TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule
LSA Document #16-2

DIGEST

Adds 45 IAC 7-0.5 to clarify the scope, definitions incorporated by reference, and definitions. Amends 45 IAC 7-1-1 to clarify the penalty provisions. Amends 45 IAC 7-2-1 to clarify and update disclosure of confidential information. Adds 45 IAC 7-3-5.5 to clarify and update deduction and refund requirements. Amends 45 IAC 7-3-6 to clarify proof needed to receive a deduction or refund. Adds 45 IAC 7-4 to clarify who is responsible for tax payment and clarify tax on samples. Adds 45 IAC 7-5 to clarify the requirements of filing monthly returns and clarify primary source reporting. Adds 45 IAC 7-6 to clarify exemptions from alcoholic beverage excise tax. Repeals 45 IAC 7-1-2, 45 IAC 7-1-3, 45 IAC 7-3-1, 45 IAC 7-3-2, 45 IAC 7-3-3, 45 IAC 7-3-4, and 45 IAC 7-3-5. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

45 IAC 7-0.5; 45 IAC 7-1-1; 45 IAC 7-1-2; 45 IAC 7-1-3; 45 IAC 7-2-1; 45 IAC 7-3-1; 45 IAC 7-3-2; 45 IAC 7-3-3; 45 IAC 7-3-4; 45 IAC 7-3-5; 45 IAC 7-3-5.5; 45 IAC 7-3-6; 45 IAC 7-4; 45 IAC 7-5; 45 IAC 7-6

SECTION 1. 45 IAC 7-0.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. ALCOHOLIC BEVERAGE EXCISE TAXES

Rule 0.5. General Provisions

45 IAC 7-0.5-1 Construction and scope

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4

Sec. 1. Unless otherwise indicated, the regulations in this article shall apply to all alcoholic beverage excise taxes imposed by IC 7.1-4.

(Department of State Revenue; 45 IAC 7-0.5-1)

45 IAC 7-0.5-2 Incorporation of alcohol and tobacco commission's definitions

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4

Sec. 2. The definitions in IC 7.1-1-3 are incorporated into this article by reference.

(Department of State Revenue; 45 IAC 7-0.5-2)

45 IAC 7-0.5-3 "Alcoholic beverage excise tax" defined

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4

Sec. 3. "Alcoholic beverage excise tax" means any of the following taxes under IC 7.1-4:
(1) The beer excise tax under IC 7.1-4-2.
(2) The liquor excise tax under IC 7.1-4-3.
(3) The wine excise tax under IC 7.1-4-4.
(4) The hard cider excise tax under IC 7.1-4-4.5.
(5) The malt excise tax under IC 7.1-4-5.

(Department of State Revenue; 45 IAC 7-0.5-3)

SECTION 2. 45 IAC 7-1-1 IS AMENDED TO READ AS FOLLOWS:

Rule 1. Penalty for Late Remittance and Failure to File Returns

45 IAC 7-1-1 Penalty for nonpayment and failure to file a return

Authority: IC 6-8.1-3-3; IC 6-8.1-10-2.1; IC 7.1-4-6-2.1
Affected: IC 7.1-4-6-2

Sec. 1. **(a)** A person ~~who~~ **that** is liable for the payment of any **alcoholic beverage** excise tax or other fee ~~and does not make~~ **listed in** IC 7.1-4 **is subject to the penalty imposed under** IC 6-8.1-10-2.1 **if the person fails to:**

(1) timely ~~remittance of~~ **remit** the **full** tax or fee; ~~shall pay a penalty equal to ten per cent (10%) of the unpaid taxes or fees.~~ **or**

(2) timely submit an alcoholic beverage excise tax return, including an information return or report, or a return showing no tax liability, and all required attachments.

(b) If a person fails to pay the full amount of tax due on or before the due date, the discount for timely payment will be disallowed.

(Department of State Revenue; Rule (7.1-4-62)-1; filed Aug 29, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 807)

SECTION 3. 45 IAC 7-2-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 7-2-1 Confidential information; disclosure

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 6-8.1-7-1; IC 7.1-4-6

Sec. 1. **(a)** Unless in accordance with a judicial order, the department of state revenue, its **employees, former employees,** counsel, **or** agents, ~~clerks, stenographers, or other employees, or former employees, shall~~ **may** not divulge any federal information disclosed by the documents required to be filed under this article, except to:

(1) members, employees, and agents of the department of state revenue; ~~or to~~

(2) the governor, or the **governor's employees;**

(3) a member or employee of the general assembly when acting on behalf of a taxpayer located in the member's legislative district who has provided sufficient information that the member or employee is acting on behalf of the taxpayer;

(4) the attorney general **or any other legal representative of the state** in any action in respect to the amount of tax due under this article; or ~~to~~

