

1 SENATE BILL NO. 20

2 INTRODUCED BY S. FITZPATRICK

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE TAXATION
6 LAWS; ELIMINATING THE PENNY TAX; PROVIDING FOR DEFICIENCY ASSESSMENTS; PROVIDING
7 PROCEDURES TO COMPUTE ALCOHOLIC BEVERAGE TAXES IN THE ABSENCE OF STATEMENTS;
8 PROVIDING AUTHORITY BY THE DEPARTMENT TO COLLECT DELINQUENT TAXES; PROVIDING FOR
9 REFUNDS AND INTEREST; REVISING LAWS RELATING TO THE FILING OF FORMS; PROVIDING FOR
10 THE FILING OF ELECTRONIC FORMS AND PROVIDING DATES; REVISING ALCOHOLIC BEVERAGE TAX
11 LAWS PERTAINING TO BEER, WINE, AND HARD CIDER, ALCOHOL MANUFACTURED BY DISTILLERIES,
12 AND TABLE WINE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-1-406, 16-1-411,
13 16-1-424, AND 16-2-301, MCA; AND REPEALING SECTION 16-1-409, MCA."
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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17 **NEW SECTION. Section 1. Deficiency assessment -- penalty and interest -- statute of**
18 **limitations.** (1) If the department determines that the amount of the tax due is greater than the amount
19 disclosed by a return, it shall mail to the licensee a notice, pursuant to 15-1-211, of the additional tax proposed
20 to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be
21 filed. The licensee may seek review of the determination pursuant to 15-1-211.

22 (2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The
23 department may waive any penalty pursuant to 15-1-206.

24 (3) The amount of tax due under any return may be determined by the department within 3 years
25 after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing.
26 For the purposes of this section, a return due under this part and filed before the last day prescribed by law or
27 rule is considered to be filed on the last day prescribed for filing.
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1 **NEW SECTION. Section 2. Procedure to compute tax in absence of statement -- estimation of**
2 **tax -- failure to pay -- penalty and interest.** (1) If the licensee fails to file any return required by this part within
3 the time required, the department may, at any time, audit the licensee or estimate the taxes due from any
4 information in its possession and, based on the audit or estimate, assess the licensee for the taxes, penalties,
5 and interest due the state.

6 (2) The department shall impose a penalty and interest as provided in 15-1-216. The department
7 shall mail to the licensee a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be
8 assessed. The notice must contain a statement that if payment is not made a warrant for distraint may be filed.
9 The licensee may seek review of the determination pursuant to 15-1-211. The department may waive any
10 penalty pursuant to 15-1-206.

11
12 **NEW SECTION. Section 3. Authority to collect delinquent taxes.** (1) (a) The department shall
13 collect taxes that are delinquent as determined under this part.

14 (b) If a tax imposed by this part or any portion of the tax is not paid when due, the department shall
15 impose a penalty and interest as provided in 15-1-216 and the department may issue a warrant for distraint as
16 provided in Title 15, chapter 1, part 7.

17 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal
18 has expired, the department may direct the offset of tax refunds or other funds due the licensee from the state,
19 except wages subject to the provisions of 25-13-614 and retirement benefits.

20 (3) As provided in 15-1-705, the licensee has the right to a review of the tax liability prior to any
21 offset by the department.

22 (4) The department may file a claim for state funds on behalf of the licensee if a claim is required
23 before funds are available for offset.

24 (5) An action may not be maintained to enjoin the collection of the tax or any part of the tax.

25
26 **NEW SECTION. Section 4. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
27 result of overpayment of taxes collected under this part must be filed within 3 years of the date that the return
28 was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 5. Department rulemaking. The department shall prescribe rules necessary to carry out the purposes of imposing and collecting the tax on the sale of alcoholic beverages.

Section 6. Section 16-1-406, MCA, is amended to read:

"16-1-406. Taxes on beer. (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana by a wholesaler or by a licensed brewer directly to retailers, special permittees, or the public. ~~A barrel of beer equals 31 gallons.~~ The tax is based ~~upon~~ on the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 10,000 barrels of beer a year is taxed on the following increments of production:

(i) up to 5,000 barrels, \$1.30;

(ii) 5,001 barrels to 10,000 barrels, \$2.30.

(b) The tax on beer sold for a brewer who produces over 10,000 barrels is \$4.30.

(2) The tax imposed pursuant to subsection (1) ~~is on a wholesaler and an electronic beer tax return~~ is due at the end of each month from the wholesaler ~~upon~~ on beer sold by the wholesaler during that month. The tax imposed pursuant to subsection (1) on a licensed brewer and an electronic beer tax return is due on or before the 15th day of each month from the brewer for beer sold during the previous month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to subsection (1), an amount equal to:

(a) 23.26% must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and

(b) the balance must be deposited in the state general fund."

