



REVENUE ...
Working For You

Alcoholic Beverages and Beer Tax Guide

December 2011

TENNESSEE TAXES ON ALCOHOLIC BEVERAGES AND BEER

Dear Tennessee Taxpayer,

This publication is designed to help taxpayers better understand the Tennessee taxes on alcoholic beverages and beer, including the collection and remittance of the taxes. The taxes on alcoholic beverages and beer are a part of the Tennessee tax structure. You may find compliance easier when you know more about these taxes. Please take time to acquaint yourself with how these taxes may apply to you. This guide to the taxes on alcoholic beverages and beer does not have the effect of law but is intended as an informal reference for taxpayers who wish to gain a better understanding of the requirements of the Tennessee taxes on alcoholic beverages and beer. It is not an all-inclusive document. The tax guide is not intended as a substitute for the statutes or Rules and Regulations concerning Tennessee taxes on alcoholic beverages and beer, nor is it intended to be a statement of Department of Revenue policy. The information in this guide is current as of the date of publication but could change as the tax laws, their interpretation, and their application do change from time to time because of legislative action, reviews, and court decisions.

Periodically, registered taxpayers are mailed information letters with updates on tax laws and policies. Be sure to read any letter you receive carefully; this information may save you time and money. Informational publications are also available for specific industries. Contact the Taxpayer and Vehicle Services Division to obtain these publications.

The Department of Revenue offers a toll free tax information line for Tennessee residents. The number is (800) 342-1003. Nashville or out-of-state callers may call (615) 253-0600. The Department of Revenue also offers a telecommunications device for the deaf (TDD) line at (615) 741-7398.

In addition, the Department of Revenue offers a HOT LINE number for the exclusive use of tax practitioners. In-state practitioners may call toll free (800) 397-8395. Nashville and out-of-state callers phone (615) 253-0700.

If you have questions, please do not hesitate to contact any of the offices listed below.

Sincerely,

Taxpayer and Vehicle Services Division

Tennessee Department of Revenue
Taxpayer and Vehicle Services Division
Andrew Jackson Building, 3rd Floor
500 Deaderick Street
Nashville, Tennessee 37242-1099

Toll Free: (800) 342-1003
Out-of-State: (615) 253-0600
TDD: (615) 741-7398

Regional Offices

Nashville:
1321 Murfreesboro Road
Nashville, TN 37217
(615) 360-0423

Chattanooga:
540 McCallie Avenue
Suite 350
Chattanooga, TN 37402
(423) 634-6266

Jackson:
Lowell Thomas State Office Building
225 Dr. Martin L. King Jr. Drive
Suite 340
Jackson, TN 38301
(731) 423-5747

Johnson City:
204 High Point Drive
Johnson City, TN 37601
(423) 854-5321

Knoxville
531 Henley Street
Room 606
Knoxville, TN 37902
(865) 594-6100

Memphis
3150 Appling Road
Bartlett, TN 38133
(901) 213-1400

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TENNESSEE TAXES ON ALCOHOLIC BEVERAGES AND BEER

ALCOHOLIC BEVERAGE COMMISSION [Tenn. Code Ann. Section 57-1-102]

The Alcoholic Beverage Commission is established by law as the licensing and regulatory body for all persons wishing to engage in the manufacturing, distilling, mixing, or selling of beverages containing certain percentages of alcohol. The scope of this regulation encompasses these beverages:

- + “Alcoholic beverage” or “beverage” - Includes alcohol, spirits, liquor, wine, high alcoholic content beer, and every liquid containing alcohol, spirits, or wine and capable of being consumed by a human being, other than patent medicine, or beer where the latter contains an alcoholic content of 5% by weight or less. It includes any liquid product containing distilled alcohol, capable of being consumed by a human being, made with distilled alcohol no matter what the alcoholic content. Products or beverages containing less than 0.05% alcohol by volume, other than wine as defined in Tenn. Code Ann. Section 57-3-101, shall not be considered to be alcoholic beverages and shall not be subject to regulation or taxation under Tenn. Code Ann. Title 57.
- + “Wine” - The product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine, and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed 21% by volume. No other product may be called “wine” unless designated by appropriate prefixes descriptive of the fruit or other product from which the beverage was predominantly produced, or an artificial or imitation wine.
- + “High alcoholic content beer” - An alcoholic beverage which is beer, ale, or other malt beverage having an alcoholic content of more than 5% by weight and not more than 20% by weight, except wine, as defined in Tenn. Code Ann. Section 57-3-101, that is brewed, regulated, distributed or sold, provided that no more than 49% of the overall alcoholic content of such beverages may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol.

The Alcoholic Beverage Commission consists of three members appointed by the governor. The commission has authority to appoint a director, assistant director, and a chief law enforcement officer who serves under the supervision of the director. No person is eligible to be appointed to, or employed by, the commission if that person or any family member has any interest, financial or otherwise, either direct or indirect, in any distillery, wholesale dealer, retail dealer, or building occupied by any such dealer licensed as such in the state of Tennessee.

Nor may any member of the commission own stock or any interest in such activity.

Powers and Duties of the Commission

The commission is authorized to adopt and promulgate the rules and regulations that pertain to alcoholic beverages. The commission may alter, amend, or repeal any parts of the rules and regulations as it deems necessary. The commission may promulgate rules governing the conduct of educational seminars conducted by businesses licensed under Tenn. Code Ann. Section 57-3-204. [Tenn. Code Ann. Section 57-1-209]

The commission is authorized to investigate and/or arrest, without warrant or process, any person who the arresting officer has probable cause to believe is committing or attempting to commit a felony in violation of Title 39, Chapter 17, Part 4, if the felony is committed on premises licensed by the commission, on any premises under investigation by the commission in conjunction with its other duties and responsibilities, or any other premises selling alcoholic beverages as defined in Tenn. Code Ann. Section 57-3-101, whether licensed or unlicensed. [Tenn. Code Ann. Section 57-1-210]

Licensing Procedures [Tenn. Code Ann. Section 57-3-104]

The commission has the authority, by and with the consent of the governor, to:

- + Employ persons necessary for the effective administration and enforcement of state law. It has the duty and power to issue all licenses in respect to, or for, the manufacture, importation, bottling, keeping, giving away, furnishing, possession, transportation, sale, and delivery of alcoholic beverages, and to revoke any license whatsoever, that it has the authority to issue.
- + Refuse to issue a license or permit if, upon investigation, it finds that the applicant for a license or permit has concealed or misrepresented any material fact or circumstance concerning the operation of the business or employment, or if the interest of the applicant in the operation of the business or employment is not truly stated in the application, or in case of any fraud or false swearing by the applicant touching any matter relating to the operation of the business or employment. If a license or permit has been issued, the commission shall issue a citation to the licensee or permittee to show cause why the license or permit should not be suspended or revoked. All data, written statements, affidavits, evidence, or other documents submitted

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in support of an application are a part of the application.

- + Make, alter, amend, or repeal rules and regulations and prescribe all forms of application, licenses, and tax stamps, and of all reports and other papers and documents required in the enforcement of Tenn. Code Ann. Title 57.

License Classifications

The Alcoholic Beverage Commission may issue, under provisions of state law, the classes of licenses and permits listed below. Beer permits are issued by the respective city or county government where the establishment seeking the license is located. Licenses and permits issued by the Alcoholic Beverage Commission are:

- + Manufacturer's, distiller's, or rectifier's license;
- + Liquor wholesaler's license;
- + Liquor retailer's license; and
- + Winery license. [Tenn. Code Ann. Section 57-3-207]
- + Nonresident seller's permit. [Tenn. Code Ann. Section 57-3-605]
- + Employee and Server permits. [Tenn. Code Ann. Section 57-3-702]
- + Direct Shipper's License [Tenn. Code Ann. Section 57-3-217]

Any person, firm, or corporation desiring to manufacture, distill, rectify, or sell wine or other alcoholic beverages must apply to the commission, on forms furnished by the commission, for a permit so to do. No person, firm, or corporation is authorized to engage in any of these activities until the permit is approved and issued by the commission. There are general requirements for all licenses and specific requirements that are pertinent to the type of license or permit required. For information regarding the licensing requirements, fees, and procedures, please contact the Alcoholic Beverage Commission at (615) 741-1602. Any person, firm, or corporation desiring to brew or sell beer should contact their local city or county government for applicable information.

The same entity that grants the license has the power to revoke the license for sufficient cause under Tenn. Code Ann. Section 57-5-108(a). Information relating to rules, procedures, applicable state and local laws, and license revocation and relief procedures should also be obtained from the licensing agency at the time of application.

Alcoholic Beverage Collectors

[Tenn. Code Ann. Section 57-3-209]

An "alcoholic beverage collector" is defined as a person who collects commemorative bottles containing alcoholic beverages, wine, or distilled spirits and displays the collection in a place available to the public, either by appointment or regular schedule, and who sells collectible alcoholic beverages for the purpose of collection, without the intent that the collectible beverage would be consumed.

A person qualifying as an alcoholic beverage collector may apply to the Alcoholic Beverage Commission for an alcoholic beverage collector's license. The application fee for such license is \$300 and the annual license fee is \$1,000. The license allows the collector to purchase beverages and to sell, in face-to-face transactions, collectible beverages to persons aged 21 or older. Sales prices must be at least 300% of the sales price of the same brand and quantity at a retailer of such beverages.

Alcoholic beverage collectors are liable for payment of all sales taxes due on such sales made by the collector to others. If the collector cannot demonstrate that the collectible alcoholic beverage was purchased from a licensed retailer, the collector will also be liable for payment of the appropriate wholesale gallonage taxes to the Department of Revenue.

Wine Direct Shippers

[Tenn. Code Ann. Section 57-3-217]

Any entity holding a federal basic permit issued under the Federal Alcohol Administration Act and in the business of manufacturing, bottling, or rectifying wine can apply to the Alcoholic Beverage Commission for a wine direct shipper's license. A person meeting the licensing requirements and receiving a direct shipper's license can make sales and deliveries of wine by common carrier to Tennessee citizens 21 years of age or older.

Sales cannot exceed nine liters to any individual during a calendar month or twenty-seven liters to one individual in a calendar year. Sales cannot be made to persons residing in local jurisdictions that have not authorized the sale of alcoholic beverages.

There is a fee of \$300 for the application and an annual license fee of \$150.

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Direct shippers must also remit to the Department of Revenue the appropriate Tennessee alcoholic beverage gallonage taxes on such sales as well as the required sales taxes resulting from such sales. Taxes will be due not later than the 20th of the month following the month in which the sale was made.

Winery Licenses

[Tenn. Code Ann. Section 57-3-207]

Winery licenses may be issued to any entity meeting the statutory requirements of Tenn. Code Ann. Section 57-3-207. The license holder may manufacture and bottle, but may not rectify, alcoholic vinous beverages unless the license holder also holds a license to distill and/or rectify alcoholic spirits. Wineries located outside Tennessee may apply for and receive winery licenses.

Applicants for winery licenses must remit a fee of \$300 with the license application. There is an annual license fee of \$150, which must be remitted prior to issuance of an approved license.

Licensed wineries may serve wine without charge as complimentary samples for tasting at the winery and then sell wine at retail in sealed containers at the winery, but not for consumption on the premises. Wineries may donate wine without charge to nonprofit religious, educational, or charitable organizations.

Wineries may exchange wine in bulk with other wineries. Such exchange will not be considered a sale.

In addition to its own wines, licensed wineries located in Tennessee may also sell on their own premises juices or concentrates derived from any agricultural products; items used in home winemaking; and other gifts, tourism, or wine-related products as allowed by regulation. Wineries located outside Tennessee may sell such items as their state laws allow.

Wineries located in Tennessee may sell no more than five cases or sixty liters of wine to a single retail customer in one day. Purchasers of wine from out-of-state wineries cannot legally transport into Tennessee more than five cases or sixty liters of such wine in one day. Persons purchasing and transporting such wine must have a bill of sale that identifies the nature, quantity, purchaser, and date and place of purchase of the wine.

Bills of sale for wine purchased outside Tennessee must reflect that the wine was purchased for transport into Tennessee and that Tennessee taxes have been paid.