(5) any duly authorized officer of the United States;

~~Any disclosure under this regulation can only~~ **when it is agreed that the information is to be confidential and to be used solely for official purposes.**

(b) State information disclosed by the documents required to be filed under this article may be ~~made~~ **disclosed without a judicial order** when it is agreed that the information is to be confidential and to be used solely for tax collection purposes. ~~However, that~~

(c) State information may be revealed upon the receipt of a certified request ~~to~~ **from** any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

(1) that state, district, territory, or possession permits the exchange of like information with the taxing officials of the state of Indiana; and ~~when~~

(2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes. ~~Any employee or agent of the department of state revenue or other state employee violating the provisions of this regulation shall be subject to dismissal from his employment.~~

(d) This section does not apply to statistical information compiled from alcoholic beverage excise tax returns, which may be disclosed without a judicial order so long as the department does not disclose

information identifying any taxpayer.

(Department of State Revenue; Alcoholic Beverage Tax Reg 7.1-4-6-1 to 7.1-4-6-8; filed Oct 29, 1979, 3:00 p.m.: 2 IR 1722)

SECTION 4. 45 IAC 7-3-5.5 IS ADDED TO READ AS FOLLOWS:

45 IAC 7-3-5.5 Deduction and refund requirements

Authority: IC 6-8.1-3-3; IC 7.1-4-2-8; IC 7.1-4-6-3.6
Affected: IC 6-8.1-9-1; IC 7.1-4-2-8; IC 7.1-4-3-5; IC 7.1-4-4-6; IC 7.1-4-4.5; IC 7.1-4-5-3

Sec. 5.5. (a) A person may claim a deduction on the monthly return required to be filed under 45 IAC 7-5-1 for alcoholic beverages under the following circumstances:
(1) The person sold or withdrew for sale an alcoholic beverage to an exempt entity under 45 IAC 7-6-1;
(2) An alcoholic beverage was damaged or destroyed while in the person's possession; or
(3) An alcoholic beverage was returned by the person to the primary source of supply;
so long as the person submitted proof as required under section 6 of this rule.

(b) If this deduction exceeds the liabilities owed to the state on that monthly return, the department shall refund the tax to the person.

(c) If the person does not claim the deduction on the monthly return, the refund procedures under IC 6-8.1-9-1 will apply.

(d) The tax paid on alcoholic beverages subsequently lost or stolen cannot be deducted, refunded, or credited.

(Department of State Revenue; 45 IAC 7-3-5.5)

SECTION 5. 45 IAC 7-3-6 IS AMENDED TO READ AS FOLLOWS:

45 IAC 7-3-6 Proof required to receive deduction or refund for exempt alcoholic beverages sold or withdrawn for sale

Authority: IC 6-8.1-3-3; IC 7.1-4-2-8; IC 7.1-4-6-3.6
Affected: IC 7.1-4-2-8; IC 7.1-4-3-5; IC 7.1-4-4-6; IC 7.1-4-4.5; IC 7.1-4-5-3

Sec. 6. ~~(a)~~ In order ~~for the beer wholesaler~~ to **claim a deduction or** receive a refund of ~~the beer~~ **an alcoholic beverage** excise tax, ~~he must submit~~ **the following** proof ~~to the department in the following manner:~~ **must be retained:**
(1) **For an exempt sale under 45 IAC 7-6-1, the following:**
(A) If the sale is to the United States government, its agencies, or its instrumentalities, ~~he must submit~~ copies of the invoice stating the regular selling price less the excise tax.
~~(2)~~ **(B)** If the sale is to a person other than the United States government, its agencies, or its instrumentalities, ~~he must submit~~ copies of the invoice showing:
~~(A)~~ **(i)** purchaser's name;
~~(B)~~ **(ii)** address;
~~(C)~~ **(iii)** date;
~~(D)~~ **(iv)** amount of beer sold; and
~~(E)~~ **(v)** either:
~~(i)~~ **(AA)** a waybill, bill of lading, or other evidence of shipment issued by a common carrier; or
~~(ii)~~ **(BB)** a trip sheet, acceptable by the department, supported by a properly notarized export shipping form supplied by the department.
(2) For returned alcoholic beverages, copies of the invoice or invoices showing the following:
(A) Primary source of supply's name.
(B) Credit invoice number.
(C) Date returned.
(D) Date excise tax was paid.

(E) Gallons returned.

(3) For alcoholic beverages that have been damaged or destroyed, any information reasonably required by the department.

(Department of State Revenue; 45 IAC 7-3-6; filed Aug 31, 1983, 9:49 a.m.: 6 IR 1901)

SECTION 6. 45 IAC 7-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Imposition of Tax

45 IAC 7-4-1 Persons responsible for tax payment

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4

Sec. 1. (a) Except as otherwise provided in IC 7.1-4, the following permit holders are required to collect the specific alcohol excise taxes on the first sale or withdrawal for sale of an alcoholic beverage within Indiana:

(1) The persons liable for the beer excise tax are governed by IC 7.1-4-2-2.

