

IDAPA 35 – IDAHO STATE TAX COMMISSION

Tax Policy – Taxpayer Resources Unit

35.01.09 – Idaho Beer and Wine Taxes Administrative Rules

Who does this rule apply to?

The following account holders with the State Tax Commission:

- Beer wholesalers
- Breweries
- Wine distributors
- Wineries
- Wine direct shippers

What is the purpose of this rule?

Ensure the reporting and payment of:

- Beer tax
- Wine tax

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Revenue and Taxation -

Department of Revenue and Taxation:

- [Section 63-105, Idaho Code](#) – Powers and Duties - General

Alcoholic Beverages -

Beer:

- [Section 23-1051, Idaho Code](#) – Regulations

County Option Kitchen and Table Wine Act:

- [Section 23-1323, Idaho Code](#) – Rules and Regulations Concerning Excise Tax – Power of Tax Commission

Who do I contact for more information on this rule?

State Tax Commission

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35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 23-1051, and 23-1323, Idaho Code, the Commission (Commission) has promulgated rules implementing the provisions of the Idaho Beer Act and the Idaho County Option Kitchen and Table Wine Act (The Acts). (3-20-20)

001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 35.01.09, “Idaho Beer and Wine Taxes Administrative Rules” are to be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on: (3-20-20)

a. All barrels or fractional amounts of beer sold or disposed of by a wholesaler and also used or consumed in Idaho. (3-20-20)

b. All gallons of wine sold or disposed of by a distributor and also used or consumed in Idaho. (3-20-20)

002. ADMINISTRATIVE APPEALS (RULE 002).

Sections 23-1050A, 23-1322A, Idaho Code

These rules only apply to the imposition and collection of beer and wine taxes. This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. (3-20-20)

003. INCORPORATION BY REFERENCE (RULE 003).

Sections 23-1050A, 23-1322A, Idaho Code

01. **Tax Commission Administration and Enforcement Rules.** These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” (3-20-20)

02. **Declaratory Rulings.** Declaratory Rulings may be made by the Commission under the provisions of Section 67-5255, Idaho Code, and Tax Commission Administration and Enforcement Rule 110. (3-20-20)

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Sections 23-1001, 23-1303, Idaho Code

Definitions provided by statute, including the definitions in Sections 23-1001 and 23-1303, Idaho Code, apply to these rules. The following definitions apply for the purpose of these rules. (3-20-20)

01. **Disposition.** A disposition is any decrease of beer or wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. (3-20-20)

02. **Taxpayer.** A taxpayer is a person liable to report and pay the beer tax or wine tax according to the Acts and these rules. (3-20-20)

03. **Wine Direct Shipper.** A wine direct shipper is a winery that has been issued wine direct shipper a permit by the Idaho State Police to ship wine directly to residents of Idaho. (3-20-20)

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

Sections 23-1001, 23-1003, 23-1006, 23-1008, 23-1303, 23-1309A, 23-1314, 23-1319, Idaho Code

01. **In General.** Sections 23-1008 and 23-1319, Idaho Code, imposes an excise tax on beer sales by beer wholesalers and wine sales by wine distributors for use or consumption in Idaho. (3-20-20)

a. Every disposition of beer by a wholesaler or wine by a distributor to a retailer or consumer constitutes a sale for resale or use. Beer wholesalers or wine distributors are liable for the payment of taxes on the sales. Any person making sales or dispositions of beer or wine, whether licensed or not, is liable for the taxes. (3-20-20)

b. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code, as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code, on all shipments of wine to Idaho. (3-20-20)

c. Any brewer, brewery, producer, or manufacturer of beer within Idaho will be considered a beer

dealer within the meaning of the definitions provided in Section 23-2001(d), Idaho Code. However, to ensure payment of tax on beer, any entity holding a brewery license will be considered a wholesaler to the extent of any disposition from the brewery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the brewery's premises. (3-20-20)

d. Any vintner, winery, producer, or manufacturer of wine within Idaho will be considered a wine importer within the meaning of the definitions provided in Section 23-1303(1)(e), Idaho Code. However, to ensure payment of tax on wine, any entity holding a winery license will be considered a distributor to the extent of any disposition from the 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. (3-20-20)

e. Ales, strong beer, new beer, or any other alcoholic beverages containing more than four percent (4%) alcohol by weight are taxed at the wine tax rate. (3-20-20)

f. Premixed cocktails with an alcoholic content of fourteen percent (14%) or less by volume are taxed at the wine tax rate. (3-20-20)

g. Illegal Sales or Dispositions. In addition to the remedies of Sections 23-1055 and 23-1309, Idaho Code, the Commission may assess taxes against persons making illegal sales of beer or wine who otherwise would be liable for payment of taxes. (3-20-20)