Wine Festivals

Any nonprofit entity organized to encourage and support grape growing and winemaking with membership of ten or more such licensed wineries as members can hold no more than eight wine festivals per calendar year. Each festival cannot exceed 72 hours in length.

Participating wineries can transport and offer one-ounce complimentary samples of their wines at such festivals. Server permits issued by the Alcoholic Beverage Commission are required. Participating wineries can also offer sales of their wine products for consumption off the premises.

Nonprofit entities holding wine festivals must obtain a special occasion license from the Alcoholic Beverage Commission in order to serve complimentary samples and make sales of wine for consumption off the premises.

Manufacturers and Distillers

Any manufacturer or distiller holding a retail license may serve samples of the product manufactured or distilled to any person of legal drinking age without cost and may include such samples as part of a tour of the manufacturer's or distiller's premises. The samples made by made available on the premises of the retailer or at any other location of the manufacturer or distiller when the other location has been reported to the Alcoholic Beverage Commission and permitted by federal law. [Tenn. Code Ann. Section 57-3-204(f)(6)]

High Alcoholic Beer Manufacturers [Tenn. Code Ann. Title 57, Chapter 3]

A manufacturer of high alcoholic content beer may manufacture such product in any jurisdiction in which the voters have approved both retail package sales and sales for consumption on the premises and in any jurisdiction if the manufacturer holds a Brewer's Notice approved by the US Department of the Treasury, Alcohol, and Tobacco Tax and Trade Bureau.

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If such manufacturer holds a retail license to sell alcoholic beverages, the manufacturer can make retail sales of its product at a retail location on the manufacturer's premises. The manufacturer can sell no more than five gallons or 1/6th barrel of beer, or any combination, to any one individual per visit to the premises.

The manufacturer may also hold a license as a restaurant or limited service restaurant located on the manufacturer's premises and may sell the manufacturer's beer at such a restaurant.

If the manufacturer obtains a license to sell its product at a retail store on the manufacturer's premises, the local jurisdiction shall impose a 15% inspection fee on the wholesale price of such high alcoholic content beer sold at the retail store to inspect the retail store.

The gallonage taxes imposed on sales of high alcoholic content beer are the same as those imposed on alcoholic beverages in Tenn. Code Ann. Sections 57-3-302 or 57-3-303, whichever is applicable.

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SALES OF ALCOHOL FOR CONSUMPTION ON THE PREMISES (Liquor by the Drink) [Tenn. Code Ann. Section 57-4-101]

Under state law, it is legal for certain taxpayers to sell alcoholic beverages, wine, and beer for consumption on the premises. These taxpayers, as defined in Tenn. Code Ann. Section 57-4-102, include:

- + Hotels and motels.
- + Commercial passenger boat companies.
- + Restaurants.
- + Commercial airlines.
- + Passenger trains.
- + Charitable, nonprofit, or political organizations.
- + Tourist resorts or clubs.
- + Convention centers.
- + Historic performing arts centers.
- + Urban park centers.
- + Historic interpretive centers.
- + Community theaters.
- + Historic mansion houses.
- + Terminal buildings of commercial air carriers.
- + Zoological institutions.
- + Museums.
- + Commercial airline travel clubs.
- + Public aquariums or aquarium exhibition facilities.
- + Caterers.
- + Sports authority facilities.
- + Clubs.
- + Bed and breakfast establishments.
- + Motor speedways
- + Theaters.
- + Paddlewheel steamboat companies.
- + Special historic district (wine only).
- + Other facilities as specified.

These taxpayers are very specifically defined in Tenn. Code Ann. Section 57-4-102. Any taxpayers with questions as to whether or not they qualify as one of the entities listed above should read the cited Tennessee code section or call the Alcoholic Beverage Commission.

Local Referendum Required

Although these taxpayers are qualified to sell liquor by the drink under state law, none may engage in sales of alcoholic beverages and wine for consumption on the premises in any county or municipality that has not approved these sales by a popular referendum in that county or municipality. Approval of these sales by referendum must be certified to the Alcoholic Beverage Commission by the county election commission. If a county referendum has approved sales of alcoholic beverages, wine, or beer for consumption off the premises, then any municipality within that county

may conduct a referendum to authorize sales for consumption on the premises within the boundaries of that municipality.

Application Procedure

If sales for consumption on the premises, also referred to as liquor by the drink, have been approved in the county or municipality, then qualified entities may apply to the Alcoholic Beverage Commission, according to the commission's requirements, for a permit to sell wine and spirits. (They must apply to the local authorities for approval to sell beer.) Restaurants may apply to sell wine only, under the provisions of Tenn. Code Ann. Section 57-4-101(c)(1). After receipt and proper investigation of the application, the Alcoholic Beverage Commission will decide whether or not a permit will be issued. For complete licensing requirements and rules, call the Alcoholic Beverage Commission.

Bond Requirement [Rule 1320-4-2-.02]

Each person seeking a license to make sales for consumption on the premises must, as a condition prior to the granting of the license, post security with the Commissioner of Revenue. This security may be in the form of a corporate surety indemnity bond, a cash deposit, or a bond secured by a certificate of deposit. This security will be posted to insure proper payment of all taxes incurred for which the applicant may become liable.

For all licensees, other than restaurants selling only wine, the amount of the initial security will be \$10,000. For restaurants selling only wine, the amount of the initial security will be \$2,000. After the first 3 months of operations and timely submission of all required reports and returns, the licensee can submit a written request to have the security adjusted to 4 times the average monthly tax liability of the first 3 months. The security amount cannot be adjusted to less than \$1,000.

After the first 3 months of doing business, the commissioner may also determine that the security should be adjusted to 4 times the average monthly tax liability. If required, additional security must then be posted to cover the amount required. Failure to post security as determined by the commissioner, or forfeiture or cancellation of any portion of the security posted, will cause any application for license or renewal of license to be disapproved.

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The provisions of this rule shall also apply to restaurants selling wine only, except that the “wine only” licensee may request, after the first 3 months of operation, that the commissioner adjust the amount of the security required to 20% of 4 times the average monthly tax liability, but not less than \$1,000. The commissioner may also determine, after the first 3 months of operation, that the amount of security must be adjusted to equal 20% of 4 times the monthly tax liability.

Taxes and Fees

[Tenn. Code Ann. Section 57-4-301]

Any person engaging in the retail sales of alcoholic beverages, wine, or beer for consumption on the premises is exercising a taxable privilege. The state legislature has established the following state taxes, to be paid annually:

<u>Entity</u>	<u>Tax July 1, 2004</u>	<u>Previously</u>
Private Club	\$ 500	\$ 300
Convention Center	\$ 1000	\$ 500
Premier Type Tourist Resort	\$ 2000	\$ 1500
Historic Performing Arts Center	\$ 150	\$ 300
Urban Park Center	\$ 150	\$ 500
Commercial Passenger Boat Company	\$ 1250	\$ 750
Historic Mansion House Site	\$ 150	\$ 300
Historic Interpretive Center	\$ 150	\$ 300
Community Theater	\$ 150	\$ 300
Zoological Institution	\$ 150	\$ 300
Museum	\$ 150	\$ 300
Commercial air carrier terminal building facility	\$ 1500	\$ 1000
Commercial Airline Travel Club	\$ 1000	\$ 500
Public Aquarium	\$ 150	\$ 300
Motor Speedway	\$ 2000	\$ 1000
Sports Facility	\$ 2000	\$ 1000
Theater	\$ 150	\$ 300

	07/2006	07/2005	07/2004	07/2003
Restaurant				
75-125 Seats	\$ 750	\$ 700	\$ 650	\$ 600
126-175 Seats	\$ 925	\$ 850	\$ 800	\$ 750
176-225 Seats	\$ 975	\$ 900	\$ 850	\$ 800
226-275 Seats	\$ 1100	\$ 1025	\$ 950	\$ 900
276 Seats and over	\$1200	\$ 1125	\$ 1050	\$ 1000
Restaurant (wine only)				
40-125 Seats	\$ 270	\$ 220	\$ 170	\$ 120
126-175 Seats	\$ 300	\$ 250	\$ 200	\$ 150
176-225 Seat	\$ 310	\$ 260	\$ 210	\$ 180
226-275 Seats	\$ 330	\$ 280	\$ 230	\$ 180
276 Seats and over	\$ 350	\$ 300	\$ 250	\$ 200

	07/2006	07/2005	07/2004	07/2003
Hotel or Motel				
0 – 99 rooms	\$ 1000	\$ 1000	\$ 1000	\$ 1000
100 – 399 rooms	\$ 1250	\$ 1200	\$ 1000	\$ 1000
400 rooms plus	\$ 1500	\$ 1400	\$ 1200	\$ 1000

Special Historic District (Wine Only) \$ 100
[Tenn. Code Ann. Section 57-4-301(g)]

Each county **or** municipality where one of these entities exercises its privilege may also levy and collect the privilege tax separately. However, the privilege tax collected by the county or municipality is based upon 2003 rates.

Tax on Gross Sales

In addition to these taxes, a 15% Tennessee tax is also levied on these establishments on the gross sales of all alcoholic beverages and wine for consumption on the premises.

Commercial Airlines, Paddlewheel Steamboats, and Passenger Trains

In lieu of the taxes listed above, commercial airlines, paddlewheel steamboats, and passenger trains will pay an annual licensing fee of \$1250. In addition, these entities must pay Tennessee tax on alcoholic beverages brought into this state on which Tennessee tax has not been paid. Their tax liability is determined by a two-fold apportionment computation. First, the entity must multiply the quantity of each type of alcoholic beverage purchased within its operating system by the ratio of its revenue passenger miles in Tennessee to the total revenue passenger miles within its system. Next, the entity must multiply the respective results obtained in this computation by \$1.21 per gallon of wine and \$4.40 per gallon of spirits apportioned to Tennessee.

Art Galleries

Effective June 15, 2004, art galleries that do not sell food or beverages and that receive 90% of their revenue from the sale of artwork may serve wine to patrons without a charge. These art galleries are not required to pay a license fee or taxes related to the privilege of serving wine. [Tenn. Code Ann. Section 57-4-105]

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Restrictions on the Disposition of Alcoholic Beverages [Rule 1320-4-2-.04]

No licensee may make any disposition of liquor or wine other than through sales for consumption on the premises.

- + A license holder may also suffer a loss of inventory through theft, breakage, or acts of nature. If this happens, the licensee can be permitted to reduce inventory by the amount of beverage lost by supplying proper proof of the loss to the department, and thereby eliminate the tax liability for the lost beverages.
- + Theft: As soon as feasible after the theft, provide the department with proof that the theft was reported to the proper law enforcement agency and that the insurer of the goods has paid for the loss. Upon receipt of the proof, the department will issue the licensee a certificate, a copy of which must be retained in the licensee's records for 3 years as authorization for the inventory reduction.
- + Breakage or acts of nature: As soon as feasible after the loss occurs, obtain the assistance of an agent of the department to observe the loss and furnish a certificate of loss. The certificate must state the quantity and brand of liquor on which the federal strip stamp remains intact, and the quantity and brand of wine, on which the crown, cap, seal, or cork remain intact and unbroken.
- + In instances when the container is unbroken but the contents are considered unsalable by the Pure Food and Drug Administration or other appropriate authority, the licensee can be allowed the inventory reduction if the contents are destroyed by or in the presence of a department agent and so certified. A copy of either certification must be retained for 3 years as documentation of the reduction.

Wine or Spirits Used in Food Preparation

Wine or distilled spirits to be used in the preparation of food will be stored separately from those sold by the drink for consumption on the premises. They must be used exclusively in the preparation of food. If any portion of the contents of a bottle is sold by the drink for consumption on the premises, the entire contents of the bottle will be taxed.

Reports to the Commissioner [Rule 1320-4-2-.05]

Each applicant will provide the Commissioner of Revenue, on prescribed forms, price schedules of all alcoholic beverages offered for sale, and show the regular sales price of each drink listed, including the applicable sales tax and alcohol beverage tax. When

drinks are sold at other than the regular sales price, as during happy hour, the schedule shall reflect the event or activity, the number of hours per day and days per week, and the special price at which the drinks are sold.

These schedules must be provided at the time of application and must be updated when any change is made in the information contained on the schedule.