(2) A permittee listed in IC 7.1-4-3-2 is liable for the collection and payment of the liquor excise tax.

(3) A permittee listed in IC 7.1-4-4-3, as well as a direct wine seller, is liable for the collection and payment of the wine excise tax.

(4) A permittee listed in IC 7.1-4-4.5-3 is liable for the collection and payment of the hard cider excise tax.

(5) A permittee listed in IC 7.1-4-5-2 is liable for the collection and payment of the malt excise tax.

(b) The taxes listed in subsection (a) are imposed on the sale or gift, or withdrawal for sale or gift, to a person of an alcoholic beverage subject to that tax, regardless of whether or not the person purchasing the alcoholic beverage is authorized to purchase or receive it.

(c) The alcoholic beverage subject to the taxes shall be taxed only once, at the first sale or withdrawal for sale, in the following manner:

(1) When a primary source of alcohol located within the state of Indiana sells, or withdraws for sale, alcohol to a person in Indiana, the primary source of alcohol is responsible for paying the alcoholic beverage excise tax.

(2) When a wholesaler located within Indiana receives alcohol from a primary source of alcohol not located within Indiana, the wholesaler located within Indiana is responsible for paying the alcoholic beverage excise tax.

(3) When a permit holder sells, or withdraws for sale, alcohol directly to a retailer or consumer, the permit holder is responsible for paying the tax.

(Department of State Revenue; 45 IAC 7-4-1)

45 IAC 7-4-2 Samples

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-3-2-7; IC 7.1-3-9-11; IC 7.1-3-10-13; IC 7.1-3-12-5; IC 7.1-3-14-7; IC 7.1-3-27

Sec. 2. (a) If a permit holder responsible for the alcoholic beverage excise tax is authorized to sell samples, the permit holder is responsible for payment of the appropriate tax on those samples, even if the sample is complimentary and the permit holder does not charge the customer for the sample.

(b) Sample sizes and restrictions are found in 905 IAC 1-5.2-9.2, which is incorporated herein by reference.

(Department of State Revenue; 45 IAC 7-4-2)

SECTION 7. 45 IAC 7-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Monthly Reports

45 IAC 7-5-1 Monthly reports

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4-6-3.5

Sec. 1. (a) If a person is liable for the payment of a tax under IC 7.1-4 and this article, the person must file a monthly return in an electronic format with the department on or before the twentieth day of the month following the month in which the liability for the tax accrues by reason of the manufacture, sale, gift, or the withdrawal for sale or gift, of alcoholic beverages within this state.

(b) Payment of the excise tax due shall accompany the return in an electronic format.

(Department of State Revenue; 45 IAC 7-5-1)

45 IAC 7-5-2 Primary source reporting

Authority: IC 6-8.1-3-3; IC 7.1-4-6-1; IC 7.1-4-6-3.6
Affected: IC 7.1-4-6-3.6

Sec. 2. (a) Primary source suppliers are required to file monthly reports of alcoholic beverage sales into Indiana in an electronic format prescribed by the department.

(b) The department may request on the report any information it considers reasonably necessary.

(Department of State Revenue; 45 IAC 7-5-2)

SECTION 8. 45 IAC 7-6 IS ADDED TO READ AS FOLLOWS:

Rule 6. Exemptions

45 IAC 7-6-1 Exemptions from alcoholic beverage excise tax

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4-2-8; IC 7.1-4-3-5; IC 7.1-4-4-6; IC 7.1-4-5-3

Sec. 1. (a) Sales or withdrawals for sale of alcoholic beverages intended for export to a state outside Indiana are exempt from alcoholic beverage excise tax.

(b) Sales or withdrawals of alcoholic beverages for sale to the United States government, its agencies, and instrumentalities, including military facilities, are exempt from alcoholic beverage excise tax; however, sales to individuals, private stores, or concessionaires located upon federal areas are not exempt.

(c) Sales or withdrawals for sale of wine to a pastor, rabbi, or priest for sacramental or religious purposes only are exempt from the liquor excise tax (IC 7.1-4-3) and the wine excise tax (IC 7.1-4-4).

(d) Lost or stolen alcoholic beverages are not exempt from alcoholic beverage excise tax.

(Department of State Revenue; 45 IAC 7-6-1)

SECTION 9. THE FOLLOWING ARE REPEALED: 45 IAC 7-1-2; 45 IAC 7-1-3; 45 IAC 7-3-1; 45 IAC 7-3-2; 45 IAC 7-3-3; 45 IAC 7-3-4; 45 IAC 7-3-5.

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