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**IDAPA 35
TITLE 01
Chapter 12**

35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY.

In accordance with Section 63-513 and 23-1051, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Beer Tax Products Act. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 35, Chapter 12, Title 01, "Idaho Beer Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on all barrels or fractional amounts of barrels as provided by Section 23-1008, Idaho Code, sold by wholesalers for use or consumption within this state. (7-1-93)

002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

This chapter does allow administrative relief of the provisions outlined herein under Section 63-3049, Idaho Code. (7-1-93)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 1, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075 or 9-340, Idaho Code. (7-1-93)

005. - 009. (RESERVED).

010. DEFINITIONS.

01. Disposition. Disposition, for the purpose of these rules, shall mean any diminution, reduction, dispensation, or depletion of beer from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. (7-1-93)

011. SALES SUBJECT TO BEER TAX.

01. In General. Idaho imposes an excise tax upon barrels or fractional amounts of barrels as provided by Section 23-1008, Idaho Code, sold by wholesalers for use or consumption within Idaho. (7-1-93)

02. Imposition. All of the terms defined in Section 23-1001, Idaho Code, et seq., apply to the assessment of the tax provided in Section 23-1008, Idaho Code. (7-1-93)

a. All beer wholesalers, as defined in Section 23-1001(g), Idaho Code, are required to collect and to pay the tax imposed by Section 23-1008, Idaho Code. (7-1-93)

b. Any brewer, brewery, producer or manufacturer of beer within Idaho shall be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(c), Idaho Code, for the purpose of administration of the tax as imposed by Section 23-1008, Idaho Code. However, to ensure payment of taxes on beer, any entity holding a brewery license shall be considered a wholesaler to the extent of any dispositions from such brewery for the purpose of resale or consumption in, by or through any retail facilities including, but not limited to, tasting rooms on or near the brewery's premises. (7-1-93)

c. References to the Act as used in these rules are to Chapter 10, Title 23, Idaho Code. (7-1-93)

d. Ales, strong beer, new beer, or any other alcoholic beverages containing a greater percentage of alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code. (7-1-93)

03. Every Disposition Is a Sale. Every disposition of beer by a wholesaler to a retailer or consumer shall constitute a sale of beer for use in this state, whether said sale is made within or without this state, and the wholesaler shall be liable for the payment of taxes on such sales. Any person making sales or dispositions of beer, whether licensed as a wholesaler or not, shall be liable for the tax on such sale or disposition of beer for which no tax under the Act has otherwise been collected. (7-1-93)

04. All Sales Presumed Taxable. Every sale or disposition of a wholesaler's inventory shall be presumed to be a tax able sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

012. EXEMPTIONS.

01. Burden of Proof. The burden of proving any exemption, deduction, credit, or refund allowed by the Act and these rules is upon the person claiming it. (7-1-93)

02. Wholesale Sales of Beer Outside this State. Every resale of beer by a wholesaler or brewery for the purpose of and resulting in export of beer from this state for resale outside this state shall be exempt from the tax. (7-1-93)

03. Sales to Purchasers on Military Reservations. Sales to authorized purchasers on military reservations for the purpose of and resulting in sale or consumption on such reservation shall be exempt from the tax. (7-1-93)

04. Sales to Idaho Liquor Dispensary. Sales of beer to the Idaho State Liquor Dispensary shall be exempt from the tax. (7-1-93)

05. Dispositions from One Wholesaler to Another. Disposition of beer by transfer or sale or any other means from one wholesaler to another wholesaler shall be exempt. (7-1-93)

013. SECURITY FOR TAX REQUIRED.

01. Security for Payment of Tax. Each person liable for payment of the taxes provided by Chapter 10, Title 23, Idaho Code, shall at all times have in effect and on file with the Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the Commission, shall be payable to the Commission, and shall be conditioned upon remittance of all taxes imposed on beer by this state for which such person shall be liable, including any penalty and interest. (7-1-93)

02. Amount of Security. The amount of the security shall be three (3) times the amount of the tax due on an average monthly beer tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)

03. Security Requirement Excused. A wholesaler or brewery having an average beer tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

04. Security for a New Wholesaler or Brewery. When a new wholesaler or brewery applies for a reporting permit number as required by ISTC 16, security will be required. (7-1-93)

a. If a beer tax reporting history is available from a previous ownership, the security required shall be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no beer tax reporting history available from a previous ownership of the business, the new wholesaler or brewer shall furnish security in the amount of two thousand dollars (\$2,000), unless the taxpayer can establish to the satisfaction of the Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the Commission and adjusted accordingly.