Returns and Payment [Tenn. Code Ann. Section 57-4-302]

The Commissioner of Revenue is the collecting authority for the state taxes listed here, and may promulgate rules and regulations to implement full collection. The tax will be collected from the consumer and will be remitted by the retailer.

The tax is due monthly, on the first day of the following month. On or before the 15th day of each month, each licensee will send the Department of Revenue returns showing the gross sales of all sales taxable under this tax during the preceding month. A separate return must be filed for each established place of business. The amount of tax due will be remitted at the same time. Failure to remit the tax by this date will cause it to be delinquent.

The commissioner may, at the written request of the licensee, authorize a taxpayer to file on an accounting period other than monthly. In this case, the licensee will file the return on or before the 15th day of the month following the end of the reporting period. All other reporting requirements remain the same.

Extension

The commissioner may, for good cause, grant an extension of time, not to exceed 30 days, for a licensee to file the return and pay the tax due. Requests for extension must be made in writing, state why the extension is needed, be signed by the licensee, and be made prior to the due date of the tax return and tax. [Tenn. Code Ann. Section 57-4-304(a)]

Failure to File Timely Returns

When any taxpayer fails to file a timely return or is delinquent in payment of tax for the third time in any one-year licensing period, the commissioner may recommend to the Alcoholic Beverage Commission that the license of that taxpayer be revoked or suspended. It is a misdemeanor for any licensee to

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continue in business after revocation or suspension of the license. Each day in business constitutes a separate violation. [Tenn. Code Ann. Section 57-4-304(b)]

If a licensee becomes delinquent in the payment of the tax, the commissioner may notify, by registered mail, any person, including the Alcoholic Beverage Commission, having in their possession or control any credits or other personal property belonging to the delinquent licensee, or owing any debts to the licensee at the time of the delinquency. No one so notified may make any disposition of those debts or properties without the approval of the commissioner, or until 30 days elapse from the receipt of the notice. Any person receiving such notice must advise the Alcoholic Beverage Commission of such property, credits, or debts within 5 days. [Tenn. Code Ann. Section 57-4-305]

Records

[Rule 1320-4-2-.06]

Every person licensed for sales for consumption on the premises is required to properly report and pay the applicable tax on sales. To do so, records must be maintained that will provide a daily record of sales clearly distinguishing between regular sales and happy hour or special price sales, and all purchases of alcoholic beverages distinguishing between alcoholic beverages used in cooking and for drinks. These records must be maintained for 4 years and must include:

- + A monthly inventory by brand of the value of stock on hand as of the last day of each month.
- + A daily record of all sales. Entries for sales of alcoholic beverages must not be commingled with sales of food, beer, or other items. Entries on documents evidencing sales of alcoholic beverages should be made either on a separate document or on the bottom or reverse of any document showing sales of other items. If cash registers are used, tapes must be keyed separately for sales of alcoholic beverages and sales of beer, food, or other items. Summary totals will not be accepted unless supported by the itemized tape used to arrive at such totals.
- + Receipts derived from the sales of alcoholic beverages sold at other than regular prices, as posted with the department, on the price schedule (happy hour sales, etc.) must be clearly recorded on cash register receipt tapes and/or guest checks showing the total sales during a particular period or activity. Summary totals and/or grand totals of such tapes will not be accepted unless supported by the itemized tape used to arrive at the total.

- + A record of all alcoholic beverages purchased including all invoices, delivery tickets, bills of lading, and copies of purchase orders. The purchase dates will be considered to be the invoice dates.
- + A perpetual inventory record of all alcohol or wine used in cooking. Cooking alcohol and wine must be stored separately from alcoholic beverages, used exclusively for cooking purposes, and accounted for as a food item.

Transfer of Business Ownership

[Rule 1320-4-2-.08]

Any person who purchases or obtains ownership of a business engaged in making sales of alcoholic beverages for consumption on the premises will not make any sales of alcoholic beverages prior to receiving a license from the Alcoholic Beverage Commission and registering for sales and alcoholic beverage taxes with the Department of Revenue. Any person making sales before accomplishing these actions will be held liable for the tax on those sales, and will be operating illegally under state law.

Any person who sells, transfers, or otherwise terminates ownership in a business engaged in sales of alcoholic beverages for consumption on the premises must provide notice of the sale, transfer, or termination to the Department of Revenue within 15 days of the effective date of the sale, transfer, or termination. "Notice" means direct written notice to the department as part of the final alcoholic beverage return and final sales tax return of the business. The business's alcoholic beverage license must also be surrendered to the Alcoholic Beverage Commission. [Tenn. Code Ann. Section 57-4-303]

Any person who, upon sale or transfer of the business, allows or permits the new owner or operator to remit tax, make wholesale purchases, or conduct business in any manner using the seller's or transferor's alcoholic beverage license or tax registration will be jointly and severally liable with the new owner or operator for any unpaid taxes accrued during the period of illegal operation. Any person that fails to provide the required notice to the Department of Revenue, with the result that the new owner continues to operate under the seller's or transferor's alcoholic beverage license, will be presumed to have allowed the illegal operation to occur.

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MIXING BAR TAX

[Tenn. Code Ann. Section 67-4-410]

Any person selling mixed drinks and/or setups for mixed drinks in any location is liable for a gross receipts privilege tax on sales of those items. The tax rate is 15% of gross sales.

The term “mixed drinks and/or setups for mixed drinks” includes any sales of beverages containing any alcoholic content, except for beer, and includes sales of water, soft drinks, ice, or any item capable of being used to prepare a mixed drink at a place of business. It also includes the sales of setups for mixed drinks to be consumed by persons supplying alcoholic beverages from their own container (for example: bring-your-own-bottle) on the premises of any business holding a license to dispense alcoholic beverages for consumption on the premises.

This tax is applicable to any sales of mixed drinks or setups, as defined above, regardless whether the drinks or setups are consumed on the premises of the business or off the premises. It also applies to any country club; nightclub; private clubs such as social, dinner, athletic, or sporting clubs; and fraternal societies, orders, or associations making sales of these items.

Exceptions

This tax does not apply to liquor wholesalers licensed under Tenn. Code Ann. Section 57-3-203. It also does not apply to sales of setups made by cafes, cafeterias, or restaurants where their sales are incidental to their primary business, selling prepared meals, and where no bar or separate facility is maintained for the purpose of selling mixed drinks or setups.

Returns and Payment

The mixing bar tax is due monthly and must be remitted to the Department of Revenue not later than the 20th day of the month following any month in which the taxpayer has gross receipts from any sales of mixed drinks or setups. The tax is due from persons making these sales even if the sales were not made legally under the pertinent county or municipal code respective to the location of the sale.

Records

Persons making sales and remitting the tax will maintain pertinent records, as required by state law, for audit review; these records will include records of all purchases and gross receipts from the sales of bottled beverages, mixed drinks, and setups.

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BRAND REGISTRATION

[Tenn. Code Ann. Section 57-3-301]

“Brand” Defined

Each and every distilled spirits or wine product bearing a distinct “brand name” or “trade name”, as those terms are defined and used in the regulations put into effect by the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF), concerning labeling of wines and distilled spirits, are considered a separate brand for tax purposes in Tennessee.

Within the group of wine or distilled spirits products bottled, manufactured, distilled, rectified, imported, or marketed under a particular “brand name” or “trade name” as previously defined, products that fall within separate classes or types, as defined in the standards of identity for the several classes and types of wine and distilled spirits put into effect by the ATF, will also be considered separate brands for Tennessee tax purposes. Wine or distilled spirit products that differ only in the amount of alcohol they contain shall not be considered as separate brands.

Examples are given below. This is not an all-inclusive listing of the many brands defined under the law.

- + Grape wine, sparkling grape wine, and carbonated grape wine are considered separate brands of grape wine. Further, champagne, champagne style, and crackling wine are all considered different brands of sparkling grape wine.
- + The major category brands of distilled spirits are neutral spirits or alcohol, whiskey, gin, brandy, blended applejack, rum, tequila, cordials and liqueurs, flavored distilled spirits, imitations, geographical designations, and products without geographical designations but distinctive of a particular place. Further, brands of whiskey are bourbon whiskey, whiskey distilled from bourbon, light whiskey, blended whiskey, blended straight whiskey, spirit whiskey, scotch whiskey, Irish whiskey, and Canadian whiskey.

The Measure of the Tax

[Tenn. Code Ann. Section 57-3-301(b)]

Every manufacturer or importer distributing brands of alcoholic beverages in Tennessee must properly register each brand distributed by them and pay the

proper amount of brand registration privilege tax to the Department of Revenue. The privilege tax year is from June 1 through May 31 each year. All documents must be filed, and the tax paid, by May 1 each year; the tax is delinquent after May 31.

The tax is based on the number of cases of each brand sold during the previous 12-month period. If a particular brand was not sold for the entire 12-month period, the tax will be based on the average monthly sales of that brand times 12. Tax is due in the following amounts:

- + For each brand of distilled spirits for which actual wholesale sales were 50 cases or more, the tax is \$250 per year.
- + For each brand of distilled spirits for which actual wholesale sales were less than 50 cases, the tax is \$100 per year.
- + For each brand of wine for which actual wholesale sales were 250 cases or more, the tax is \$250 per year.
- + For each brand of wine for which actual wholesale sales were less than 250 cases, there is no tax due.

Introduction of a New Brand

[Tenn. Code Ann. Section 57-3-301(e)]

No manufacturer, importer, or representative can introduce any brand of alcoholic beverage into Tennessee until the tax has been paid to the Department of Revenue. Likewise, no wholesaler can give an order for, receive, accept, or offer for sale any brand of alcohol beverages until the brand has been registered and the annual tax paid to the department.

Any manufacturer or importer that wishes to introduce a new brand of alcoholic beverage in Tennessee, one that has not been distributed previously in this state, will first register the brand and pay the tax of \$250 per brand being registered. The \$250 tax payment will be prorated on the basis of 1/12 of the tax for each month remaining in the privilege tax year in which the brand is registered. Any manufacturer or importer paying a prorated amount upon initial registration will pay, for the first subsequent full privilege tax year, an amount based on the average monthly number of cases sold at wholesale in Tennessee during the initial partial year times 12.

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Failure to Register a New Brand **[Rule 1320-4-6-.07]**

If a manufacturer or distributor fails to register or improperly registers a new brand, the department will notify that person to cease distribution in Tennessee until proper registration is made. The department will also notify the Alcoholic Beverage Commission that the person's permit should be suspended pending proper registration. If proper registration does not ensue within 30 days, any unregistered or improperly registered beverages will be seized and sold by the department.

In addition to paying the applicable tax each year, each manufacturer or distributor will file, with the department, copies of all written contract or renewal agreements with Tennessee wholesalers making sales of their brands in this state, copies of the labels of each brand of alcoholic beverages distributed in this state, copies of the approved ATF Form 1649, and any other reports or forms required by the Commissioner of Revenue. Copies of labels and forms need not be filed every year, but must be filed initially and when any label change or filing addition is made.

Transfer of Brands **[Rule 1320-4-6-.07]**

No manufacturer or importer will be permitted to transfer a brand from one wholesale distributor to another or terminate a contract prior to the expiration of its term without written permission of the commissioner. Request for approval of transfer or termination must be submitted in writing with a copy submitted simultaneously to the wholesale distributor in whose name the brand is currently registered.

Upon receipt of the request to terminate, the department will notify both the requesting party and the wholesale distributor that they have 30 days to resolve any deficiency. There will be no change in the brand during those 30 days. If, at the end of the 30-day period, the requesting party wishes to continue, it must notify the department in writing of

that intention. If a request to proceed is received, the commissioner will make a determination as to whether there is good cause to transfer the brand, and notify the parties when the decision is reached. The parties then have 10 days to request a hearing before the decision becomes final. If a hearing is requested, the decision will not take effect unless the hearing officer approves the transfer or termination.

Rulings of good cause could be made if any of these situations were found to exist:

- + The wholesaler's failure to substantially comply with the requirements of the manufacturer or distributor when those requirements were neither discriminatory when compared with requirements imposed on other wholesalers nor in violation of any law or regulation.
- + The wholesaler's failure to act in good faith and in a commercially reasonable manner in fulfilling the contract.
- + Voluntary abandonment of the contract.
- + The wholesaler's conviction in court of an offense punishable by imprisonment of more than 1 year.
- + Any act by the wholesaler that substantially impairs the manufacturer or importer's name or trademark.
- + Institution of insolvency or bankruptcy proceedings against the wholesaler or the wholesaler's assignment for the benefit of creditors.
- + The wholesaler's failure to pay the manufacturer or distributor within 30 days of notification of any past due monies owed that relate to the contract.
- + The wholesaler's failure to comply with any federal, state, or local law or regulation material to the operation of the distributorship that could impair the wholesaler's future performance.

