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**IDAPA 35
TITLE 01
CHAPTER 09**

**35.01.09 - IDAHO COUNTY OPTION KITCHEN AND TABLE WINE
TAX ADMINISTRATIVE RULES**

000. LEGAL AUTHORITY (RULE 000).

In accordance with Section 63-105 and 23-1323, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho County Option Kitchen and Table Wine Tax Act. (7-1-98)

001. TITLE AND SCOPE (RULE 001).

These rules shall be cited as IDAPA 35.09.01, "Idaho County Option Kitchen and Table Wine 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 a per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

002. WRITTEN INTERPRETATIONS (RULE 002).

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address. (3-15-02)

003. ADMINISTRATIVE APPEALS (RULE 003).

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 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077, or 9-337 through 9-350, Idaho Code. (3-15-02)

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.state.id.us". All offices are open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

006. -- 009. (RESERVED).

010. DEFINITIONS (RULE 010).

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

011. SALES SUBJECT TO WINE TAX (RULE 011).

01. In General. Section 23-1319, Idaho Code, imposes an excise tax per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

02. Imposition. All of the terms defined in Section 23-1303, Idaho Code, apply to the assessment of the excise taxes provided in Section 23-1319, Idaho Code. (7-1-93)

a. All wine distributors, as defined in Sections 23-1303(d) and (g), Idaho Code, are required to collect and to pay the excise taxes imposed by Section 23-1319, Idaho Code. (7-1-93)

b. Any vintner, winery, producer or manufacturer of wine within Idaho shall be considered a wine importer within the meaning of the definitions provided in Sections 23-1303(e) and (h), Idaho Code, for the purpose of administration of the excise tax as imposed by Section 23-1319, Idaho Code. However, to ensure payment of taxes on wine, any entity holding a winery license shall be considered a distributor to the extent of any dispositions from such winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. (7-1-93)

c. References to the Act as used in these rules, are to the County Option Kitchen and Table Wine Act, Chapter 13, Title 23, Idaho Code. (7-1-93)

d. Ales, strong bear, 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)

e. Premixed cocktails having an alcoholic content of fourteen percent (14%) or less by volume shall be taxed as wine. (7-1-93)

03. Every Disposition is a Sale. Every disposition of wine by a distributor to a retailer or consumer shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and the distributor shall be liable for the payment of taxes on such sales. Any person making sales of dispositions of wine, whether licensed as a distributor or not, shall be liable for the taxes on such sale or disposition of wine 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 distributor's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

012. EXEMPTIONS (RULE 012).

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 Wine Outside This State. Every resale of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from tax on wine. (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 on wine. (7-1-93)

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

05. Dispositions From One Distributor to Another. Any disposition of wine by transfer or sale or any other means from one distributor to another distributor shall be exempt. (7-1-93)

013. BREAKAGE OR SPOILAGE (RULE 013).

01. Damage or Spoilage. When a wine container has been damaged or when wine becomes spoiled or has otherwise become unfit for beverage purposes, the wholesaler may claim a deduction of up to seventy-five one hundredths of one percent (.75%) 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 destructions 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 Wine Destruction, Form WB-403, as set forth in Subsection 013.02 of this rule. (7-1-93)

02. Request for Wine Destruction. If the breakage or spoilage exceeds seventy-five one hundredths of one percent (.75%) of the total inventory purchases for the month, or the taxpayer has received written notice as discussed in Subsection 013.01.a. of this rule, the taxpayer must file a Request for Wine 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 wine 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 wine may be claimed by the taxpayer who has received written approval from the Commission to destroy unfit wine. (7-1-93)

014. SECURITY FOR TAX REQUIRED (RULE 014).

01. Security for Payment of Tax. Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

02. Amount of Security. The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine 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. (7-1-98)

03. Security Requirement Excused. A distributor or winery having an average wine 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 Distributor. When a new distributor or winery applies for a reporting permit number as required by Idaho Wine Tax Administrative Rule 15, security will be required. (7-1-98)

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

b. If there is no wine tax reporting history available from a previous ownership of the business, the new distributor or winery shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax 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 State Tax Commission and adjusted accordingly. (7-1-98)

05. Types of Security. A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-98)

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 State Tax Commission. (7-1-98)

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 State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)

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 State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)

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 State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, 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. (7-1-98)

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 State Tax Commission. (7-1-98)

06. Petition to Waive Security Deposit. Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

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

a. The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

b. Upon petition from the taxpayer, the State Tax 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 State Tax 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. (7-1-98)

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 Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax 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. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

015. WINE TAX REPORTING PERMIT NUMBER (RULE 015).

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

02. Permit Number Is Non-Assignable. A wine 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 wine 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)

016. WINE TAX RETURNS AND REPORTS (RULE 016).

01. Due Date of Reports. Every person liable for the payment of taxes on wine 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 wine for 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. Prescribed Forms. (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms provided by the Commission. (7-1-93)

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

c. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)

d. In-state distributors, wineries, vintners, producers or manufacturers shall use Form WI-1752 and related forms to report 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 the winery are subject to tax at the time of withdrawal from the winery's inventory. (7-1-93)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1322, 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 who does not file a valid return will be considered to have filed no return. 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 wine 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 wine tax return form. (7-1-93)

b. All wine tax returns or other documents filed by the taxpayer must include his wine tax permit

number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine 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; 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)

017. REDETERMINATION, COLLECTION, AND ENFORCEMENT (RULE 017).

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 wine tax. The provisions and terms of those Income Tax statutes and Income Tax Rules promulgated thereunder, to the extent consistent with the Wine Tax Act and these Wine 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 wine or wine tax shall be substituted for purposes of the County Option Kitchen and Table Wine Tax 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 Division of Statewide Administrative Rules and at those libraries specified in Section 67-5205(c), Idaho Code. (7-1-93)

018. PENALTY AND INTEREST (RULE 018).

If taxes on wine 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)

019. RECORDS REQUIRED (RULE 019).

01. In General. Every person liable for the payment of taxes on wine shall 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 related records. (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 wine tax returns. (7-1-93)

d. True and complete inventories of the wine 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 23-1314, Idaho Code. If an assessment has been made by the Tax Commission and an appeal to the Commission or district court is pending, the books and records specified above, relating to the period covered by such proposed assessment shall 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)

020. VIOLATION OF ACT OR RULES -- REPORT TO DIRECTOR OF THE IDAHO STATE POLICE (RULE 020).

Whenever a violation of any of the requirements imposed on any person by the Act or these rules has occurred, the violation shall be immediately reported to the Director of the Idaho State Police, who may initiate the action necessary for the enforcement of the Act, including without limitation, license revocation proceedings. (3-15-02)

021. DECLARATORY RULINGS (RULE 021).

Declaratory Rulings may be made by the State Tax Commission under the provisions of Section 67-5255, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 110. (5-3-03)

022. -- 999. (RESERVED).

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