(7-1-93)

05. Types of Security. A person required to post security may, in lieu of posting a surety bond, deposit with the Commission any of the following amounts equivalent to the amount of the security required: (7-1-93)

a. Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the Commission. (7-1-93)

b. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-93)

c. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the Commission. (7-1-93)

d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Commission. The terms of the letter of credit must permit the Commission to make demand directly against the issuer of the letter of credit for any taxes, penal ties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-93)

e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the Commission. (7-1-93)

06. Petition to Waive Security Deposit. Other than as provided in Subsection 013.03 of this rule, a security shall be required in all instances, unless the Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-93)

07. Taxpayer Petition for Release from Security Requirement. (7-1-93)

a. The Commission will release a taxpayer from the posting of a security if the taxpayer has filed all beer tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all beer tax due for the preceding twenty-four (24) month period on a timely basis (7-1-93)

b. Upon petition from the taxpayer, the Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefor. (7-1-93)

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in sub section 07.a. above, the Commission will make immediate demand that a security be posted with the Commission. (7-1-93)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the Commission's determination. If the taxpayer wishes to seek a redetermination of the Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-93)

e. Failure to post security upon demand, notwithstanding Subsection 013.07.d. above, will be a violation of the rules promulgated by the Commission and shall be immediately reported to the Director of Law Enforcement, together with a request or petition that the Director initiate procedures to suspend or revoke the

taxpayer's license. (7-1-93)

014. REDETERMINATION, COLLECTION, AND ENFORCEMENT.

01. Administrative Appeals. Sections 63-3042 through 63-3065A, 63-3068, and 63-3070, Idaho Code, govern the method for administrative appeals, appeals to the Board of Tax Appeals, and appeals to Idaho's District and Supreme Courts, as well as collection and enforcement of the beer tax. The provisions and terms of those Income Tax statutes and Income Tax Rules promulgated thereunder, to the extent consistent with the Act and these Beer Tax Rules, are hereby adopted by this reference as if stated in full in this rule. (7-1-93)

02. Substitution of Terms. Wherever the terms income or income tax are used in those statutes and rules, the terms beer or beer tax shall be substituted for purposes of the Act and these rules. (7-1-93)

03. Copies of Code and Rules Available. Copies of Idaho Code provisions and rules which deal with procedures for redetermination, collection, enforcement, and other matters are available at offices of the Tax Commission and at those libraries specified in Section 67-5205(c), Idaho Code. (7-1-93)

015. PENALTY AND INTEREST.

If any taxes on beer are not timely paid by the person(s) liable for such tax, a penalty shall be applied as provided by Section 63-3046, Idaho Code, together with interest as provided by Section 63-3045, Idaho Code. (7-1-93)

016. BEER TAX REPORTING PERMIT NUMBER.

01. Permit Number Required. Every brewery located within this state and every beer wholesaler is required to obtain a beer tax reporting permit number before engaging in business. Application forms may be obtained from the Tax Commission. No fee is required to obtain a beer tax number. (7-1-93)

02. Permit Number is Non-assignable. A beer tax reporting permit number is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the Tax Commission. (7-1-93)

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's beer tax reporting permit number without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (7-1-93)

017. BEER TAX RETURNS AND REPORTS.

01. Due Date of Reports. Every person liable for the payment of taxes on beer and every person responsible for making reports to the Commission shall, on or before the fifteenth (15th) day of each month, file a written report with the Commission showing all sales of beer for use or delivery within Idaho during the immediately preceding calendar month. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (7-1-93)

02. Weekend or Holiday Due Date. For purposes of this rule, if the fifteenth (15th) day of any month shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (7-1-93)

03. Forms Provided by Tax Commission. All dealers engaged in the sale or other disposition of beer imported into Idaho shall report all sales and dispositions of beer on forms provided by the Commission. (7-1-93)

04. Inventory Reporting Methods. Wholesalers of beer must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on Wholesaler Beer Tax Returns provided by the Commission. (7-1-93)

05. Out-of-State Brewers. Out-of-state brewers of beer shall use dealer's reporting forms to report sales to wholesalers. (7-1-93)

06. In-State Brewers. In-state brewers of beer shall use wholesaler's beer tax returns to report all withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by a brewery are subject to tax at the time of withdrawal from the brewer's inventory. (7-1-93)

07. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1051, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All beer tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the beer tax return form. (7-1-93)

b. All beer tax returns or other documents filed by the taxpayer must include his beer tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A beer tax return that does not provide sufficient information to compute a tax liability does not constitute a valid beer tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; and it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