TENNESSEE TAXES ON ALCOHOLIC BEVERAGES AND BEER

WHOLESALE GALLONAGE TAX

Liability

[Tenn. Code Ann. Section 57-3-303(a)]

Any wholesaler that imports alcoholic beverages into Tennessee or receives alcoholic beverages manufactured in Tennessee for eventual retail sale, in any size retail container, or in-state distribution by sale or gift will pay a tax on each gallon or portion of a gallon distributed or sold.

Any manufacturer or rectifier licensed to manufacture alcoholic beverages in Tennessee will pay the tax directly to the Department of Revenue on the amount of its own product that is needed for its own use, not to exceed 100 cases per month. Out-of-state shipments of alcoholic beverages from Tennessee manufacturers or distillers, made to persons holding both federal and state licenses to sell alcoholic beverages, will not be subject to the tax. [Tenn. Code Ann. Section 57-3-303]

Any person possessing more than five gallons of alcoholic beverages will have the burden of proof that all applicable taxes have been paid on those beverages. [Tenn. Code Ann. Section 57-3-304]

This is a state tax only. No county or municipality or other taxing district has the power to levy a like tax. [Tenn. Code Ann. Section 57-3-305]

The Measure of the Tax

The tax on the sale or distribution of wine is \$.31966 per liter or \$1.21 per gallon.

The tax on the sale or distribution of spirits is \$1.16237 per liter or \$4.40 per gallon.

Exceptions

The tax on the sale or distribution of wine does not apply to the sale, gift, or distribution of any wine manufactured, sold, given away, or distributed and used solely as sacramental wine. [Tenn. Code Ann. Section 57-3-302]

The tax on intoxicating liquor or alcoholic beverages with an alcohol content of more than 5% will not be applicable to those beverages sold for consumption within the geographical boundaries of a fort, base, camp, or post of the armed forces of the United States or to post exchanges, ship service stores,

commissaries or messes operated by the United States armed forces. This exemption will be applied in the form of a credit for taxes paid on these beverages. The credit shall be allowed only upon application by the wholesaler or distillery making deliveries of the intoxicating beverages. In addition to the application for credit, the requestor will need to furnish a copy of the invoice with the signature of a person having proper authority over the Post Exchange, ship service store, commissary, or mess certifying that the alcoholic beverages were sold and delivered to the military entity. [Tenn. Code Ann. Section 57-3-303(k)]

Payment

The wholesale gallonage tax is payable on the first day of the month following the month when the taxable transactions occur. It will be delinquent if not paid on or before the 15th day of that following month.

The tax remitted on the return will be based on the adjusted gross sales for the preceding calendar month. "Adjusted gross sales" means the total disposition of all alcoholic beverages except:

- + Sales to other wholesalers.
- + Returns to distillers or other suppliers, or exports authorized by suppliers to other than distillers.
- + Damaged or deteriorated merchandise that has been destroyed or house breakage of wines and distilled spirits on which the federal tax strip stamp is intact.
- + Sales, gifts, or distribution of wine used solely for sacramental purposes.
- + Beverages accidentally damaged or destroyed on the business premises by fire or other acts of nature.
- + Sales to qualified military installations of the federal government.

Records

Each wholesaler, distiller, or manufacturer required to file a return shall keep accurate and complete books and records, accounts, and other documents as may be deemed necessary by the commissioner and the commission to substantiate the accuracy of the wholesaler, distiller, or manufacturer's return and the amount of tax due, and shall retain such records for a period of 3 years. [Tenn. Code Ann. Section 57-3-303(d)]

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Documenting Credits from Gross Sales

[Rule 1320-4-6-.02]

Sales to Other Wholesalers

Tax-free sales to other wholesalers must be supported by properly documented sales invoices in the consignor's records and receipts in the consignee's records.

Returns or Exports

Products returned to distillers, or exports authorized by suppliers, must be documented with:

- + Evidence of authorization from the supplier for return or export of the specific product.
- + A copy of the bill of lading regarding the product shipped.
- + An affidavit from the person receiving the returned or exported product indicating the product received and, for distilled spirits, the destruction of the identification stamps on those products.
- + Documentary evidence from the supplier that credit has been afforded the wholesaler for the returned or exported products.

The documentation for any returned product or exports for which tax relief is claimed will be attached to the tax return for the month in which the relief is claimed. No relief will be granted until all documentation required is attached to one return and is received by the department.

House Breakage

Before relief can be granted for house breakage, the wholesaler must obtain the assistance of a department representative. The representative will observe the broken containers and furnish documentation of the broken containers of spirits on which the federal strip stamp and manufacturer's seal are intact or the containers of wine on which the crown, cap, seal, or cork remain intact.

Sacramental Wine

Sales invoices applicable to the tax-free sales of wine for sacramental purposes must be signed by an authorized person designated in a letter from an official of the church or synagogue receiving the wine. The authorized person's signature must also be on file with the department as a matter of record.

Loss by Fire or Act of Nature

The wholesaler must furnish documentary evidence, which the Department of Revenue may use to reasonably determine that a specific loss has occurred by fire or other act of nature, before relief from tax liability may be granted.

Military Sales

These conditions must be met before a wholesaler may receive relief from liability for sales made to a fort, base, camp, post, post exchange, ship service store, commissary, or mess:

- + The commanding officer of the military installation must furnish the Commissioner of Revenue with a letter designating a person to sign invoices acknowledging the receipt of the products and a copy of the signature of this person.
- + The person so designated must have signed each invoice acknowledging receipt of the products and a certificate summarizing the items received. The designated person will also certify that the products received will be sold for consumption within the geographical boundaries of the military installation.

Copies of all invoices and the certificate must be attached to the monthly return for substantiation of the requested credit.

Wholesaler's Bond Requirement

A cash bond, or surety bond with a solvent surety company qualified to do business in Tennessee, must be posted with the department annually. The amount of the bond will not be less than 110% of the average monthly tax liability of the wholesaler for the preceding 12-month period.

A wholesaler that is beginning business must file an initial bond for a 4-month period in an amount determined by the commissioner. At the end of the 4-month period, the amount will be adjusted for the balance of the 12-month period or until the following July 1, whichever occurs first, to equal not less than 110% of the average tax liability for the initial 4 months.

Any taxpayer that has been in continuous operation for 3 consecutive years, and has timely paid the gallonage tax, for which the taxpayer is liable within the past 12 months, will not be required to execute or maintain a bond.

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Wholesaler's Bond Requirement (cont'd)

Wholesalers beginning business are required to file, with the Commissioner of Revenue, a cash or surety bond with a solvent company qualified to do business in this state, in an amount no less than \$75,000 for an initial period of four months. At the end of the four-month period, the bond will be adjusted for the balance of the twelve-month period, or until the following July 1, whichever occurs first, in an amount no less than 110% of the average monthly tax liability incurred during the initial full four-month period engaged in business.

If, at July 1 following beginning of business, the wholesaler has been in business for less than twelve full months, the wholesaler will determine the amount of the renewal bond for the ensuing year by dividing the total tax liability incurred during the period from opening of business until July 1 following the beginning of business by the number of months actually engaged in business to arrive at the monthly average tax liability. This amount will then be multiplied by 110% to arrive at the amount of bond to be posted for the ensuing year.

Transportation of Alcoholic Beverages **[Tenn. Code Ann. Section 57-3-403]**

State law prohibits any person, firm, or corporation, other than a common carrier, from transporting, either in person or through an agent, employee, or independent contractor, untaxed alcoholic beverages within, into, through, or from the state of Tennessee, in quantities in excess of five gallons. This applies in either wet or dry counties. Any person may receive, possess, and transport alcoholic beverages, in any jurisdiction in which the retail sale of alcoholic beverages for consumption off the premises has been legalized, if all appropriate taxes as required by law have been paid upon those beverages. [Tenn. Code Ann. Section 57-3-403]

Transporter's Bond Requirement

Before any person may transport any alcoholic beverages within, into, through, or from this state, except by means of common carrier, that person must post, with the Alcoholic Beverage Commission, a bond with approved surety payable to the state of Tennessee, in the penalty of \$1,000, upon condition that the transporter will not unlawfully transport or deliver any alcoholic beverages within, into, through, or from this state. Evidence that the required bond has been posted must accompany the alcoholic beverages at all times during transportation. No such bond will be required of any person licensed under this chapter to sell alcoholic beverages at wholesale when those alcoholic beverages are being transported in a vehicle belonging to the licensee. [Tenn. Code Ann. Section 57-3-403(a)(1)]

Documents Required for Shipment

A bill of lading, or other memorandum of shipment signed by the consignor, showing an exact description of the alcoholic beverages being transported; the name and address of the consignor; the name and address of the consignee; and the route to be traveled by such vehicle while in Tennessee will accompany alcoholic beverages at all times during transportation. This route must be the most direct route from the consignor's place of business to the place of business of the consignee. Vehicles transporting alcoholic beverages shall not vary from the route specified in the bill of lading or other memorandum of shipment. [Tenn. Code Ann. Section 57-3-403(a)(2)]

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WHOLESALE CASE TAX ON ALCOHOLIC BEVERAGES [Tenn. Code Ann. Section 57-6-201]

There is also imposed an additional tax on the wholesale sale of alcoholic beverages. This tax rate is 15 cents per case of each alcoholic beverage sold in Tennessee.

Returns and Payment

The wholesaler will pay this tax monthly based on the number of cases sold during the previous month. It is the wholesaler's duty to file a report, on or before the 15th of each month, with the Commissioner of Revenue showing information relating to the sales and disposition of all alcoholic beverages and any other information that the commissioner may require.

Each distiller, rectifier, vintner, and importer selling wine or distilled spirits to licensed wholesalers in Tennessee will send a duplicate of the sales invoice to the commissioner. Attached to the duplicate invoice will be copies of all papers, exhibits, etc., which may be attached to the original invoice.

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BEER AND ALCOHOLIC BEVERAGES CONTAINING UP TO 5% ALCOHOL

Registration of Manufacturers and Wholesale Distributors [Tenn. Code Ann. Section 57-5-102]

“Beer” is defined as beer, ale, other malt beverages, or any other beverages having an alcoholic content of not more than 5% by weight, except wine as defined in Tenn. Code Ann. Section 57-3-101(20). No more than 49% of the over alcoholic content of such beverages may be derived from the addition of flavors and other non-beverage ingredients containing alcohol. [Tenn. Code Ann. Section 57-5-101(b)]

Every person in Tennessee who engages in the manufacture or wholesale distribution of beer is required to first register its name and address, by mail or in person, with the Commissioner of Revenue. Any registered entity also must receive, and keep posted at its usual place of business, a certificate of registration bearing a serial number assigned to that person, firm, corporation, joint-stock company, syndicate, or association by the commissioner. The registration shall be made and certificate of registration received and posted before business commences.

The registration cost is \$20 for wholesalers and \$40 for manufacturers and is to be paid by the applicant before a certificate is issued. Once issued, the certificate must be renewed annually, on or before January 1, by payment of the registration fees.

Failure to Register

Any person required to be registered, who fails to register with the commissioner within 20 days after entering business, or who fails to obtain a renewal of registration for the current year by January 20, will have a penalty of \$5 a month for each month or fractional part of a month during which such failure continues added to the cost of registration. The total penalty assessment may not exceed an amount equal to the registration fee.

In addition to the specific mandatory penalty, any person who engages in any business or activity knowing a certificate of registration is required from the commissioner, without first having obtained the certificate, or who, having obtained the certificate, continues to engage in or conduct business after the certificate has been revoked or suspended, will be liable to a penalty of not more than \$100 to be imposed at the discretion of the commissioner. Each

day that such business or activity is so engaged in or conducted may be deemed a separate offense at the discretion of the commissioner.

