stats., and includes a holder of a Federal Basic Importer's Permit.

(d) "Ownership interest" is a level of ownership in a sole proprietorship, partnership, tax option corporation, limited liability company, corporation, estate, or trust as an individual, partner, shareholder, member, or beneficiary.

(e) "Production brewer" means a brewer who directly manufactures fermented malt beverages for another brewer.

(f) "Recipe-brewer" means a person who contracts with an agent to directly manufacture fermented malt beverages for sale or transportation by that person.

(g) "Retail Class 'B' fermented malt beverage license" means all retailers' Class "B" licenses, including a temporary license issued under s. 125.26 (6), Stats.

(h) "Sign" means a graphic display, containing letters, words, symbols, numerals, shapes, forms or pictures, including all component parts and labor necessary to assemble the unit, which has no value or use except to advertise or identify a product or a place of business or an event or any combination of these. The value of the sign is determined by the original cost of acquisition if it is purchased by a brewer or wholesaler.

(i) "Sponsor" means to underwrite in whole or in part the cost of an event by providing signs, advertising in score cards or on scoreboards and fences or by providing equipment, prizes, trophies, entertainment or other things of value.

(2) BREWER'S PERMIT RESTRICTION AND EXCEPTIONS. (a) *Restriction.* No brewer or wholesaler of fermented malt beverages may sponsor any event conducted on that part of a campus premises where the sale of fermented malt beverages takes place or premises operated under a retail Class "B" fermented malt beverage license or permit or promoted by a campus operation for the sale of fermented malt beverages or retail Class "B" fermented malt beverage licensee or permittee.

(b) *Exceptions.* However, a brewer or wholesaler may:

1. Purchase advertising or other services or rights for a fair consideration from any corporate Class "B" retail fermented malt beverage licensee which is a member of a regularly established athletic league if the licensee derives more than 50% of its gross

income from the ownership, maintenance and operation of a professional athletic team which plays a regular schedule of games and which derives more than 50% of its income from the sale of admissions to the team's games.

2. Enter into contracts or other arrangements directly with non-licensed third parties to sponsor an event or sponsor radio or television broadcasts, to make payment for advertising, or to provide other services or things of value if all 3 of the following conditions are met:

a. No payments, services or other things of value are made directly or indirectly by the brewer or wholesaler to a Class "B" licensee.

b. The payments, services or other things of value are not contingent upon the event being held at any premises designated by the brewer or wholesaler.

c. The sponsor's products are not required to be sold or served at the premises selected by the non-licensed third party.

3. Permit refrigerated trucks or trailers to remain on Class "B" licensed premises for the storage of beer during an event. At the conclusion of the event the brewer, bottler or wholesaler may issue one invoice to the Class "B" licensee for the beer actually used at the event.

(3) EXAMPLES OF PROHIBITED ACTIVITIES. Subject to the limitations in sub. (2) (a) and (b), examples of conduct prohibited by s. 125.33 (1), Stats., and this section include:

(a) A brewer or wholesaler may not sponsor an association, team or other organization for a campus or Class "B" licensee or permittee or have a Class "B" licensee, corporate officer or partner who is part of an association, team or other organization it sponsors.

(b) A brewer or wholesaler may not hire persons to provide a concert or music at a Class "B" licensed premises.

(4) BREWER'S PERMIT REQUIREMENTS. (a) A brewer producing or selling fermented malt beverages in this state shall file an application for a brewer's permit with the department in the manner prescribed by the department.

(b) A production brewer is required to obtain federal label approval and a federal brewer's notice from the federal alcohol and tobacco tax and trade bureau.

(c) 1. An application filed under par. (a) shall include a certification by the recipe-brewer as to both of the following:

a. The recipe-brewer is contracting with a production brewer to produce fermented malt beverages.

b. The contract between the recipe-brewer and production brewer specifically provides that the production brewer is an agent of the recipe-brewer and the recipe-brewer has retained the right to control the work contracted for.

2. Upon request of the department, a recipe-brewer shall provide the department with the contract under subd. 1. a. and b. for the department's inspection.

3. A contract under subd. 1. a. and b. may be contingent upon the recipe-brewer receiving a permit under s. 125.29, Stats.