02. Supplementing Inventory. If a brewery or winery supplements inventory, adequate records are required to support any tax paid. The Commission will presume no tax is paid on beer or wine in the inventory of a brewery or winery without evidence of the payment of tax. Wineries are not supplementing their inventory when purchasing wine or grape juice from other wineries to blend and produce wine. (3-20-20)

03. All Sales Presumed Taxable. Every sale or disposition from inventory is presumed to be a taxable sale, unless the sale or disposition is exempt from tax by the Acts or these rules. (3-20-20)

012. EXEMPTIONS (RULE 012).
Sections 23-1048, 23-1051, 23-1319, 23-1323, Idaho Code

01. Burden of Proof. The burden of proving any exemption, deduction, credit, or refund allowed by the Acts and these rules is upon the person claiming it. (3-20-20)

02. Wholesale Exports. Every resale of beer or wine by a beer wholesaler, brewery, wine distributor, or winery for the purpose of and resulting in an export of beer or wine from this state for resale outside this state is exempt from beer or wine tax. (3-20-20)

03. Sales By Wine Direct Shippers Outside This State. When an Idaho wine direct shipper is licensed as a wine direct shipper in another state, they are licensed to sell wine to residents of the other state. Sales of wine by the Idaho wine direct shipper, using another state's wine direct shipper license, to a resident of that state and delivered to a location in that state are exempt from Idaho wine tax. (3-20-20)

04. Sales to Purchasers on Military Reservations. Sales to authorized purchasers on military reservations for the purpose of and resulting in sales or consumption on the reservation are exempt from beer or wine tax. (3-20-20)

05. Sales to Idaho State Liquor Dispensary. Sales of beer or wine to the Idaho State Liquor Dispensary are exempt from beer or wine tax. (3-20-20)

06. Dispositions From One Distributor or Wholesaler to Another. Any disposition of beer or wine by transfer or sale or any other means from one (1) distributor or wholesaler to another is exempt from beer or wine tax. (3-20-20)

013. BREAKAGE OR SPOILAGE (RULE 013).
Sections 23-1051, 23-1319, Idaho Code

01. Percentage Method. When a beer or wine container is damaged, contents spoiled, or is otherwise unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. (3-20-20)

a. The Commission may revoke the use of the percentage method for any taxpayer at any time. The Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Commission. (3-20-20)

b. Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Commission. (3-20-20)

02. Destruction Request Method. Taxpayers must submit the destruction request form before claiming breakage or spoilage when the amount claimed exceeds the maximum percentages allowed or the Commission revokes the percentage method. (3-20-20)

a. A destruction request form must be submitted ten (10) days before the proposed destruction date. (3-20-20)

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

c. The Commission reserves the right to observe the destruction of beer or wine in person and to delay the destruction until a mutually agreed upon time can be arranged. (3-20-20)

03. Deduction for Breakage or Spoilage. A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. (3-20-20)

014. FINANCIAL SECURITY (RULE 014).
Sections 23-1049, 23-1320, Idaho Code

01. Financial Security for Payment of Tax. Any person required to pay tax under the Acts must have security on file with the Commission unless excused or waived by the Commission. The security is to be payable to the Commission in the form and an amount acceptable to the Commission. The security is conditioned upon payment of all taxes imposed on beer or wine by this state for which the person is liable, including any penalty and interest. (3-20-20)

02. Types of Security. A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. (3-20-20)

03. Security for a New Taxpayer. When a new taxpayer applies for a tax account the security required is one thousand dollars (\$1,000) unless one of the following conditions applies: (3-20-20)

a. If a beer or wine tax reporting history is available from a previous ownership, the security required may be based on the most recent twelve (12) month filing history of the prior ownership. (3-20-20)

b. If an out-of-state wine direct shipper is applying for an initial account, they may request a bond waiver. (3-20-20)

c. If the taxpayer can establish a lesser amount should apply based on the average monthly amount payable according to Section 23-1049, Idaho Code. (3-20-20)

04. Petition to Waive Security Requirement. The taxpayer must petition the Commission for waiver of the security requirement. (3-20-20)