County or City Permit Required [Tenn. Code Ann. Section 57-5-103]

It is unlawful, under the authority delegated by state law to counties and cities, to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a permit issued by the county or city where that business is located. Permits will be issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndicate, or association. A permit is valid:

- + Only for the owner to whom the permit is issued. A permit cannot be transferred to another owner. If the owner is a corporation, a change in ownership will occur when control of at least 50% of the stock of the corporation is transferred to a new owner.
- + Only for a single location, except where an owner operates 2 or more restaurants or other businesses within the same building. That owner may, in the owner's discretion, operate some or all these businesses under the same permit. The permit cannot be transferred to another location. A permit is valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business.
- + Only for a business operating under the name identified in the permit application.

A business can sell beer for both on-premises and off-premises consumption at the same location under one permit.

A permit holder must return a permit to the county or city that issued it within 15 days of termination of the business, change in ownership, relocation of the business, or change of the name of the business. Notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business, or change of the name of the business. Any person, firm, corporation, joint-stock company, syndicate, or association engaged in the sale, distribution, or manufacture of beer without the permit required by this part commits a Class A misdemeanor.

In the case of beer wholesalers, no county or city shall require a permit from a wholesaler unless that wholesaler operates a warehouse in that particular county or city.

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Classification of Counties

For the purpose of licensing, regulating, and controlling the transportation, storage, sale, distribution, possession, receipt, and/or manufacture of beer, the counties of the state shall be classified in two categories:

- + Class A counties: those counties not governed by metropolitan governments.
- + Class B counties: those counties governed by metropolitan governments.

The use of the words “county” or “counties” means counties generally without reference to the classification of counties and will indicate that provisions limited by the word “county” or “counties” apply equally to Class A and Class B counties. When “county legislative body” or “county legislative bodies” is used, it means “metropolitan council” or “metropolitan councils” when applicable to Class B counties.

Resale Certificate

It is unlawful for any person to sell, distribute, or manufacture beer without having a valid certificate indicating that purchases of beer by that person are “for resale” as that term is used in Tenn. Code Ann. Section 67-6-102(67).

Within 10 days after being issued a permit to sell, distribute, or manufacture beer, a person will file, with the county or city issuing the permit and with each person from whom the person buys beer, a copy of a valid certificate indicating that the purchases of beer are “for resale” and will subsequently maintain, at all times, a valid resale certificate on file with the county or city issuing the permit and with each person from whom the person buys beer.

Application for Permit

[Tenn. Code Ann. Section 57-5-104]

Before being permitted to store, sell, distribute, and/or manufacture beer, every person will pay any license fee, and comply with any regulations and ordinances as may be passed by the county courts of the counties and/or enacted by the proper municipal authorities of the cities or towns where that person may do business.

Each applicant for a permit will be required to pay an application fee of \$250 to the county or city in which the applicant’s place of business is located. No portion of the fee will be refunded to the applicant regardless whether an application is approved or denied. [Tenn. Code Ann. Section 57-5-104(a)]

Annual Privilege Tax

A privilege tax of \$100 is also imposed on the business of selling, distributing, storing, or manufacturing beer in this state. Any entity engaged in selling, distributing, storing, or manufacturing beer will remit the tax on January 1 to the county or city in which that business is located. The tax will be remitted to the county clerk for businesses located in the county outside the incorporated limits of any city or town, and to the official identified by the city or town for businesses located within the incorporated limits of the city or town. [Tenn. Code Ann. Section 57-5-104(b)(1)]

Notice to Permit Holders

Counties and cities will mail a written notice to each permit holder of the payment date of the annual tax at least 30 days prior to January 1. Notice shall be mailed to the address specified by the permit holder on the permit application. If a permit holder does not pay the tax by January 31 or within 30 days after written notice of the tax was mailed, whichever is later, then the county or city shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within 10 days after receiving notice of its delinquency by certified mail, then the county or city may suspend or revoke the permit or impose a civil penalty pursuant to Tenn. Code Ann. Section 57-5-108. [Tenn. Code Ann. Section 57-5-104(b)(3)]

At the time a new permit is issued to any business subject to this tax, the permit holder is required to pay the privilege tax on a prorated basis for each month or portion of a month remaining until the next tax payment date. [Tenn. Code Ann. Section 57-5-104(b)(5)]

Licenses to Sell Outside of Town or City Limits

[Tenn. Code Ann. Section 57-5-105]

Any person that desires to manufacture, distribute, sell, or store beer in any county, outside the limits of any incorporated city or town, will file an application for a permit with the county legislative body, or any

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committee formed for that purpose by the county legislative body, in the county that would be affected by these activities. Any person desiring to make such application should contact the legislative body of that county for specific requirements.

Any governing body that is authorized by statute to issue the appropriate license to sell, distribute, manufacture, or store beer also is the authority for revoking or suspending that license. The power to suspend or revoke licenses and impose civil penalties is also conferred upon the Commissioner of Revenue as it may relate to certificates of registration or transportation permits issued by the commissioner or to reports and returns required to be filed with, or taxes owed to, the Department of Revenue, or for the receipt, possession, storage, or transportation of beer in violation of Tenn. Code Ann. Title 57, Chapter 5. [Tenn. Code Ann. Section 57-5-108(l)]

Bonds – Warehousemen, Dealers, and Manufacturers [Tenn. Code Ann. Section 57-5-110]

All persons, corporations, joint-stock companies, syndicates, firms, or associations storing, selling, distributing, and/or manufacturing beer in this state will execute a bond securing the payment of the taxes levied as the state privilege tax. The bond is to be payable to the Commissioner of Revenue and is to be signed by some solvent surety company residing in or having an office and agent in the state of Tennessee. The commissioner also must approve the bond.

An initial bond of \$20,000 will be posted to secure the proper payment of all taxes for which the taxpayer may become liable during the taxpayer's initial license period of 12 months. After monthly reports which cover the initial 3 full months of the taxpayer's operation have been received by the department, the bond amount may, upon written request of the taxpayer, be adjusted to an amount equal to no less than twice the amount of the tax required to be paid by such person per month, determined by averaging the tax liability over the 3 months immediately preceding the adjustment. If, at any time after the initial 3 months operation, the commissioner shall determine the average monthly tax liability of a taxpayer to be greater than \$20,000, the taxpayer shall be required to immediately file a rider to the taxpayer's bond to increase the amount of the bond to 2 times the taxpayer's average monthly tax liability as determined by the commissioner.

In lieu of a corporate surety, the commissioner may allow the applicant to secure the bond by depositing collateral in the form of a certificate of deposit, as accepted and authorized by the banking laws of the state of Tennessee, which has a face value equal to the amount of the bond. This collateral may be deposited with any authorized state depository designated by the commissioner.

If a taxpayer has been in continuous operation for 3 consecutive years and, during the preceding 6 months, has paid the special privilege tax for which the taxpayer is liable within the time period for payment set by the statute or rule, then the taxpayer will not be required to execute and maintain any bond required by this section. Any taxpayer, exempt from the bonding requirement, who fails to pay the special privilege tax within the time period for payment set by statute or rule will, upon that failure, be again required to execute and maintain a bond as required.

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BARRELS TAX

Liability for the Tax

[Tenn. Code Ann. Section 57-5-201]

Every person in this state manufacturing, storing, selling, or distributing beer or other beverages of not more than 5% alcoholic content by weight, will pay a special privilege tax, in addition to all other taxes, in an amount equal to \$4.29 per barrel (of 31 liquid gallons) stored, sold, distributed by gift or sale, or manufactured in Tennessee. The tax upon barrels containing more or less than 31 gallons shall be at a proportionate rate.

The tax is a state tax; no county, municipality, or taxing district shall have power to levy any like tax.

Purchase of Beverages

[Tenn. Code Ann. Section 57-5-201]

No retail dealer of beverages containing not more than 5% alcohol by weight will purchase these beverages from anyone other than a licensed wholesaler located in Tennessee. No wholesale distributor of beverages containing not more than 5% alcohol by weight shall purchase such beverages from anyone other than a licensed manufacturer, importer, or other Tennessee wholesaler. Anyone importing, or causing to be imported, any alcoholic beverage as defined herein will be liable as other wholesale distributors or dealers. Anything to the contrary notwithstanding, a retail dealer of beverages containing not more than 5% alcohol by weight may purchase such beverages directly from a licensed manufacturer located in Tennessee if the sale of such beverages by the manufacturer directly to the retailers is authorized by law, pursuant to Tenn. Code Ann. Section 57-5-101.

An exception, provided under Tenn. Code Ann. Section 57-5-101(c)(1)(A), provides that a manufacturer may operate as a retailer at the manufacturer's location, or a site contiguous thereto, for sales of not more than 5,000 barrels of beer annually for consumption on or off the premises as long as the requirements of Tenn. Code Ann. Title 57, Chapter 5 concerning the licensing of such retail establishments are met. Sales by a manufacturer of its beer at a separate (noncontiguous) location are not authorized by this exception. The Attorney General has upheld such a determination in Opinion No. 00-087 issued May 5, 2000.

Enforcement of the Tax

[Tenn. Code Ann. Section 57-5-202]

The Commissioner of Revenue will supervise and collect the tax. No employee of the commissioner will, while employed, be interested, directly or indirectly, in the vending, storing, distributing, and/or manufacturing of beer and/or any other beverage under the penalty of dismissal from office and of \$500 fine, to be recovered by indictment or presentment.

Members of the state highway patrol and all sheriffs, deputy sheriffs, and police officers of the state and its political subdivisions are responsible for the enforcement of the police and penal provisions of the state laws applicable to beer. Such officers, along with inspectors, agents, representatives, or officers appointed by the commissioner, are charged with the enforcement of the revenue provisions of this section. Duly authorized representatives of the department, in the discretion of the commissioner, are authorized and empowered to make arrests for violation of the revenue provisions of this chapter while on active duty engaged in enforcing the revenue provisions.

Exempt Sales

[Tenn. Code Ann. Section 57-5-201(a)(1)]

Beer or other such beverages, manufactured in Tennessee and thereafter exported for sale, distribution, or gift, or dispensed gratuitously and consumed on the premises, are not included in the measure of the barrels tax liability. The Commissioner of Revenue is authorized to promulgate rules and regulations to secure this exemption and to prevent the exemption from being claimed in the case of beer sold, distributed, or given away in Tennessee. The burden shall be on the manufacturer claiming exemption to establish to the satisfaction of the collection officers that the beverage manufactured in Tennessee is exempt.

Credit for Military Sales

[Tenn. Code Ann. Section 57-5-208]

The tax on beer and ale is not applicable to beer and ale sold for consumption within the geographical boundaries of a fort, base, camp, or post of the armed forces of the United States, post exchanges, ship service stores, commissaries, and messes operated by the United States armed forces. The Department of Revenue will allow wholesalers and breweries, duly licensed in Tennessee, credit for taxes paid on beer or

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ale sold to post exchanges, ship service stores, commissaries, and messes operated and controlled by the United States armed forces, and which are instrumentalities of the government of the United States.

This credit shall be allowed only upon application made to the department by the wholesaler or brewery delivering beer or ale and upon a showing, by copy of the invoice with the signature of the officer in charge of the military facility, of certification that the beer or ale was sold to and delivered to the facility by the Tennessee wholesaler or brewery. In addition, the application will be supported by such other evidence as the commissioner may require by regulation.

Payment of the Tax

[Tenn. Code Ann. Section 57-5-203]

The tax will be paid to the Department of Revenue on or before the 20th day of the month following the month in which it accrues.

Delinquent Payment of the Tax

When any person is delinquent in the payment of the barrels tax, the commissioner will send, by registered mail with return receipt requested, written notice and demand for payment of the delinquent tax, indicating the amount due and unpaid, to the surety or sureties on the bond at the last known address. If the delinquent tax and all interest and penalties legally due are not paid within 10 days after the mailing of such notice, the commissioner will cancel the certificate of the taxpayer and proceed against the delinquent taxpayer under Tenn. Code Ann. Sections 29-3-112 and 29-3-113. The commissioner is authorized and empowered, and it is the commissioner's duty, to issue a distress warrant for the collection of all delinquent state privilege taxes due under this chapter, with interest and penalty in the sum of 10%.