018. RECORDS REQUIRED.

01. In General. Every person liable for the payment of taxes on beer will keep and preserve the following records: (7-1-93)

a. A daily record of all cash and credit sales including invoices, receipts, journals, and other records related thereto. (7-1-93)

b. A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders arranged serially according to date. (7-1-93)

c. A record of and supporting documents for all deductions and exemptions allowed by law or claimed in filing beer tax returns. (7-1-93)

d. True and complete inventories of the beer stock on hand taken at the end of each month. (7-1-93)

e. True and complete records of breakage and spoilage claimed as a deduction from inventory. (7-1-93)

02. Record Retention. These records must be kept for a period of four (4) years as required by Section 23-1006, Idaho Code. If an assessment has been made by the Tax Commission and an appeal to the Tax Commission or district court is pending, the books and records specified above and relating to the period covered by such proposed assessment will be kept until final disposition of the appeal. (7-1-93)

03. Location and Condition of Records. Records and files shall be kept on the premises of the place of business and maintained in a legible manner. They shall be kept clean and as much as possible free from deterioration. All invoices, sales slips, bank statements, and canceled checks should be kept in chronological order so

as to be balanced with the records to which they pertain. (7-1-93)

019. VIOLATION OF ACT OR REGULATIONS-REPORT TO DIRECTOR OF LAW ENFORCEMENT.

Whenever any violation of any of the requirements imposed on any person by the Act or these rules has occurred, the same shall be immediately reported to the Director of Law Enforcement, who may initiate any action necessary for the enforcement of the Act, including without limitation, license revocation proceedings. (7-1-93)

020. AUDITS.

Any taxpayer required to pay the tax or make reports shall, upon notification from the Tax Commission, make available for inspection and audit, as the Commission or its designee may require, any records required to be kept under Chapter 10, Title 23, Idaho Code. (7-1-93)

021. BREAKAGE OR SPOILAGE.

01. **Damage or Spoilage.** When a beer container has been damaged or when beer becomes spoiled or has otherwise become unfit for beverage purposes, the taxpayer may claim a deduction of up to five tenths of one percent (.5%) of the total inventory purchases during the month in which the breakage or spoilage occurred without requiring written approval from the Tax Commission. The taxpayer must maintain adequate records to verify actual breakage or spoilage claimed. (7-1-93)

a. The Commission may at any time disallow the use of this method for any taxpayer. The Commission shall notify the taxpayer in writing that future deductions of breakage or spoilage will require written approval from the Commission. (7-1-93)

b. Any taxpayer who has received such written notice from the Commission must file a Request for Beer Destruction, Form WB-403, as set forth in Subsection 021.02 of this rule. (7-1-93)

02. **Request for Beer Destruction.** If the breakage or spoilage exceeds five tenths of one percent (.5%) of the total inventory purchases for the month, or the taxpayer has received written notice as discussed in subsection 01.a. of this rule, the taxpayer must file a Request for Beer Destruction, Form WB-403, with the Commission ten (10) days prior to the proposed destruction date. (7-1-93)

a. The taxpayer must receive written approval from the Commission prior to destruction of any products referred to on the request. (7-1-93)

b. The Commission reserves the right to be present to observe the destruction of the beer and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for the Commission or its representative to witness such destruction. (7-1-93)

c. A credit for the amount of tax represented by the destroyed beer may be claimed against future tax due by the taxpayer who has received written approval from the Commission to destroy beer. (7-1-93)

022. REFUNDS.

If the taxpayer is entitled to a refund of less than two hundred dollars (\$200), such refund shall be applied as a credit against the tax due or assessed for a succeeding tax period. The taxpayer may elect to have any refund to which he is entitled under the Act or these rules applied as a credit against the tax due or assessed for a succeeding tax period, regardless of the amount of such refund. (7-1-93)

023. UNLAWFUL SALES, PURCHASES AND ACTS.

In addition to the remedies of Section 23-1055, Idaho Code, the Tax Commission may also assess taxes against persons making illegal sales of beer who would otherwise be liable for payment of taxes on the sales of such beer. (7-1-93)

024. ALTERNATIVE METHOD.

The Tax Commission hereby requires the use of the method of payment of taxes on beer as provided in Sections 23-1047 through 23-1055, Idaho Code, retroactive to July 1, 1962. (7-1-93)

025 DECLARATORY RULINGS.

Declaratory Rulings may be made by the Tax Commission under the provisions of Section 67-5255, Idaho Code, and Idaho Income Tax Rule, ISTC 131, which may be reviewed at any Tax Commission office and at depository libraries listed in Section 67-5205(c), Idaho Code. (7-1-93)

026. - 999. (RESERVED).