- a.** The Commission may release a taxpayer from the security requirement if the taxpayer has filed all required tax returns including supplemental schedules and paid the tax due on time for the preceding twenty-four (24) months. (3-20-20)
- b.** When the taxpayer petitions the Commission, the taxpayer's account will be examined within sixty (60) days, if necessary. The Commission will notify the taxpayer of its decision within ninety (90) days from the date the taxpayer's petition was received. The notification will include the Commission's decision and reasons for the decision. (3-20-20)
- c.** If at any time after the release of a security requirement the taxpayer is late filing returns or paying tax, the Commission may immediately revoke the waiver and demand the taxpayer post security. (3-20-20)
- d.** If a petition for release of security is denied or a demand for posting of security is made, the Commission will notify the taxpayer by certified mail. The notice will include the reasons for the Commission's decision. The taxpayer has thirty (30) days from the date of the notice to request, in writing, a redetermination of the Commission's decision. (3-20-20)
- e.** Not posting security upon demand is a violation of these rules and may be immediately reported to the Director of the Idaho State Police, along with a request to suspend or revoke the taxpayer's license or permit. (3-20-20)

015. BEER OR WINE TAX ACCOUNTS (RULE 015).

Sections 23-1051, 23-1323, Idaho Code

- 01. Tax Accounts.** Before engaging in business, taxpayers need to have a beer tax or wine tax account from the Commission to report and pay tax. As evidence of the tax account, a tax permit is issued. The terms tax account and tax permit are used interchangeably in this section. No fee is required for a tax account. (3-20-20)
- 02. Tax Accounts Are Non-transferable.** Where there is a change of ownership, it is the responsibility of the tax account holder to cancel the tax account by giving written notice to the Commission. (3-20-20)
- a.** Notice requirements include the date of closure or last date of operation, date of sale or lease, and the name of the new owner or lessee. (3-20-20)
- b.** If the new owner or lessee uses the previous owner's tax account, the registered tax holder may be responsible for all tax, penalty, and interest incurred during that time period. (3-20-20)
- 03. Tax Account Cancellation.** The Commission may cancel an inactive tax account. A tax account is considered inactive when returns are filed with no reportable beer or wine activity for twelve (12) consecutive months. The Commission will provide notice of cancellation to the last known address of the tax account holder. (3-20-20)

016. BEER OR WINE TAX RETURNS (RULE 016).

Sections 23-1047, 23-1051, 23-1322, 23-1323, Idaho Code

- 01. Reporting Periods.** Returns are due on or before the 15th day of the month following the end of the reporting period, or the next business day when the due date is a Saturday, Sunday, or legal holiday. All returns must be filed monthly unless the Commission approves an alternate reporting period. (3-20-20)
- a.** Request to File Quarterly or Semiannually. Taxpayers owing six hundred dollars (\$600) or less per quarter with a timely filing and payment history may request a quarterly or semiannual reporting period. (3-20-20)
- b.** Request to File Annually. Wine direct shippers, taxpayers with seasonal activities, and other taxpayers with minimal activity may request an annual reporting period. (3-20-20)
- c.** Final Return. A taxpayer will mark cancel on the last return filed. Tax, penalty, and interest will

apply if the taxpayer continues business activity after filing a final, return and canceling the tax account. (3-20-20)

02. Prescribed Forms. All sales or other dispositions of beer or wine in Idaho must be reported on forms provided or approved by the Commission. (3-20-20)

03. Inventory Reporting. Taxpayers are to report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods and forms provided or approved by the Commission. (3-20-20)

04. Requirements of a Valid Return. A valid return includes the tax return, all supplemental schedules, and worksheets with information to compute the tax liability. The return must meet the requirements of these rules and the information must be legible. (3-20-20)

017. (RESERVED)

018. PENALTY AND INTEREST (RULE 018).

Sections 23-1050A, 23-1322A, Idaho Code

If a taxpayer files returns or pays taxes late, penalty and interest apply. Penalty is authorized by Section 63-3046, Idaho Code. Interest is authorized by Section 63-3045, Idaho Code. (3-20-20)

019. RECORDS REQUIRED (RULE 019).

Sections, 23-1006, 23-1051, 23-1314, 23-1323, Idaho Code

01. In General. Every person liable for the payment of taxes on beer or wine must keep and preserve the following records: (3-20-20)

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, sales receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. (3-20-20)

c. Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. (3-20-20)

d. True and complete physical counts of the beer and wine inventory taken at the end of each reporting period. (3-20-20)

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

f. Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order so they can be balanced with the corresponding return. (3-20-20)

02. Record Retention. These records are to be kept for a minimum of four (4) years. If a taxpayer appeals an assessment, all records are to be kept until final disposition of the appeal. (3-20-20)

03. Location and Condition of Records. All records and files are to be kept clean, legible, and free from deterioration on the premises of the business. (3-20-20)

020. -- 999. (RESERVED)

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