Records

[Tenn. Code Ann. Section 57-5-206]

Every person in this state engaged in the storage, sale, distribution by sale or gift, and/or manufacture in this state of beer and/or other beverage with no more than 5% alcoholic content will keep invoices and all other business records. The commissioner or authorized agents, representatives, or employees will be allowed to inspect all articles, containers, packages, invoices, books, papers, and memoranda as may be deemed necessary by the inspecting individual, to ascertain whether or not the barrels tax has been paid or to determine the amount of tax that is due. These items will be available for inspection at any time during business hours.

The original bill of sale or invoice, or a microfiche copy, will be kept by the wholesaler for at least 2 years, and the duplicate bill of sale or invoice shall be retained by the retailer for at least 2 years, subject to inspection by the department or the county, municipal, or metropolitan government involved.

The commissioner may require any person engaged in the storage, sale, distribution by sale or gift, and/or manufacture, in this state, of beer and/or any other such beverages to furnish any reports, statements, or information, under oath, which may be deemed in the opinion of the commissioner, necessary for the purpose of enforcing a compliance with the tax requirement.

The commissioner is authorized and required to make rules and regulations necessary, in the commissioner's opinion, to carry out the provisions of the statute. These rules and regulations will have the force and effect of law if not in conflict with express statutory provision.

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WHOLESALE BEER TAX

The Levy of the Tax

[Tenn. Code Ann. Section 57-6-103]

The Wholesale Beer Tax Act imposes a tax of 17% of the wholesale price on wholesale sales of beer. Under this act, “beer” means beer, ale, other malt beverages, or any other beverages having an alcoholic content of not more than 5% by weight, except wine as defined in Tenn. Code Ann. Section 57-3-101.

“Wholesale” or “wholesale sale” means a sale, gift, or other transfer and delivery of beer by a wholesaler to any person other than another wholesaler, but does not include any gratuitous dispensing by a brewery of its own manufactured beer which is consumed on the premises. “Wholesaler” means a person who sells beer to retailers and includes a distributor, brewery, or brewery branch making sales directly to retailers. [Tenn. Code Ann. Section 57-3-102]

Exemption for Military Sales

[Tenn. Code Ann. Section 57-6-111]

The wholesale beer tax will not be applicable to any beer and/or ale sold to any post exchange, ship service store, commissary, open mess, officers’ club, N.C.O. club, or other organization recognized by and located on any fort, base, camp, or post of the armed forces of the United States. Wholesalers and brewers duly licensed in Tennessee will be allowed to deduct the sales of all beer and/or ale sold at any fort, base, camp, or post of the armed forces of the United States from those sales listed on the required monthly reports. A copy of a receipt duly signed by the officer in charge of such clubs, certifying that the beer or ale was sold and delivered to such clubs at a fort, base, camp, or post, must be attached to the monthly report.

Adjustments

Damaged Containers

No wholesaler will make any reduction or adjustment for loss due to shortages or damaged or broken containers, except for actual loss from the time the beer leaves the brewery until it is delivered to the retailer. These reductions or adjustments shall not exceed 1/2 of 1% of the total monthly purchases of each wholesaler, except in cases of fire,

storms, acts of God, or unavoidable accidents. At least 2 witnesses or persons familiar with the facts must provide sworn statements substantiating any claims in excess of 1/2 of 1%. The Department of Revenue may disapprove any and all claims for such credits. [Tenn. Code Ann. Section 57-6-109(a)]

If the damage or unsalable condition occurred prior to arrival at the wholesaler’s warehouse but was not discovered until after the beverage was stored, or if the damaged beer or ale had to be temporarily stored by the wholesaler as a matter of expediency before destroying it or retuning it to the brewery, the deduction is still available. [Rule 1320-4-1-.03(1)]

Beer damaged between shipment from the manufacturer and delivery to the wholesaler becomes the possession of the common carrier transporting the beer or the insurance company insuring the beer. The common carrier or insurance company will become liable for the wholesale beer tax, unless proof deemed satisfactory to the Commissioner of Revenue is furnished by the carrier or insurer showing that the beer has been destroyed or shipped to a point outside the state, rather than having been sold or consumed in this state. [Tenn. Code Ann. Section 57-6-115]

All beer shall be inspected and accepted by the retailer or a representative at the time of delivery. The wholesaler will not make adjustment or refund for damage, breakage, or shortage after the time of delivery to the retailer. However, a wholesaler may determine that beer sold to a retailer does not conform to quality control standards. Upon making that determination, the wholesaler may provide the retailer with replacement beer in exchange for the beer that no longer conforms to quality control standards, if the tax paid on the total amount of replacement beer is equal to the tax credit received on the beer being returned by the retailer. [Tenn. Code Ann. Section 57-6-109(b)]

Out-of-state Shipments

A deduction from receipts and purchases will be available to the wholesaler for all beer or ale that is shipped outside Tennessee in the same month in which it was purchased. This same deduction is available for all beer or ale damaged, lost, stolen, destroyed, or that becomes unsalable while in transit, either by common carrier or the wholesaler’s own transport equipment, prior to being stored in the wholesaler’s warehouse. [Rule 1320-4-1-.03(1)]

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Repurchase of Previously Sold Beverages

Under Tenn. Code Ann. Section 57-6-109(c), a wholesaler may purchase full case lots of beer previously sold to a retailer by the wholesaler, at the price at which the beer was sold to the retailer, if, upon determination by a county or municipality, it is found that:

- + A retailer has surrendered or abandoned its permit to sell beer.
- + A retailer's permit to sell beer has been revoked.
- + A retailer's permit to sell beer has been suspended for more than thirty days.
- + A retailer has in good faith discontinued business for more than 30 days.

Gifts or Discounts

[Tenn. Code Ann. Section 57-6-110]

No wholesaler may make any gift of beer or other type of gift to, or make any deal with, a retailer or other person to reduce the wholesale price of beer below the list price as an inducement to the retailer or other person to make larger purchases. However, a manufacturer may offer, utilizing manufacturer provided coupons, a discount to the consumer to be redeemed only by the manufacturer. No retailer or wholesaler may participate, either directly or indirectly, in the redemption of such coupons.

Payment of the Tax

[Tenn. Code Ann. Section 57-6-103]

All wholesalers will remit to each county or municipality, based on wholesale sales in the preceding calendar month, the amount of the net tax on their wholesale sales to retailers and other persons in the county or within the corporate limits of the municipality. The tax due will be remitted on or before the 20th day of each month.

All sales made by wholesalers at the wholesalers' places of business will be deemed wholesale sales; the tax will be collected on all such sales. The tax collected on any such sales made to licensed retailers shall be paid to the county or municipality in which the retailer's place of business is located. The tax on all other sales made at the wholesaler's place of business shall be paid to the county or city in which the wholesaler's place of business is located.

The wholesale price does not include the amount charged as a deposit on returnable bottles, or kegs, provided that deposit does not exceed the actual

value of the bottles, cases, or kegs to be returned. The amount of tax will be taken to the nearest whole cent per case, keg, or carton.

At the same time the tax is paid to the appropriate local government entities, the wholesaler will remit 1/2 of 1% of the gross tax to the Department of Revenue. The wholesaler will retain 3% of the gross tax to defray the cost of collecting and remitting the tax.

Delinquent Returns

[Tenn. Code Ann. Section 57-6-107(b)]

If any wholesaler fails or refuses to remit the tax on or before the 20th of the month when due, the department or any county or municipality concerned may institute legal action for collection of the delinquent taxes. In addition, suspension or revocation of certificates of registration may be initiated for failure to file any required report, for filing a false or fraudulent report, or for failure to pay tax due with the intent to defraud.

Cash Sales

[Tenn. Code Ann. Section 57-6-108]

In order to effectively collect the wholesale beer tax, all sales of beer by wholesalers to retailers or any other persons, except sales to duly licensed wholesalers and sales within military installations, will be for cash only. The intent of this provision is that wholesale sale of beer, delivery, and payment will be a simultaneous transaction; any maneuver, device, or method of extending credit is prohibited.

Wholesale Price List

[Tenn. Code Ann. Section 57-6-104]

Each wholesaler will maintain a wholesale price list and will file the list with the Department of Revenue and the tax-collecting official of each county and municipality where wholesale sales are made. Notice of any change in the price list will be delivered to the department and the tax-collecting official of each county and municipality. Notices will be filed as follows:

- + In case of a new business or a wholesaler acquiring a new brand not previously distributed, a price list shall be filed not later than 5 days after either occurrence.
- + In case of any change in an existing price list previously filed, a revised price list shall be filed at least 3 days prior to the effective date of any change.

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A wholesaler will not be permitted to file a wholesale price list that reduces the price of beer on quantity sales by brand, container, and category, even though the quantity wholesale price is uniform to all retailers and to all other persons. The price shall be fixed on each brand sold by container and category. It shall be the same price regardless of the quantity of beer sold of a given brand by container and category.

Changes in Wholesale Price

A wholesaler will not sponsor or participate in any price-cutting maneuver, device, or promotion by changing the wholesale price of beer of a given brand, container, and category. (As used in this section, "category" refers to cans, returnable bottles, nonreturnable bottles, kegs and barrels, and "container" to size in ounces.) A wholesaler may permanently reduce the wholesale price of beer. However, any such wholesale price reduction, to be considered permanent, must remain in effect for at least 360 days. Otherwise it will be considered a wholesale beer price-cutting maneuver, device, or promotion, and in direct violation of the provisions of the law. (Tenn. Code Ann. Section 57-6-104(c)) It is mandatory on the local beer board to suspend the license or permit of the wholesaler for 30 days, for violating any of the provisions of Tenn. Code Ann. Section 57-6-104, within the city or county where the violation was committed. [Tenn. Code Ann. Section 57-6-114(b)]

A wholesaler has the authority to increase the wholesale price of beer. In that event, the increased wholesale price will be considered to be the posted wholesale beer price. There is no limitation on the number of increases of the wholesale price of beer allowed any wholesaler, but any increase in the wholesale price of beer will remain in effect for at least 360 days. A wholesaler may also raise the wholesale price of beer during a 360 day posting period in an amount less than or equal to any increase in the federal excise tax. Such price increase shall be filed within 10 days of the date the tax increase takes effect. [Tenn. Code Ann. Section 57-6-104(c)]

A wholesaler may be permitted to change the wholesale price of beer on sales made only at the wholesaler's warehouse to retailers and other persons, regardless of the time element, as referred to in this section in cases of emergency where a wholesaler is unable to make delivery of beer to retail establishments. [Tenn. Code Ann. Section 57-6-104(c)(4)]

Designated Sales Territories

Each beer manufacturer or importer will designate sales territories for each of its brands sold in Tennessee and will name one licensed beer wholesaler in each territory who, within that territory, will be the exclusive wholesaler for the brand or brands. Any manufacturer or importer supplying more than one brand may grant exclusive territories to different wholesalers for the sale of each brand. No wholesaler shall distribute the specified brand or brands of beer outside that wholesaler's assigned territory, or knowingly sell to a retailer whose licensed retail establishment is located outside such wholesaler's assigned territory. [Tenn. Code Ann. Section 57-6-104(f)]

Within 10 days prior to the introduction of a new brand of beer in a territory, the manufacturer or importer will submit to the commissioner, in duplicate, a sworn affidavit containing a description of the geographical boundaries of each territory for each brand of its products, the name and address of the wholesaler, and the notarized signature of the wholesaler. Territories in effect on February 1, 1973, and those territories established for new brands entering the market subsequent to that date, will constitute the exclusive sales territory for the brands and wholesalers involved. [Tenn. Code Ann. Section 57-6-104(g)]

Change of Wholesaler

Should a manufacturer or importer desire to change wholesalers, or in any way alter the territory of a wholesaler for any brand, that manufacturer or importer must file, with the commissioner and each wholesaler involved, not less than 90 days prior to the effective date of such change, a notarized notice of intent, in duplicate, containing:

- + A description of the geographical boundaries of the proposed territory.
- + The name and address of the wholesaler currently distributing such brand or brands in the territory.
- + The name and address of the proposed wholesaler and the notarized signature of the proposed wholesaler.
- + The name and address of all persons or firms having a financial interest in the proposed wholesale business.