(d) An application filed under par. (a) shall designate the premises where the fermented malt beverages will be manufactured as the exclusive permitted brewery premises and provide the permit number of the production brewer.

(e) 1. All applications for issuance or renewal of permits under s. 125.29, Stats., shall be processed by department personnel generally familiar with activities of fermented malt beverage brewers. The issuance and renewal of permits shall be done in coordination with the enforcement of the requirements of s. 125.29 (1) and (2), Stats.

2. A permit issued or renewed under this paragraph is specific to the premises of the production brewer. If the recipe-brewer seeks to have fermented malt beverages manufactured at multiple locations, it shall submit brewer's permit applications for each new premise.

(f) For purposes of s. 139.05 (2), Stats., the recipe-brewer is the brewer that is required to file tax returns.

(g) A recipe-brewer shall include fermented malt beverages manufactured in a contract brewing arrangement in the report required under s. 139.11 (2), Stats. A production brewer shall exclude fermented malt beverages manufactured in a contract brewing arrangement from the report required under s. 139.11 (2), Stats.

(h) For purposes of the eligible producers tax credit under s. 139.02, Stats., the recipe-brewer is the producer.

(5) FERMENTED MALT BEVERAGE WHOLESALER WAREHOUSE FACILITIES. (a) *Minimum requirements for warehouse facilities.* The premises described in a permit issued under s. 125.28, 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. 125.25, 125.26, or 125.27, Stats.

(b) *Exception to minimum requirements.* The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.28, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines that the waiver is fair and equitable, if the applicant or permittee does both of the following:

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

2. Indicates how the requirements described in par. (a) and s. 125.28 (5) (a), 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.

(c) *Purchases by a wholesaler.* Every permittee under s. 125.28, Stats., shall retain invoices covering all purchases of fermented malt beverages stored at the premises described in the permit for 4 years from the date of the invoice. The invoices shall be retained on the premises described in the permit for 2 years from the date of the invoice, and shall be open to inspection at all reasonable times by any representative of the department.

(d) *Inventory records.* Every permittee under s. 125.28, Stats., shall complete a written inventory listing the entire stock of fer-

mented malt beverages 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 by the permittee for 4 years from the date the inventory is completed. 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.

(e) *Inspections of warehouse facilities.* Before issuing a permit under s. 125.28, 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 par. (a). The department shall also conduct periodic site inspections of premises described in permits issued under s. 125.28, Stats. Site inspections shall be conducted by department personnel generally familiar with activities of fermented malt beverage wholesalers.

(f) *Background investigations of applicants.* Before issuing a permit under s. 125.28, Stats., the department shall conduct a background investigation to determine whether 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. 125.28 (1) (a) and (2) (b), Stats.

(g) *Processing of permits by the department.* All applications for issuance or renewal of permits under s. 125.28, Stats., shall be processed by department personnel generally familiar with activities of fermented malt beverage wholesalers. The issuance and renewal of permits shall be done in coordination with the enforcement of the requirements of s. 125.28 (5) (e), Stats.

Note: See 68 Atty Gen 395 for a discussion of s. Tax 7.23.

Note: This section interprets s. 125.33 (1), Stats.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (1) (b) and (3) (intro.), Register, June, 1983, No. 330, eff. 7-1-83; am. (1) (a) to (c), (2) (a), (b) (intro.) and (3) (intro), r. (2) (b) 1., 2., 4. and 5., (3) (b), (d) and (e), renum. (2) (b) 3., 6. and (3) (c) to be (2) (b) 1., 2. and (3) (b) and am. (2) (b) 2. and (3) (b), r. and recr. (3) (a), Register, September, 1990, No. 417, eff. 10-1-90; renum. (2) (b) 7. under s. 13.93 (2m) (b) 1., Stats., Register, September, 1990, No. 417; **EmR1201: emerg. am. (title), (1) (intro.), renum. (1) (a) to (d) to be (1) (b) and (g) to (i), cr. (1) (a), (c) to (f), (2) (title), am. (3) (intro.), cr. (4), (5) eff. 1-1-12; CR 12-013: am. (title), (1) (intro.), renum. (1) (a) to (d) to be (1) (b) and (g) to (i), cr. (1) (a), (c) to (f), (2) (title), am. (3) (intro.), cr. (4), (5) Register July 2012 No. 679, eff. 8-1-12.**