Section 7. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider -- penalty and interest. (1) (a) A tax of 27 cents ~~per a~~ liter is imposed on sacramental wine and table wine, except hard cider, ~~imported by a table wine distributor and on table wine shipped directly to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107~~ sold by:

(i) a table wine distributor to licensed retailers, agency liquor stores, and special permit holders;

(ii) a licensed winery directly to licensed retailers, special permit holders, or the public; and

(iii) a registered winery directly to the public.

(b) A tax of 3.7 cents ~~per a~~ liter is imposed on hard cider ~~imported~~ sold:

(i) by a table wine distributor to licensed retailers, agency liquor stores, and special permit holders;

(ii) by a licensed winery directly to retailers, special permit holders, or the public; and

(iii) by a registered winery directly to the public and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month during the following period that begins October 1 and ends September 30.

(b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine,

1 table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1
2 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay
3 the tax on or before October 15 of the following period that begins October 1 and ends September 30.

4 (c) A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to
5 consumers or licensed retailers in the state shall electronically file a wine tax return or a hard cider tax return, or
6 both, and pay the tax on a monthly basis on or before the 15th of each month for sales in the previous month.

7 (d) A table wine distributor that sells sacramental wine, table wine, or hard cider in the state shall
8 electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or
9 before the 15th day of each month for sales in the previous month.

10 ~~(3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects~~
11 ~~the winery or the table wine distributor to the penalties and interest provided for in 15-1-216.~~

12 ~~(4)~~(3) The tax paid by a winery or by a table wine distributor in accordance with subsection (2) must,
13 in accordance with the provisions of 17-2-124, be distributed as follows:

14 (a) 69% to the state general fund; and

15 (b) 31% to the state special revenue fund to the credit of the department of public health and
16 human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

17 ~~(5)~~(4) The tax computed and paid in accordance with this section is the only tax imposed by the state
18 or any of its subdivisions, including cities and towns.

19 ~~(6)~~(5) For the purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does
20 not include hard cider."

21
22 **Section 8.** Section 16-1-424, MCA, is amended to read:

23 **"16-1-424. Distillery -- reporting -- tax payment -- penalties.** (1) Except as provided in subsection
24 ~~(9)~~ (3), a distillery licensed to do business in this state under 16-4-311 shall, on or before the 15th day of each
25 month, ~~in the manner and~~ electronically on a form prescribed by the department, make an exact return to the
26 department reporting the total amount of liquor samples provided with or without charge at the distillery in the
27 previous month. The department may at any time make an examination of the distillery's books and of the
28 premises and may otherwise check the accuracy of the return.

(2) The taxes imposed pursuant to 16-1-401 and 16-1-404 ~~upon~~on a distillery licensed under 16-4-311 are due on or before the 15th day of each month from the distiller for liquor sold during the previous month. The department shall adopt rules and provide forms for the proper allocation of taxes.

~~(3) If a distiller subject to the payment of the taxes provided for in 16-1-401 and 16-1-404 fails to make any return required by this code or fails to make payment of the taxes within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of taxes due the state from the delinquent distiller.~~

~~(4) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, the attorney general shall prosecute in any court of competent jurisdiction an action to collect the tax.~~

~~(5) If all or part of the tax imposed upon a distillery by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.~~

~~(6) An action may not be maintained to enjoin the collection of the tax or any part of the tax.~~

~~(7) Any tax owed by a distiller under this code that is not paid within the time provided is delinquent, and penalty and interest must be added to the delinquent tax as provided in 15-1-216.~~

~~(8) Except as provided in subsection (9), a distiller who fails, neglects, or refuses to make the return to the department provided for in this section, refuses to allow the examinations as provided for in this section, or fails to make an accurate return in the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$1,000.~~

~~(9)~~(3) A distillery for which the tax is less than \$10 a month from the sale of samples is not required to file a return or pay the tax for that month under this section."

Section 9. Section 16-2-301, MCA, is amended to read:

"16-2-301. Retail selling price on table wine -- tax on certain table wine. ~~(1)~~ The retail selling price at which table wine is sold at an agency liquor store is as determined by the agent.

~~(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax must be paid~~

1 ~~to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department~~
2 ~~shall deposit the tax paid under this section in the general fund.~~

3 ~~(3) For the purposes of this section, "table wine" does not include hard cider."~~

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5 NEW SECTION. Section 10. Repealer. The following section of the Montana Code Annotated is
6 repealed:

7 16-1-409. Failure to make beer tax returns -- penalties and interest.

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9 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 5] are intended to be
10 codified as an integral part of Title 16, chapter 1, part 4, and the provisions of Title 16, chapter 1, part 4, apply
11 to [sections 1 through 5].

12 - END -