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The 90-day waiting period will be waived if the proposed change is agreeable to all parties involved. (Tenn. Code Ann. Section 57-6-104(g)) The designated territories of beer wholesalers are a matter of public record; a copy shall be made available upon request to the commissioner. [Tenn. Code Ann. Section 57-6-104(h)]

Wholesaler's Bond

[Tenn. Code Ann. Section 57-6-107]

Each wholesaler must furnish an indemnity or personal bond, satisfactory to and payable to the department as agent of the counties and municipalities involved, in an amount equivalent to the amount of gross tax payable under this part, based on the wholesaler's highest month's sales in the preceding 12 months. A wholesaler just commencing business will estimate sales. In no event will a wholesaler be required to post a bond in excess of \$10,000.

In lieu of a corporate surety on the required bond, the commissioner may allow the wholesaler to secure the bond by depositing collateral in the form of an accepted and authorized certificate of deposit, which has a face value equal to the amount of the bond.

This collateral may be deposited with any authorized state depository designated by the commissioner. Interest on any deposited certificate of deposit will be paid to the wholesaler who has deposited it as collateral, or to such person as the wholesaler or the certificate may direct.

Any wholesaler that has been in continuous operation for 3 consecutive years and, during the preceding 6 months, has paid all wholesale beer taxes payable on or before the 20th of the month when due, will not be required to furnish any indemnity or personal bond. However, any wholesaler exempt from the bonding requirement, who fails to pay any tax due on or before the 20th of the month, will then be required to furnish an indemnity or personal bond.

Records and Reports

[Tenn. Code Ann. Section 57-6-105]

Every wholesale beer dealer doing business in Tennessee must keep accurate delivery tickets and records of each delivery of beer or other similar beverages to individual retailers and any other persons purchasing more than 5 gallons of beer at one time. The records must indicate:

- + The date the merchandise was delivered.
- + The name and address of the purchaser.
- + The date of the sale.
- + The quantity, size, brand, and price of each container sold.

Each retailer or recipient must sign the delivery ticket each time beer is received from a wholesaler. The wholesaler shall keep the signed original or a microfiche copy, and the retailer must retain a duplicate. Each such delivery ticket must be retained for at least 2 years, subject to inspection by the department, county, or municipality.

The wholesaler must also retain records of every sale to persons purchasing less than 5 gallons at a time. These records will reflect the daily quantity, size, brand, and price of each container sold. These records will also be retained for 2 years, subject to inspection.

Investigations

[Tenn. Code Ann. Section 57-6-106]

The Department of Revenue may, on its own initiative, but must, upon request of any county or municipality receiving this tax, make investigations to determine whether the full amount of tax imposed by this part has been paid. Any county or municipality requesting an investigation may designate an agent to participate in the investigation. Wholesalers and retailers will make their books and records with respect to beer purchases, sales, and inventories available for inspection and audit at all reasonable business hours, and will furnish any information with respect to beer purchases, sales, and inventories required by the department. The results of any investigations will be reported to counties and municipalities concerned.

The department, at the request of any county or municipality concerned, will provide information available in the department with respect to the administration of this tax, including the amount of tax collected and remitted, within the county or municipality.

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MISCELLANEOUS FEES AND PERMITS

Municipal Inspection Fee

Any municipality has the authority to pass an ordinance imposing an inspection fee on all licensed retailers of alcoholic beverages located within that municipality. This fee cannot exceed 8% of the wholesale price of beverages supplied by a wholesaler in municipalities located in Tennessee counties with a population of less than 60,000 according to any federal census from 1960 and later. The fee cannot exceed 5% in counties having a population of more than 60,000 as determined by the same measure. [Tenn. Code Ann. Section 57-3-501]

The wholesaler will collect the inspection fee from the retailer once the municipality notifies the wholesaler that an inspection fee has been imposed. The fee can be collected at the time of the sale or when the retailer makes payment for the delivery of the alcoholic beverages. [Tenn. Code Ann. Section 57-3-502]

The wholesaler will make a monthly report to the municipal government. This report will contain a list of the alcoholic beverages sold to any retailer, the wholesale price of the beverages sold, the amount of tax due, and any other information that the municipality may require. The report will be made not later than the 20th of the month following the month the sales were made. Failure to make a timely report or remittance will result in a 10% penalty. [Tenn. Code Ann. Section 57-3-503]

Nonresident Seller's Permit [Tenn. Code Ann. Section 57-3-602]

A nonresident seller's permit is required for any manufacturer, distillery, winery, importer, broker, or person located outside Tennessee that sells or distributes alcoholic beverages to any wholesaler licensed in Tennessee under Tenn. Code Ann. Section 57-3-203. It is not material to the requirement for the permit whether the sales are consummated inside or outside of this state.

The nonresident seller's permit can be obtained by making application to the Alcoholic Beverage Commission. Once granted a permit, the permit holder will be subject to the requirements and conditions imposed by the commission.

Inspections of Permit Holders [Tenn. Code Ann. Section 57-3-609]

If a representative of the Alcoholic Beverage Commission or the Department of Revenue wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permit holder, that representative shall make a written request to the permit holder or a duly authorized manager or representative. If the permit holder is a corporation, the request will be made to any officer of the corporation. When a request for an examination is made, the person to whom it is directed shall immediately allow the representative to conduct the examination.

The representative may investigate the organization, conduct, and management of any nonresident seller's permit holder and may make copies of any records which, in the judgment of the representative, may show or tend to show that the permit holder has violated state law, regulation, or the terms of the permit. A representative may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

The commission may revoke or suspend a nonresident seller's permit, in accordance with this section, if a permit holder or authorized representative fails or refuses to permit an examination authorized by this section, or to permit the making of copies of any documents as provided by this section, without regard to whether the document is inside or outside the state, or if the permit holder or authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

Employee and Server Permits [Tenn. Code Ann. Section 57-3-701]

The Alcoholic Beverage Commission is authorized to issue employee and server permits to the following:

- + Each representative or salesperson of any wholesale licensee in Tennessee that engages in soliciting orders from retail licensees. [Tenn. Code Ann. Section 57-3-203(d)]

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- + Each employee of a wholesale licensee that dispenses alcoholic beverages in the wholesaler's place of business. [Tenn. Code Ann. Section 57-3-203(e)]
- + Each employee of a retail licensee that dispenses alcoholic beverages in the retailer's place of business. [Tenn. Code Ann. Section 57-3-204(c)]
- + Every person engaged in selling alcoholic beverages, wines, or beer for consumption on the premises will possess a server permit. [Tenn. Code Ann. Section 57-4-203(h)]

There are specifically defined requirements that must be met for issuance of each of these permits, along with applicable fees and application procedures. Any person needing one of these permits should contact the Alcoholic Beverage Commission for more information.

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TRANSPORTATION OF BEER AND LIGHT ALCOHOLIC BEVERAGES

Any person engaged in transporting beer or other light alcoholic beverages from outside Tennessee to any point within Tennessee will have, in that person's possession during the entire time the person is engaged in transporting those beverages in this state, an invoice, bill of sale, or bill of lading showing the name and address of the consignor, the name and address of the licensed brewery, wholesaler, or distributor to whom the beverages are to be delivered, and the quantity of those beverages. A common carrier maintaining a permanent office within this state, where complete records of all beer or other light alcoholic beverages transported from without this state are kept and are open to inspection by the commissioner or any duly authorized agent at all reasonable times, will not be required to have these documents in the carrier's personal possession. [Tenn. Code Ann. Section 57-5-401]

Liability for Tax on Goods Damaged in Transit

If any common carrier transporting beer or other beverage of alcoholic content of not more than 5% by weight to a point within this state, or any insurance company insuring such products, comes into possession of those products because the products are damaged or otherwise unaccepted by the consignee, that common carrier or insurance company will become liable for the tax imposed under Tenn. Code Ann. Section 57-5-201. That liability will be relieved if proof, deemed satisfactory to the commissioner, is furnished to the commissioner by the carrier or insurance company showing that the products have been destroyed or shipped to a point outside this state and, therefore, have not been sold or consumed in this state. The imposition of liability for the tax under the circumstances as stated will not be construed as authorizing the subsequent sale of those products in this state by either common carriers or insurance companies unless otherwise licensed to do so.

Change of Consignee or Delivery Destination

It is not legal for any person to transport, or attempt to have transported, any beer or other light alcoholic beverages to a person or destination other than as designated on the shipment, or to any person not licensed to receive that type of beverages under the law or any rule or regulation of the commissioner. It is also illegal to deliver these beverages to any person or destination other than as designated in the bill of

lading or transportation contract, or to agree to transport or deliver any shipment of such beverages when it is known that the shipment is not intended for a person permitted to receive these beverages under the provisions of the law or any rule or regulation of the commissioner. [Tenn. Code Ann. Section 57-5-402]

Transportation Without Payment of Tax

No person may transport, from any point within this state to another point within this state, any beer and/or other such beverages on which the tax imposed in Tenn. Code Ann. Section 57-5-201 has not been paid, except for immediate delivery to a licensed brewery, wholesaler, or distributor in this state. Any person engaged in transporting these untaxed beverages will have in possession during the entire time engaged in transporting such beverages, an invoice, bill of sale, or bill of lading showing the name and address of the consignor, the name and address of the licensed brewery, wholesaler, or distributor to whom such beverages are to be delivered, and the quantity of each beverage by character and contents of the containers. If such person fails to produce an invoice, bill of sale, or recorded evidence, or, if when produced it fails to comply and accurately disclose the required information, the failure shall be prima facie evidence of the violation of Tenn. Code Ann. Title 57, Chapter 5. [Tenn. Code Ann. Section 57-5-404]

Every person, other than a common carrier or a licensed brewery, wholesaler, or distributor engaged in making regular deliveries of beer or other such beverages to their customers, who possesses or transports 5 gallons or more of any such beverages within Tennessee, will have, during the entire time in possession of or transporting these beverages within this state, an invoice, bill of sale, or bill of lading showing the date of purchase or shipment, the name and exact address of the seller or consignor, and the name and exact address of the purchaser or consignee. The burden of proof shall be upon the person possessing or transporting such beverages to establish to the satisfaction of the collection officers that the invoice, bill of sale, or bill of lading offered as evidence that the tax thereon has been paid does, in fact, relate to the identical beverages in possession or transport. [Tenn. Code Ann. Section 57-5-405]

Any property confiscated as contraband solely for failure to have the documents required by this section may be returned upon order of the commissioner,

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without the necessity of a hearing, upon a showing satisfactory to the Department of Revenue that taxes imposed by the state of Tennessee upon such items have been paid.

These provisions will not be construed as being applicable to interstate shipments through the state of Tennessee where such shipments are accompanied and supported by proper invoices or bills of lading containing such information as the commissioner may require. [Tenn. Code Ann. Section 57-5-407]

Contraband

[Tenn. Code Ann. Section 57-5-409]

Any beer or other beverage of alcoholic content of not more than 5% by weight that is sold, offered for sale by, or in possession of, a retailer and that was purchased from anyone except a Tennessee wholesaler or distributor licensed in this state, is declared to be contraband.

Any beer or other beverages imported into this state, in transit within this state, or in possession of a person or firm within this state not in accordance with any of the requirements of Tenn. Code Ann. Title 57 Chapter 5, or rules and regulations promulgated under it, are declared to be contraband, along with any vehicle in which it is being transported which is not a common carrier.

Contraband beverages and vehicles are subject to confiscation by the commissioner or any duly authorized representative, highway patrol officer, sheriff, or other peace officer. Any beer or other beverages or vehicles seized will be delivered promptly to the department for disposition.

Any beer seized may, in the discretion of the commissioner, be deposited with a duly licensed Tennessee wholesaler or distributor, located nearest to the site of the seizure, engaged in handling the particular brand of beer involved. The wholesaler or distributor will issue a receipt to the commissioner to document the deposit. The receipt will state the quantity and brand name of beer deposited. The wholesaler or distributor issuing the receipt may later exchange salable beer of the same quantity and brand name for the receipt with any person or persons who may be entitled thereto or to the proceeds of the sale of the beverage, in accordance with the provisions of this chapter. These receipts will be admissible as evidence in any administrative hearing or any civil or criminal court hearing or trial. [Tenn. Code Ann. Section 57-5-409(c)]

If, incidental to the confiscation of contraband beer, any intoxicating liquor deemed to be held or transported illegally under law is discovered, the confiscating officer is required to seize that liquor. Any intoxicating liquor seized will be delivered promptly to the Alcoholic Beverage Commission for sale or disposition as contraband.

Notification of Seizure

[Tenn. Code Ann. Section 57-5-410]

As soon as feasible after confiscation, written notice will be given, by the Department of Revenue, to the person from whom the confiscation was made. Notice will also be made to all others with a legal interest in the property confiscated who are either made known to the department or who, by reasonable examination of public records of titles and liens, should have been discovered. This notice may be made by personal delivery or by mail, either of which may be made to the last known address of the interested party. This notice will state:

- + A description of the confiscated property.
- + The reason for confiscation.
- + The method for seeking recovery.
- + The time limit for seeking recovery.
- + The result of failure to seek or obtain recovery by the designated method.

Claims Procedure

Any person claiming any property seized as contraband goods may, within 10 days of such notice, and after executing a bond for costs with one or more good and solvent sureties in the sum of \$250, made payable to the state of Tennessee, or upon executing a pauper's oath as provided by law, file a claim, in writing, with the commissioner at Nashville, requesting a hearing and stating any interest in the seized property. The commissioner will set a date for hearing within 10 days from the date the claim is posted or received.

In any hearing convened upon proper petition of an interested party, the initial burden shall be upon the state to show by a preponderance of the evidence that the property in question was of such nature or was used in such manner as to be declared as contraband. Upon meeting this burden, the property shall be forfeited as provided by law, unless the claimant can prove that the claimant is nevertheless qualified under this chapter, or otherwise, to recover the property in question.

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When a claim is filed for any seized vehicle, aircraft, or boat, the commissioner will not allow the claim unless or until the claimant proves that:

- + The claimant has an interest in the vehicle, aircraft, or boat, as owner or otherwise, which was acquired in good faith.
- + The claimant had, at no time, any knowledge or reason to believe that it was being, or would be, used in the violation of laws of the United States or of the state of Tennessee relating to beer or any other beverage of alcoholic content of not more than 5% by weight.

If it appears that the interest asserted by the claimant arises from, or is in any way subject to, a contract or agreement with a person with a record or reputation for violating laws of the United States or any state relating to beer or any other beverage of alcoholic content of not more than 5% by weight, then it must be proven that the claimant, having made inquiries into the character of the other person before entering onto the contract or agreement, was not aware of any adverse information. This inquiry must have been made at the headquarters of the sheriff, chief of police, principal federal internal revenue officer engaged in the enforcement of the beer laws, or other principal local or federal law enforcement officer of the locality in which such other person acquired his right under such contract or agreement and/or the locality in which such other person then resided. In each locality in which the claimant made any inquiry as to the character or financial standing of such other person, the other person must have had no such record or reputation.

However, in the case of a first offense of violating the provisions of this chapter, and after the hearing provided for herein, these provisions may, in the discretion of the commissioner, be waived and the claim of the owner or lien holder may be honored.

Designation of Hearing Officer

The commissioner may designate a hearing officer from the department to conduct the hearings provided for in this section. The hearing officer will make findings of fact, conclusions of law, and proposed orders based thereon. If the commissioner concurs, the commissioner will issue the order, or, upon review of the record, make such findings, conclusions, and issue such orders as, in the commissioner's discretion, the record justifies.

Release of Goods to Claimant

Pending any proceeding to recover beer, other beverages of alcoholic content of not more than 5% by weight, and/or any vehicle seized as contraband under the provisions of Tenn. Code Ann. Title 57, or pending any appeal of the action taken by the commissioner as a result of any such proceeding, the commissioner may order delivery to any claimant who establishes a right to immediate possession and who executes, with one or more sureties approved by the commissioner, and delivers to the commissioner, a bond in favor of the state of Tennessee for the payment of a sum double the appraised value of the goods as of the time of the seizure.

The condition of the bond shall be that the obligors shall pay to the state, through the department, the full value of the goods or property when seized unless, upon a final determination by the commissioner or the courts, the property shall be awarded to the claimant. The commissioner will determine the full value of the goods or property seized, and such determination will be presumed to be correct in the absence of any proof to the contrary being submitted by the claimant.

Commissioner's Ruling

If the ruling of the commissioner is favorable to the claimant, the commissioner shall deliver the seized property to the claimant. If the ruling is adverse to the claimant, or if a hearing is not applied for in writing within the 10 days following notice, and the commissioner determines the products to be salable, the commissioner is authorized to order sale of the property in the manner provided by law, applying the proceeds from the sale first to the costs incurred in the seizure and sale of such articles and the balance, if any, to the state general fund.

In the case of any contraband property, seized by any law enforcement officer of any incorporated municipality or county and turned over by them to the department for confiscation, 50% of the net proceeds of the sale will be paid to the municipality or to the county served by that officer.

Any beer, other beverages, or vehicles seized and ordered sold by the commissioner will be sold at public sale by the Department of General Services, the procedure to be followed being now authorized by law under Tenn. Code Ann. Section 67-4-1021. It is the responsibility of the commissioner to

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notify a Tennessee distributor handling the same brand(s) of beer and/or other such beverages as that to be sold in the impending sale. All confiscated beer, suitable for sale at retail, will first be offered for sale to the Tennessee wholesaler, located nearest the site of the seizure, engaged in handling the particular brand of beer involved at the same per case price (state beer barrelage tax included) that the wholesaler would be required to pay for such beer at the brewery. All confiscated beer, "suitable for sale at retail," not purchased within 10 days by the Tennessee wholesaler, after being notified that such beer had been confiscated and was being offered for sale to such wholesaler, will then be sold at public sale by the Department of General Services. The 17% Wholesale Beer Tax, as authorized in Tenn. Code Ann. Section 57-6-103, will be added to the public sale price; the funds derived shall be remitted to the city in which the public sale is held. The commissioner determines "suitable for sale at retail."

The commissioner, before delivering any seized property to the successful bidder, will require any tax due on the property to be paid to the Department of Revenue. Any seized beer or other beverages not sold within ninety days following hearing, or declared to be unsalable by the commissioner, will be destroyed by the commissioner in a manner which the commissioner prescribes.

Hearing Costs and Fees

[Tenn. Code Ann. Section 57-5-412]

The costs incurred in each hearing, including witness fees, mileage expenses, and all fees of sheriffs for serving any notices or subpoenas, will be taxed as costs by the commissioner or the commissioner's authorized representative. All costs and fees for witnesses and/or sheriffs will be advanced or collected as provided in the case of witnesses attending upon cases in courts of record, and the service of subpoenas requiring their attendance and testimony.

If, upon the hearing, the claimant shall be found by the commissioner, or the authorized representative, to be guilty of the matters charged, all of the aforementioned costs shall be taxed and charged against the claimant, but if the charge against such claimant shall be dismissed, then such costs shall be paid by the commissioner out of the funds collected under the provisions of Title 57.

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GENERAL INFORMATION

Mailing Date for Returns

If the due date for a return falls on Saturday, Sunday, or a holiday, the due date is automatically extended until the next business day. Returns mailed through the United States mail will be considered filed and received on the date shown by the post office cancellation mark on the envelope. If the cancellation mark is not legible or is missing, then the return will be considered filed on the date the envelope is stamped as "Received" by the Department of Revenue unless the sender can verify the actual mailing date by competent evidence. [Tenn. Code Ann. Section 67-1-107]

Penalties and Penalty Waivers

A penalty is imposed for the late filing of a tax return and for late payment of taxes owed the state. The penalty is computed at a rate of 5% per month, or any portion of a month, from the due date until the date the taxes are paid. The maximum penalty is 25% of the tax amount due; the minimum penalty is \$15. [Tenn. Code Ann. Section 67-1-804]

When a taxpayer fails to submit a timely return and penalties and/or interest are applied, the penalties and interest become a part of the tax due. [Tenn. Code Ann. Section 67-1-803]

Interest

Interest is imposed on any taxes not paid by the date required by law even though a filing date extension has been granted. The Department of Revenue has no discretion to refund or waive any interest charges. The interest rate on any deficient tax payment is established each July 1. [Tenn. Code Ann. Section 67-1-803]

Audits and Assessments

All tax returns filed with the Department of Revenue undergo some type of office audit or examination to ensure that the correct tax has been paid. This audit could be a computer math audit, a manual examination by a trained auditor, or both. The taxpayer will be contacted if additional information is needed to complete the audit. The taxpayer will receive written notification if any adjustments are made to the return.

Any taxpayer selected for a field audit will be contacted by the Department of Revenue to set up a convenient time for the audit. The taxpayer will receive advance notification as to which records will be needed for the audit. A field audit generally involves tax returns filed for the previous 3 years. At the completion of the audit, the auditor will leave the taxpayer a written report for review. Once the auditor has made any necessary changes to the report, the notice of assessment for any underpaid taxes will be issued. [Tenn. Code Ann. Section 67-1-1301]

Right to a Conference

[Tenn. Code Ann. Section 67-1-1801]

Taxpayers are entitled to an informal conference to discuss an assessment. If this request is made in writing within 30 days from the date of the Notice of Assessment, the conference must be granted. If it is made beyond the 30 days, the conference may be granted within the discretion of the commissioner.

Taxpayers who wish to contest an assessment without making payment have 90 days to file suit in chancery court, as provided by statute. Interest will continue to accrue at the prevailing rate until payment is received. A lien may be filed against the taxpayer's property during this 90-day period, but the department generally may not levy on the taxpayer's property to satisfy the assessment.

If the taxpayer timely requests an informal conference, the 90-day period for filing suit stops running until a conference decision is issued in writing. After the decision is issued, the 90-day period recommences. The 90-day stay for most collection activity is likewise extended. The taxpayer is not required to request an informal conference before contesting an assessment in court.

If the taxpayer does not timely file suit to contest the assessment, the taxpayer may pay the assessment, request a refund, and then file suit in chancery court for a refund in accordance with the procedures set forth in Tenn. Code Ann. Section 67-1-1802, if the request is denied or deemed denied by operation of law.

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TENNESSEE TAXPAYER BILL OF RIGHTS

You, as a taxpayer, have certain rights. Your rights are so important that, in 1992, the Tennessee General Assembly enacted legislation to spell them out. The Tennessee Taxpayer Bill of Rights summarizes state tax laws and revenue rules with which the Department of Revenue must comply while serving you.

TAXPAYER RIGHTS [Tenn. Code Ann. Section 67-1-110]

Tennessee guarantees that you, the taxpayer, have the right to:

- Fair and courteous treatment from all employees of the Department of Revenue.
- Tax forms and information written in plain language.
- Prompt and accurate responses to all inquiries and requests for tax assistance.
- Access public records not confidential or otherwise protected by law, and to review such records at an appropriate time and location.
- Obtain all tax information relating to your account, including financial information, which is kept confidential, except to the extent required by law.
- Tax notices that clearly explain the amount being billed.
- Clear rules and procedures to resolve tax problems.
- An informal conference, as provided by law, with the Commissioner of Revenue or her delegate to dispute any tax assessment. (Taxpayers have the right to be represented by an attorney, certified public accountant, or other representative at such conference).
- Assurance that employees of the Department of Revenue are not paid, promoted, or in any way rewarded on the basis of assessments or collections.
- Suggest ways the Department of Revenue may better serve the public.
- Prompt notification of any refund to which you are entitled.
- Assistance through statewide meetings held by the Department of Revenue in convenient locations in which taxpayers are allowed to ask questions and voice opinions.
- Notice and demand for payment 10 days before the Department of Revenue makes any collection effort, except as otherwise provided by law.
- 30 days notice before seized assets are liquidated, except as otherwise provided by law.

TAXPAYER RIGHT TO A CONFERENCE [Tenn. Code Ann. Section 67-1-1801]

Taxpayers are entitled to an **informal conference** to discuss an assessment. If this request is made in writing within 30 days from the date of the Notice of Assessment, the conference must be granted. If it is made beyond the 30 days, the conference may be granted within the discretion of the Commissioner.

Requests for conferences may be sent by mail or fax transmittal to:

Administrative Hearing Office
Tennessee Department of Revenue
500 Deaderick Street, Room 1240
Nashville, TN 37242
Phone (615) 741-3810
Fax (615) 741-6463

TENNESSEE TAXES ON ALCOHOLIC BEVERAGES AND BEER

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